

# **How Safe Is The Schoolhouse?**

## **An Analysis of State Seclusion and Restraint Laws and Policies**



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**April 15, 2012 (Updated to include new laws)**

**The report has been updated to include the Maine, Minnesota, and Wisconsin restraint and seclusion laws adopted in March-April 2012. The bibliography has also been revised to show the status of all state restraint and seclusion policies and laws effective in April 2012. There is a brief Executive Summary on page 4-5. (The report will likely be updated twice annually, with the next update planned for winter.)**

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## **Important Introductory Information**

**About the Report.** This report has been revised in April 2012 to include laws newly adopted in Maine, Minnesota, and Wisconsin, as well as other updated information. The bibliography now summarizes all state restraint and seclusion laws and policies, and includes information for those states without laws and policies. This report presents interim research for a law review article. It provides information and analysis about state approaches to seclusion and restraint. It also examines the impact on the states of federal Congressional action. The report reviews state statutes, regulations, and executive orders, which create mandatory legal protections for children. Accordingly, the report focuses on them. The report also reviews voluntary nonbinding guidelines, which lack the force of law and can be easily changed by decision of the state Department of Education.

**Important Technical Details.** Footnotes added in 2012 use the “1.1, 1.2” numbering system of legal treatises. This keeps the original footnotes to the extent they have been cited elsewhere. The report uses the term “law” to include statutes, regulations, and executive orders because they have the force of law and are legally binding. The report includes the District of Columbia, thus using 51 “states.” I did not have territorial materials. To avoid too many footnotes, the state laws and materials are collected in a bibliography, which also has been updated to include the status of all states. All information in the maps and charts has been provided in the text to maximize access by people of all abilities. Some need text; some need visuals (for disability and other reasons). Map colors were chosen to permit black and white printing/ copying white where possible. (There is not a grant underwriting this work, so technology is limited.)

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## EXECUTIVE SUMMARY

Seclusion and restraint are highly dangerous interventions that have led to death, injury, and trauma in children. They should be restricted to only rare emergencies where they must be deployed to protect someone from physical harm. No federal laws protect America's 55 million school children from seclusion/restraint. Bills have been introduced by Congressman George Miller and Senator Tom Harkin. With no single federal law, American children are covered by a patchwork of state laws, regulations, nonbinding guidelines, and even silence. **This report focuses on state restraint/seclusion laws and policies that impact children with disabilities.**

### AN OVERVIEW OF STATE LAWS

- This report uses 51 "states" to include the District of Columbia.
- 30 states have statutes and regulations providing meaningful protections against restraint and/or seclusion for children with disabilities. (In 2009, there were only 22.) These have the force of law and must be obeyed. Even the 30 states offer varying protections, with key safeguards present in some states and missing in others. There are 12 states with nonbinding guidelines, but these lack the force of law and can be readily changed by the State Department of Education. They are not the equivalent of statutes or regulations. Only 18 states have laws protecting students without disabilities.
- Of the states with meaningful laws, 12 protect only students with disabilities. This means that children without disabilities have no protection in 38 states. In another state, New Hampshire, children with disabilities are protected from both restraint and seclusion; children without disabilities, from restraint alone. A new section has been added to summarize protections/lack of protections for children without disabilities.
- Only 16 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm. Many states have no laws or have loopholes that allow restraint to be used with little limitation.
- There are 33 states that would define seclusion as a room a child cannot exit (door is locked, blocked by furniture or staff, etc.). By law, 4 states ban all seclusion. Another 8 by law allow seclusion only to prevent immediate threats of physical harm. The remaining 39 lack laws limiting seclusion to physical safety emergencies, although some do ban locked seclusion.
- Certain requirements are needed to ensure that seclusion/restraint are used only as a last resort and only as long as an emergency lasts. Only 18 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used. Only 17 states by law require restraint and/or seclusion to stop the emergency ends. Some children have remained in seclusion/restraint until they can sit perfectly still, show a happy face, pull apart socks or do other tasks unrelated to an emergency.
- States increasingly prohibit three types of restraint due to their severe risks: restraints that restrict breathing, mechanical restraints, and chemical restraints. There are 18 states that

by law forbid all restraints that impair breathing. In addition, 16 states by law ban mechanical restraints; 11 ban chemical ones.

- Children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized. But of the states allowing seclusion, only 17 require staff to continuously watch a child in a seclusion room; 30 states lack such laws. Five of the 30 permit occasional monitoring.
- Parents must be notified promptly of seclusion/restraint, so they can seek medical care for concussions, hidden injuries, other injuries, and trauma. By law, 20 states require schools to take steps to notify parents on the same day or within 24 hours. There are 26 states with no legal requirement to tell parents that a child was restrained/secluded.
- Data collection is very important. In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. At least 33,000 students were restrained/secluded in Texas and California in 2007-08. Yet, only 13 states collect minimal data on the use of restraint/seclusion each year.

### **12 STATES ADOPTED OR OVERHAULED LAWS IN WAKE OF CONGRESSIONAL BILLS**

- In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. The Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features. In the two years since introduction, 8 states adopted laws and 4 overhauled their existing laws. All 12 incorporated important features from Congressman Miller's bill, although to varying degrees.
- The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than Congressman Miller's bill, and similar to it in others. Unique features of Senator Harkin's bill have been reflected in laws adopted in 2012 and in proposals. Together, the two national Congressional bills are likely to provide a basis of support for those states which wish, and are able, to strengthen their laws. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action.

### **SOME IMPORTANT SAMPLE STATE PROVISIONS**

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

## **HOW SAFE IS THE SCHOOLHOUSE?**

### **AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES**

In 2009, the Government Accountability Office (GAO) documented the use of seclusion and restraint upon hundreds of school children, resulting in death, injury, and trauma. Stories included a 7-year-old girl dying after being held face down by staff, kindergarteners tied to chairs with duct tape and suffering broken arms and bloody noses, and a young teen who hung himself while unattended in a seclusion room. Most of the incidents involved children with disabilities.<sup>1</sup>

For more than two decades, evidence of the vast physical and psychological toll caused by restraint and seclusion has accumulated.<sup>2</sup> In 2009, the National Disability Rights Network (NDRN) catalogued the use of abusive interventions against children in over 2/3 of states,<sup>3</sup> and state protection and advocacy agencies also published reports.<sup>4</sup> The Council of Parent Attorneys and Advocates (COPAA) documented 185 episodes in which aversive techniques were used, often on young children.<sup>5</sup> In 2005, TASH and the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion published *In the Name of Treatment*.<sup>6</sup> The Council for Exceptional Children's Council for Children with Behavioral Disorders has described the "wide variety of injuries and deaths [that] have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging"<sup>7</sup> and the "widespread" use of restraint in educational and other environments.<sup>8</sup> Staff have also been injured and traumatized by these techniques.

In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee), introduced a House bill to protect children from restraint, seclusion, and other aversives. Although it passed the House, the bill did not become law. In April 2011, he reintroduced the Keeping All Students Safe Act, H.R. 1381. In December 2011, Senator Tom Harkin (Chair, Senate Health Education Labor and Pensions Committee) introduced a Senate bill, also named the Keeping All Students Safe Act, S. 2020.

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<sup>1</sup> UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS, SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5-8 (2009).

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

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

<sup>4</sup> Three examples are DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007); ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009). Several other Protection and Advocacy agencies also wrote outstanding, highly useful reports.

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

<sup>6</sup> 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).

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

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

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

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

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

## I. PATCHWORK OF STATE PROTECTIONS AGAINST SECLUSION/RESTRAINT

### Meaningful Protections in Law

There are 30 states with statutes and regulations providing meaningful protections against restraint and/or seclusion for children with disabilities. These have the force of law and must be obeyed.

The states are Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire, Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin (2012), and Wyoming. Of these, 8 were adopted after the Miller bill was introduced in December 2009 (Alabama, Florida, Georgia, Louisiana, Vermont, West Virginia, Wisconsin (2012), and Wyoming), and 4 were substantially strengthened (New Hampshire, Maine (2012), Oregon, and Tennessee).<sup>9</sup> For ease, the term "law" is used to encompass statutes, regulations, and executive orders, because each has the force of law.

**Only 30 states provide meaningful protection against either restraint or seclusion by law for children with disabilities.**

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<sup>9</sup> To provide meaningful protection, a state has to fall in one of two categories. First, it provides multiple protections against restraint and/or seclusion for students. Second, it has few protections but strictly limits the intervention to emergency threats of physical harm. Some states provide greater protections than others.

Of the 30 states, 7 have statutes, 9 have statutes and regulations, 14 have regulations alone, and 1 has an Executive Order.<sup>10</sup> Typically, state regulations are more easily changed than statutes, going through a State Department of Education approval process rather than a vote by two houses of a legislature and approval by the Governor. (An Executive Order is also easily changed, requiring only the Governor's approval.) Accordingly, weaker national seclusion/restraint proposals have the potential to weaken state regulations, and stronger national proposals, to strengthen them.

Of the states with meaningful laws, 13 cover all students; 18 protect students with disabilities--the most commonly reported victims of these abusive techniques. (New Hampshire appears in each total, as it protects all students from restraint and students with disabilities from seclusion). Ideally, all children should be protected from restraint/seclusion. Nonetheless, because these techniques have been used frequently upon children with disabilities, and they have disproportionately suffered death, injury, and trauma, special care is often taken to protect their rights and safety.<sup>11</sup>

Even the 30 states offer varying protections, with key safeguards present in some states and missing in others. Two protect against either restraint or seclusion--but not both. Others protect more against restraint than seclusion or vice versa, meaning that the intervention chosen by staff determines the degree of protection.<sup>12</sup>

Ohio and Florida are two states that came close to being included in the "weak" group. Florida

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<sup>10</sup> States with statutes only include Florida, Louisiana, North Carolina, Nevada, Oregon, Wisconsin (2012), and Tennessee. The states with both statutes and regulations are California, Connecticut, Illinois, Maine (2012), Maryland, Minnesota, New Hampshire, Texas, and Wyoming. Finally, the states that have regulations alone are Alabama, Arkansas, Colorado, Georgia, Iowa, Massachusetts, Montana, New York, Ohio (Executive Order), Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia. New Hampshire's Special Education regulations were revised in December 2010, although the seclusion/restraint regulation is similar to original 2008 regulation. In September 2010, the state had adopted a new restraint statute. The statute overrides the regulations where there is a conflict. The regulations remain the controlling document for seclusion, which was not in the statute.

<sup>11</sup> This disproportionate impact is readily apparent from the many articles and reports documenting harm to students with disabilities and the paucity of reports focusing on children without disabilities. All of the children in the GAO report who died had disabilities, and the GAO stated that almost all of the reports it received involved students with disabilities. Students with disabilities comprised 12% of the students in the Civil Rights Data Collection, but almost 70% of students who were physically restrained. Dept. of Educ., Office for Civil Rights, *Revealing New Truths About Our Nation's Schools 5* (March 2012). 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. The 13 states that protect students with disabilities, often through the state special education or disability regulations, are Arkansas, California, Colorado, Connecticut, Florida, Louisiana, Minnesota, Montana, Nevada, New Hampshire (seclusion), Pennsylvania, Texas, and Washington. The 18 states that protect all students are Alabama, Georgia, Iowa, Illinois, Maine, Massachusetts, Maryland, New Hampshire (restraint), North Carolina, New York, Ohio (restraint), Oregon, Rhode Island, Tennessee, Vermont, Wisconsin, West Virginia, and Wyoming.

<sup>12</sup> For example, Arkansas and Ohio regulate only seclusion. Illinois limits restraint to emergency threats of physical harm but permits seclusion to maintain order. Wyoming restricts seclusion to threats of physical harm but does not regulate when restraint may be used.

was classified as having meaningful protections because it has one of the strongest data collection provisions in the country, requires parental notification, bans restraint that interferes with breathing, and has other features. While it does not explicitly limit restraint to threats of physical harm, it implicitly does so, requiring schools to report why each incident involved a threat of serious bodily injury. Nonetheless, because it does not expressly limit seclusion/restraint to emergency threats of injury, enabling personnel and others to interpret the law as imposing no limit, the Florida statute was close to the border.

Ohio also was close to the line. In 2009, Ohio's Governor issued Executive Order 2009-13S, which had three provisions relating to restraint only. It forbade prone restraint, defined as face-down restraint for an "extended period of time." It, however, permitted a transitional hold—"briefly" placing a person face down to prevent harm to self or others. There is no time limit on these holds. The Order also provided that physical restraint should be used only when there is a risk of "harm to the individuals and others," and only in accord with planned state agency regulations governing its use. Ohio has no protection against seclusion. Although the 2009 Executive order called for regulations to implement the order and to further regulate restraint and seclusion, the Ohio Department of Education has not promulgated them. Ohio Legal Rights Service has expressed significant concern about the situation.<sup>13</sup>

### **Weak Protections in Law**

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

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<sup>13</sup> See FLA. STAT. 1003.573; OHIO EXEC. ORDER NO. 2009-13S (Aug. 3, 2009); Communication with Michael Kirkman, Executive Director, Ohio Legal Rights Service (Jan. 2012) (regarding OLRS concerns about Ohio scheme). The Executive Order, issued by former Governor Strickland, was made effective until rescinded. In October 2011, disability and civil rights groups thanked current Governor Kasich for "choosing to continue" the Order. <http://www.olrs.ohio.gov/sites/olrs.ohio.gov/files/u5/letter-gov-seclusion-restraint-10-18-11.pdf>. The fact that the Governor's "choice" dictates indicates how easy it is for the Executive Order to be changed or rescinded.

## States Without Protections in Law

There are 12 states with voluntary guidelines that are not legally binding. These documents include guidance approved by the State Board of Education; documents authored by/for the State Department of Education or Director of Special Education; and model principles that schools might consider.

In these states, students lack mandatory legal protection. The guidelines are not statutes or regulations. They lack the force of law. They are readily changed or eliminated, requiring only approval by the state Department of Education, rather than use of the formal legislative or rulemaking process.<sup>14</sup> The recent replacement of guidelines with laws in Vermont, Wisconsin, and Louisiana, and the seeking of a statute in Michigan, indicate their insufficiency. Nonetheless, such guidance represents the State's view that seclusion and restraint are dangerous techniques and that their use should be sharply restricted. The 12 states are Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Utah, Virginia, and Washington, D.C.<sup>15</sup>

The experience in two states is noteworthy. In 2006, after two children died in restraint, Michigan adopted nonbinding state guidance recommending that school boards adopt 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." Finally, MPAS received seclusion/restraint stories in 32 of the state's counties from parents, indicating that the nonbinding guidelines were not enough.<sup>16</sup>

Similarly, Wisconsin's protection and advocacy agency and two other organizations found in

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<sup>14</sup> At times, some people seem to view such guidelines as the equivalent of statute and regulation. This is likely due to confusion about the proposed Congressional bills, which require states to adopt "policies" incorporating the statutory requirements. But States could not eliminate or change those federal requirements, and schools within the state would have to follow them. Thus, these mandatory "policies" would differ markedly from the kind of nonbinding guidance currently in place. Such nonbinding guidance documents should not be recognized or treated as statute, regulations, or the mandatory state policies under the proposed bills.

<sup>15</sup> A few of these documents appear to be directives using "mandatory" language. Nevertheless, they are not binding laws or regulations that protect children. Like any other school district guidance, they have no force of law and may be readily changed. State practice determines whether the State will act to ensure that guidelines are followed and whether there are repercussions for employees or districts that do not adhere to them. Furthermore, many guidelines are simply suggested sets of principles, such as those in Indiana (principles "the Department recommends"); Missouri (a "model policy"); Nebraska ("provide[s] information and guidance for Nebraska School districts in creating new, or revising existing policies"); and Utah ("This document is a recommended practices guideline" that consists of "best practices"). Of the guidelines, those by the Chancellor of the District of Columbia Schools may be entitled to the strongest weight, as they consist of prohibitory terms (*e.g.*, mechanical restraints "are not authorized") rather than permissive terms. Still, they are readily changed and do not have the force of law. Washington, D.C. proposed regulations in 2010 but was unable to enact them.

<sup>16</sup> MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5 (2009).

2009 that the state’s then-existing restraint/seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. The directives lacked the “the force of law” and “sufficient enforcement.” They reported that Wisconsin students continued to be hurt and traumatized by restraint and seclusion. Wisconsin enacted a new statute in March 2012, replacing the old nonbinding directives with mandatory law.<sup>17</sup> Finally, six states have absolutely nothing, despite efforts in at least three to take action: Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota.<sup>18</sup>

## II. SECLUSION/ RESTRAINT AS EMERGENCY INTERVENTIONS

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

### A. LIMITING RESTRAINT TO EMERGENCIES THREATENING PHYSICAL HARM

Of the hundreds of stories the GAO collected, at least 20 involved children who died from restraint. Other children suffered injuries, including broken bones and bloody noses, or had post-traumatic stress syndrome.<sup>19</sup> Given the dangers, restraint should only be used in rare emergencies where it must be deployed to protect people from serious physical harm. Instead, restraint has been used for failing to do class work, tearing paper, being unable to pay attention due to disability issues, pushing items off desks, convenience, punishment, and similar issues.<sup>20</sup>

Only 16 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm.<sup>21</sup> Four require an imminent threat of serious or substantial physical harm/injury: Louisiana; New Hampshire; Oregon; and Rhode Island. Florida appears to implicitly use this standard, although the statute is not explicit, and subject to being

**Only 16 states by law limit restraint to emergencies involving threats of physical harm.**

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<sup>17</sup> DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN (2009); 2012 WISC. LAWS 146 (Mar. 19, 2012; previously Senate Bill 353).

<sup>18</sup> In New Jersey, “Matthew’s Law” has been considered each legislative session, but has not passed. Idaho deferred any decision on regulations in December 2010. An Arizona task force drafted recommendations in 2009 but the State did not act upon them. A law did require Arizona school districts and charter schools to consider the proposal, but it did not require districts or the State to adopt any seclusion/restraint policy.

<sup>19</sup> GAO REPORT at 1, 8, 10-12.

<sup>20</sup> See generally NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009); JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Appendix) (COPAA 2009); Complaint, *Ebonie S. v. Pueblo School District No. 60* (D. Colo. filed Apr. 13, 2009).

<sup>21</sup> For purposes of this report, physical harm and bodily harm/injury/danger/safety are treated synonymously.

ignored.<sup>22</sup> Eleven states require an immediate threat of physical harm: Alabama, Colorado, Connecticut, Georgia, Illinois, Maine, Ohio, Pennsylvania, Tennessee, Vermont, and Wisconsin.

The remaining 35 states lack such laws. Some have statutes and regulations that permit restraint even when the child is not posing a danger of physical harm to anyone. Others have no limits, allowing states to do as they wish.

Massachusetts and Maryland by regulation allow restraint for threats of serious physical harm or as stated in a child's Behavioral Intervention Plan (BIP) or Individualized Education Program (IEP).<sup>23</sup> Maine recently eliminated a similar regulatory provision. These rules appear superficially strong, but the loopholes let schools use restraint for almost any reason. Indeed, they may create incentives to put restraint in an IEP to avoid questions about whether there was an emergency.

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

Likewise, California law contains a significant loophole. It authorizes restraint in "emergency" situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. The statute and regulations are worded in such a way that California does not forbid the use of restraint in non-emergencies. Consequently, if restraint is used because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and protections in the law do not apply.<sup>24</sup>

Minnesota may have a similar problem, and it remains to see how the courts and the state Department of Education interpret the law. Minnesota's statute takes the form of defining "physical holding" and then restricting only "physical holding." Prior to April 2012, Physical holding was defined similarly to physical restraint (with a few exceptions). But in 2012, the legislature redefined "physical holding" as a physical restraint for the purpose of preventing physical injury. The statute continues to regulate only "physical holding" as defined by the statute and not other physical restraints. This makes it arguable that physical restraint used for other purposes may be outside the statute's reach.<sup>25.1</sup> This does not, however, appear to be the drafters' intent. Their intent appears to have been to limit all physical restraint to threats of physical injury while limiting seclusion to threats of physical injury or serious destruction of property. It remains to be seen whether the State Department of Education, the courts, or other state practice will or can clarify the matter. This may turn on the authority of the Department of

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<sup>22</sup> Florida's 2011 statute, FLA. STAT. 1003.573, implicitly suggests a serious physical harm standard, by requiring the school to explain in its report why there was an imminent risk of serious harm if seclusion/restraint were used. Florida practitioners confirm that the language's purpose was to impose a physical harm standard. Nonetheless, the statute is not explicit and can be misinterpreted as permitting seclusion/restraint for unlimited purposes.

<sup>23</sup> For children with disabilities, the BIP is often part of the IEP.

<sup>24</sup> See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

<sup>25.1</sup> MINN. STAT. § 125A.0941-42 (revised by Senate Bill S.F. 1917, signed Apr. 3, 2012); 2009 c 96 art 3 s 11 (statute as originally enacted in 2009).

Education.

Nevada, Texas, and West Virginia authorize restraint for threats of physical harm or serious destruction of property. Six states by law (Alaska, Iowa, Michigan, Montana, New York, Washington) permit restraint for threats of physical harm, destruction of property, or educational disruption. Property destruction and educational disruption are appropriately handled through positive behavioral supports, de-escalation, conflict resolution, and other adjustments.<sup>25</sup> North Carolina by statute allows restraint for threats of physical harm, property destruction, educational disruption, or as stated in the IEP/BIP, another wide loophole.

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

There are 12 states that do not seek even in voluntary guidance to limit the reasons for which restraint may be used: Arkansas, Arizona, Delaware,<sup>26</sup> Hawaii, Idaho, Kentucky, North Dakota, New Jersey, South Carolina, South Dakota, and Wyoming. Their laws are largely or entirely silent.

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

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. Children have been secluded in locked closets and rooms and in unlocked rooms they cannot exit--often because staff or furniture block the door. Doors may even be altered to prevent children from opening them—simply by raising a door knob or requiring two handles to be turned. Seclusion often is used for non-emergencies and continued long after any emergency has ended. One New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.<sup>27</sup> Children confined in closets and seclusion rooms have been denied food, water, and access to the restroom.<sup>28</sup>

States differ markedly in how they define and treat seclusion. Some recognize the danger of seclusion and seek to restrict it either by law or voluntary guidance. By law, 4 states ban all

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<sup>25</sup> As a state law limiting restraint to emergencies threatening physical harm would capture property destruction that threatens physical harm, it should not be necessary to also allow restraint for destruction of property. The latter is a very wide category that could encompass all kinds of non-threatening things.

<sup>26</sup> Delaware permits committees to authorize “emergency interventions” for children with autism if there is a threat of physical harm or destruction of property. But it does not protect other children from emergency interventions, or limit the use of the interventions in non-emergencies. It thus provides almost no protection.

<sup>27</sup> GAO REPORT at 13.

<sup>28</sup> SCHOOL IS NOT SUPPOSED TO HURT (2009) at 15-20; CCBD, *Position Summary on the Use of Seclusion in School Settings* at 236.

forms of seclusion, which eliminates the tremendous risk that seclusion poses. Another 8 states by law limit seclusion to emergencies involving threats of physical harm. Other states permit seclusion for a wide variety of reasons or even no reason at all, subjecting children to physical and psychological danger and harm.

### Seclusion Defined

Unlike restraint, seclusion is defined differently in different states, leading to differences in the degree of protection students receive. Some states regulate only “locked” seclusion and say nothing about doors blocked by staff, furniture, or cheap child-proofing devices that adults can easily open but children with some physical or cognitive disabilities cannot.

There are 33 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (*e.g.*, the door is locked or blocked in some way). Twenty-two states do it by law: Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Maine,<sup>29</sup> Massachusetts, Maryland (if alone), Minnesota, Montana, North Carolina (and also a room a child cannot leave due to physical or mental incapacity), New Hampshire, Nevada, Oregon, Rhode Island (if without access to staff), Texas (if alone in room), Tennessee, Vermont, Wisconsin, Wyoming (definition of “isolation”); and West Virginia (if unsupervised).

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

Eleven states have a similar definition in nonbinding guidance: Indiana, Kansas, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina (if child alone), Utah, Virginia, and Washington, D.C. Two states by law limit seclusion to locking a child in a room: Alabama and Florida. In the U.S. Congress, the pending House bill defines seclusion as locked isolation; the Senate bill, as locked isolation or a space from which the child is prevented from leaving.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting, whether locked or blocked in some other way.<sup>30</sup> For short-hand, these

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<sup>29</sup> Maine in 2012 amended its regulations to clarify that seclusion may be used only when there is an imminent threat of physical harm. It defines seclusion as a space from which a child is physically prevented from exiting. CODE ME. R. § 05-071, Chapter 33 (as amended by Legislature, Mar. 30, 2012 and approved by Governor, Apr. 4, 2012, <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280043951>). Previously, Maine had banned seclusion in a room from which a door could not be opened. Nonetheless, there were reports that children were secluded. Christopher Cousins, *Use of Restraint, ‘Timeout Rooms’ in Maine Schools Being Re-Examined*, BANGOR DAILY NEWS, Oct. 28, 2011. Ambiguities in the prior regulation may have been one factor that contributed to the continued use of seclusion.

<sup>30</sup> Rooms that are locked or from which children are prevented from exiting are considered “seclusion” in this report even if called something else (*e.g.*, “confinement,” “isolation,” “time-out,” or “quiet room”). They differ from legitimate “time out” spaces which can involve placing a child in a room to calm down that he/she is capable of leaving, usually with staff present. The report definition focuses on the function of the room. For example, Wyoming bans “locked seclusion,” while, under strict limits permitting “isolation” (an unlocked space from which a child cannot exit). It also has a separate category for “seclusion from the learning environment,” which appears to

may be referred to as “no-exit rooms.”

### **Bans on Forms of Seclusion**

By law, 12 states prohibit some form of seclusion. Of these, 4 ban it entirely, forbidding the use of rooms children are prevented from exiting, whether locked or technically unlocked but blocked: Georgia, Nevada, Pennsylvania, and Texas.<sup>31</sup> Given the dangers that seclusion poses, a ban is one important protection for children.

Another 9 states by law prohibit all or most forms of locked seclusion: Alabama, Arkansas, California (but permitted in emergencies in locked facilities; does not regulate seclusion as non-emergency intervention), Maine (2012), Montana (except in certain residential treatment facilities), New Mexico (fire code violation), New York, Wisconsin (2012), and Wyoming. These states would permit seclusion in spaces children cannot exit, which are as dangerous as those with formal locks.<sup>32</sup>

**4 states ban all seclusion; 9 ban locked seclusion, allowing furniture & staff to block doors.**

By law, 6 more allow locked seclusion only if the lock can automatically release, either through an emergency alarm system or when a person stops holding it: Connecticut, Iowa, Illinois, Florida (fire code referenced), Minnesota, South Carolina (fire code referenced). Most seclusion laws and guidelines are silent about fire, safety, and building codes, although these codes likely limit locked doors and impose other construction and fire safety requirements (sprinkler interference, construction of walls, etc.). When seclusion policies omit them, they leave staff and parents unaware and can lead to a belief that locking students in closets and rooms is permissible.<sup>33</sup> Of course, a door that automatically unlocks in an emergency does not eliminate the grave physical or psychological dangers of seclusion.

The remaining 39 states do not ban either locked seclusion or seclusion in rooms children cannot exit.<sup>34</sup>

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be a form of time-out. Wyoming’s “isolation” is defined as most states and this report define “seclusion,” and therefore, this report uses Wyoming’s isolation as “seclusion” unless otherwise stated. Where it would make a difference, the report treats Wyoming’s locked seclusion and isolation differently.

<sup>31</sup> Texas law forbids the use of locked spaces unless there is a threat of bodily harm, and only while awaiting the arrival of law enforcement. It permits time-out, which it defines as an unlocked room from which egress is permitted. Thus, Texas law appears to implicitly forbid unlocked no-exit rooms. Nevertheless, the absence of an explicit prohibition may be viewed as a gap that is exploited to use of such rooms.

<sup>32</sup> California was excluded from this group. By law, locked seclusion is not permitted as an emergency intervention, unless the state has otherwise licensed a facility to use a locked room. Yet, due to a loophole in wording, California is silent about locked seclusion for non-emergencies (which can include predictable events that threaten serious physical harm or events that do not threaten serious physical harm).

<sup>33</sup> For an excellent discussion of the effect that fire, building, and other safety codes may have on seclusion rooms, see SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2011). A building with more than five seclusion rooms may be considered a jail in South Carolina.

<sup>34</sup> Two states (Washington, D.C. and Michigan) urge in their nonbinding guidance that children not be locked

## **Permitting Seclusion But Restricting It to Physical Safety Emergencies**

While 4 states ban all forms of seclusion, 8 by law limit it to emergencies where it is necessary to prevent an immediate threat of physical harm: Oregon (“serious” physical harm), Colorado, Louisiana (“substantial” physical harm), Maine (2012), Tennessee, Vermont, Wisconsin (2012), and Wyoming. Florida appears to have implicitly incorporated a serious physical harm standard by requiring incident reports to explain why the use of seclusion met this standard. Still, the lack of an explicit limitation means some may interpret the law to allow seclusion for other reasons.

The remaining 39 states do not by law restrict seclusion to physical safety emergencies, exposing children to serious risk of harm. Five of these would also forbid locked seclusion, but not regulate seclusion in other rooms children are physically prevented from exiting: Alabama, Arkansas, Montana (except in certain residential treatment facilities), New Mexico (fire code violation), and New York.

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

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in rooms, although the District of Columbia would permit staff to physically block the door. Kansas and Nebraska suggest doors that automatically unlock in their voluntary guidance.

**14 States Explicitly Permit  
Seclusion in Non-Emergencies by Law**

<b>State</b>	<b>Seclusion Law and/or Loophole</b>
CA <sup>35</sup>	Bans locked seclusion as an emergency intervention for threats of serious physical harm, but does not forbid it under other circumstances. Could be used if behavior pattern is predictable or for other non-emergencies. (Also allows locked seclusion for emergencies if authorized by state license.)
NH	Bans unobserved seclusion in space child cannot exit unless written into IEP. (1) Does not restrict reasons such seclusion can be added to IEP. (2) Does not regulate observed seclusion, allowing staff to use it for any reason. Observation can be by video camera.
MN	Emergency threats of physical harm or serious destruction of property.
MA	Bans locked seclusion unless child has “access” to staff. Access is undefined and could simply be the ability to call or signal for staff.
RI	Bans seclusion unless the child is observed, and it is in BIP. Rhode Island does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration.
WV	Bans seclusion if a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. There are no limits on seclusion if the student is “supervised.”
AL	Bans locked seclusion. No regulation of seclusion in rooms where exit is blocked.
IA, MT, NY, IL, <sup>36</sup> AR	Explicitly allow seclusion for any destruction of property or educational disruption (AR requires severe disruption). While time-out in a space child can leave may be appropriate for educational disruption, placing child in a room he cannot exit is not appropriate.
NC	Allows seclusion for threats of physical harm, property destruction, educational disruption, or as stated in IEP/BIP. Can be included in IEP/BIP for any reason.
CT, MD	Allow seclusion for threats of physical harm or as stated in the IEP/BIP. Gives schools freedom to put seclusion in IEP/BIP for any reason. May encourage them to do so to avoid any questions about whether there was an emergency.

<sup>35</sup> See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

<sup>36</sup> Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

**Information from Above Table in Textual Format**  
**14 States Explicitly Permit**

**Seclusion in Non-Emergencies by Law**

Minnesota permits seclusion for emergency threats of physical harm or serious destruction of property. Five states by law permit seclusion for threats of physical harm, destruction of property, or educational disruption: Arkansas (but limiting seclusion to severe occurrences), Iowa, Montana, New York, and Illinois.<sup>37</sup> While time-out in a space a child is able to leave may be appropriate for disruptive behavior, seclusion is not.

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

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

California has a significant loophole. It explicitly bans seclusion in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. But California does not forbid the use of seclusion in non-emergencies. Consequently, if seclusion is used due to a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency use, and protections in the law do not apply.<sup>38</sup>

Two states, Connecticut and Maryland, by law permit seclusion for threats of physical harm or as stated in the BIP/IEP. The IEP/BIP loophole grants schools freedom to use seclusion for non-emergencies, and may encourage them to include seclusion in IEPs to avoid answering questions about whether there was an emergency.

**End of Textual Alternative**

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<sup>37</sup> Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

<sup>38</sup> See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

Loopholes in these laws can have dramatic consequences, as was apparent in Connecticut in January 2012. Connecticut permits seclusion for risks of physical harm or as otherwise stated in the IEP (regardless of reason). One school district superintendent appeared to suggest that seclusion rooms were regular requirements in IEPs for children with disabilities:

‘There are no provisions for the use of seclusion time out for students that do not have an IEP,’ according to a statement issued Wednesday. . . . ‘Unless you have an IEP this is not part of your daily [plan],’ he {the Superintendent} said. ‘The rooms have been used very infrequently for students without an IEP, but generally they try to find another location for the students.’

Rather than seeking to reduce use of the seclusion rooms (in which children were screaming), the district decided they would “be moved to out-of-the-way locations so their use in the future is not disruptive to other students.”<sup>39</sup> If seclusion was banned, or viewed only as an emergency intervention to prevent physical danger, staff would be extremely unlikely to view seclusion as a regular or appropriate intervention for students with disabilities, or to apparently view the rooms as distractions that simply should be moved or hidden.

There are 24 states that lack any legal protections at all. Seven have nonbinding guidance or voluntary principles urging that seclusion should be limited to threats of physical harm: Indiana, Michigan, Nebraska, Oklahoma, South Carolina, Virginia, and Washington, D.C. Unfortunately, guidelines also suggest permitting seclusion under circumstances which would harm children. Kansas recommends that seclusion be used for threats of harm or as stated in the BIP/IEP, a wide loophole. Kansas further counsels that seclusion can be a legitimate behavior modification techniques unrelated to emergencies as long as it is included in the IEP. Missouri’s guidelines suggest states consider allowing seclusion for threats of physical harm, destruction of property, or as stated in the IEP. Utah advocates for limiting restraint to threats of physical harm or serious destruction of property.

The remaining 14 states do not seek even in recommended guidance to limit seclusion to certain circumstances: Alaska, Arizona, Delaware,<sup>40</sup> Hawaii, Idaho, Kentucky (describes seclusion as a behavioral intervention), Mississippi, Ohio, North Dakota, New Jersey, New Mexico (seclusion as a behavior modification), South Dakota, and Washington. Rather, they are silent or permit seclusion for a wide variety of reasons.

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

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<sup>39</sup> Shawn R. Beals, *Angry Parents, Scared Students Seek Answers About Farm Hill School ‘Scream Rooms,’* HARTFORD COURANT, Jan. 12, 2012. (Square bracketed material in original; curly bracketed material added.)

<sup>40</sup> Delaware permits the use of “emergency interventions” for threats of physical harm or destruction of property by children with autism. But it places no limits on the use of seclusion with other children or the non-emergency use of seclusion for children with autism.

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

Several states permit seclusion and/or restraint only as emergency interventions. In accord with this principle, a number allow restraint/seclusion only if less intrusive interventions have failed, or require that they end when the emergency ends. Both of these approaches have been incorporated in the federal bills proposed by Senator Harkin and Congressman Miller. (In states that ban all seclusion, these two requirements are still relevant for restraint.) In addition, some states explicitly forbid utilizing restraint/seclusion for discipline or punishment, a position mirrored in the federal bills.

### Less Restrictive Measures Must Fail

If less restrictive methods would resolve an issue, they must be implemented first. Restraint and seclusion not only expose children to danger, but escalate behaviors and lead to a cycle of violence. By contrast, positive interventions, conflict resolution, and de-escalation resolve difficult situations and help prevent and reduce the utilization of restraint and seclusion.<sup>41</sup>

Research shows that these measures are among the most useful strategies for reducing seclusion and restraint use, according to the National Association of State Mental Health Program Directors.<sup>42</sup>

Only 18 states by law require that less restrictive methods either fail or be deemed ineffective before seclusion/restraint are used: Alabama, California, Colorado, Georgia, Iowa, Louisiana, Maine (2012), Massachusetts, Maryland, Minnesota, New Hampshire (restraint only), New York, Oregon, Pennsylvania, Rhode Island, Vermont, Wisconsin (2012), and Connecticut (restraint only; less restrictive methods need not fail to use seclusion when permitted in the IEP). Eight of these adopted the requirement after Rep. Miller's bill was introduced in 2009. Montana requires less restrictive methods to have been tried, but not necessarily to be ineffective.

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

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<sup>41</sup> See H.R. REP. NO. 111-417 at 20-21. For example, in one Utah case, a child was repeatedly restrained for smearing fecal matter on the wall and banging his head. A functional behavioral assessment determined that he was doing this because the restraints were one of the few sources of physical contact he had. School personnel were able to end the behaviors by giving the child hugs and interactions for positive behavior, according to COPAA Executive Director Denise Marshall. Thus, a less restrictive intervention, identified through a functional behavioral assessment, stopped the child from injuring himself, while restraints only encouraged him to do so. Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

<sup>42</sup> 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).

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The remaining 32 states lack this legal requirement. This allows personnel to quickly escalate to restraint/seclusion, even when it is unnecessary because a much less harmful intervention would resolve the problem. Of these, 9 states that lack statutes and regulations suggest it in their nonbinding guidance: Kansas, Michigan, Missouri, New Mexico (restraint only), Oklahoma, South Carolina, Utah, Virginia, and Washington, D.C. --signaling the importance of less restrictive interventions.

### **Intervention Cannot Continue When the Emergency No Longer Exists**

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These interventions should stop when the emergency ends. Instead, children have been ordered to sit totally still for several minutes, show a happy face, pull apart socks, or do other tasks to end them.<sup>43</sup> Such requirements are unrelated to an emergency or safety. Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks. In addition, some states or school personnel require that seclusion or restraint continue for required time periods, even if there is no longer an emergency. Of course, if a state bans seclusion, then the requirement is necessary only for restraint.

Only 17 states by law require restraint and/or seclusion to end when the emergency ends: Alabama, California, Colorado, Georgia, Illinois (restraint only), Louisiana, Maine (2012), Massachusetts, Minnesota, New Hampshire (restraint only), Nevada, Oregon, Rhode Island, Texas,<sup>44</sup> Vermont, Wisconsin (2012), and West Virginia. Two states impose this limit only on restraint and not seclusion.



**Only 17 states require  
S/R to end when the  
emergency ends.**

The other 34 states have no laws forbidding the intervention from continuing after the emergency ends. There are 6 states that explicitly allow restraint/seclusion to continue even if there is no emergency. They set time limits or require children to be calm or composed, which is often impossible for children with autism and other disabilities. A child may be upset and crying, and yet threaten no one. Some even let the IEP team decide when restraint or seclusion should end, which has nothing to do with an emergency. These states are Connecticut (seclusion must end when child is “compose[d]” or 1 hour); Maryland (seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm); Iowa (restraint for “reasonable and necessary” period; seclusion for “reasonable” period); Illinois (seclusion ends 30 minutes after behavior resulting in seclusion has ended); Montana (duration set in IEP/BIP); and New Hampshire (IEP team decides when seclusion should end). These types of limits are inappropriate, given the risks posed by seclusion and restraint. Maryland’s durational limit

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<sup>43</sup> Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

<sup>44</sup> Although Texas requires only that restraint end when the emergency ends, it effectively also imposes this requirement on seclusion, by allowing seclusion only for emergencies while awaiting the arrival of law enforcement. One law enforcement arrive, the emergency has ended and the child is with law enforcement.

differs from the others in that it sets a hard deadline of 30 minutes under all circumstances. Maryland is to be lauded for this, but the standard can raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint because he/she is not yet calm. Nonetheless, the 30 minute rule appears designed to protect the child, by ensuring that staff take action to promptly end restraint or seclusion.

Six states do have nonbinding guidelines supporting the principle that the intervention should end when the emergency ends: Indiana (restraint only), Missouri, Nebraska, Oklahoma, South Carolina, and Washington, D.C.. Such guidance lacks the force of law. Indiana's nonbinding guidance also recommends that seclusion end within 30 minutes after the behavior ends or as specified in the IEP. There are 24 states that are wholly silent: Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wyoming. These states offer no protections by law nor suggest any through voluntary guidelines.

### **Forbidding Interventions for Punishment or Discipline**

At least 19 states have laws indicating that seclusion/restraint may not be used as a means of discipline or punishment. The states include Alabama, California, Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Maine (2012), Massachusetts, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Wyoming. Some also explicitly state that the interventions are not a substitute for educational programming. Other states may not include this language because limiting restraint/seclusion to threats of physical harm by definition excludes use for discipline and punishment.

## **III. OTHER LIMITS ON RESTRAINT AND SECLUSION**

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

### **A. BANNING CERTAIN RESTRAINTS**

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

#### **Restraints that Restrict Breathing**

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

unconscious in the backseat.<sup>45</sup>

Nonetheless, only 23 states have laws restricting restraints that impede breathing and/or prone restraint. Of these, 18 states by law ban all restraints that obstruct breathing; 17 are explicit: Alabama, Colorado, Connecticut, Florida, Iowa, Louisiana, Massachusetts, Maine (2012), Maryland, Minnesota, New Hampshire, Rhode Island, Tennessee, Vermont, Washington, West Virginia, and Wisconsin (2012). Texas requires that any restraint be implemented in a way that protects the child's "health and safety" and forbids restraint that deprives the child of basic human necessities, and thus would encompass breathing.

**Only 18 states ban all restraints that restrict breathing.**

A child in prone restraint is pinned in a prone, face-down position. Prone restraint causes suffocation by compressing the child's ribs so the chest cavity cannot expand, and pushing the abdominal organs up so they restrict the diaphragm and reduce the room for lung expansion.<sup>46</sup> Prone restraint is defined in 8 states to mean holding or restraining the child in a face-down position: Georgia, Iowa, Minnesota, Ohio, Oregon, Pennsylvania, Vermont, and Wyoming. It is banned in 8 states: Georgia, Iowa, Maryland (prohibiting face-down restraint, but not using term "prone") Ohio, Oregon, Pennsylvania, West Virginia, and Wyoming. New Hampshire bans placing child in a restraint that "place[s] pressure on a student's head, neck, or torso; or []straddle[s] a student's torso."

Prone restraint is regulated in Massachusetts (limiting prone restraint to staff trained in the technique), and Vermont (allowing prone restraint under certain circumstances if less restrictive restraints would not be effective). Such regulations likely undercut prohibitions on restraints that impede breathing by appearing to exempt prone restraint from them. They are better than the states that have no protections, but they raise significant issues.

Minnesota, too, regulates prone restraint. Under a new law adopted in April 2012, it permits prone restraint through August 2013 by staff who are trained in the use of prone restraint, provided the school first reviews "any known medical or psychological limitations that contraindicate the use of prone restraints." The same new state law also prohibits restraints that impair the ability to breathe or that restrict "a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or result[ ] in straddling a child's torso." In addition, the school district must keep a list of trained staff and the training they received. The state Department of Education must publish data quarterly on the use of prone restraint. Under the same new state law, Finally the state is required to plan for ending prone restraint.

Six states with nonbinding guidance suggest forbidding prone restraint: Missouri, Nebraska, New

<sup>45</sup> GAO REPORT at 10-11.

<sup>46</sup> DISABILITY RIGHTS CALIFORNIA, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION 17-18 (2002); *see also* NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009) at 13 ("Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.")

Mexico, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These guidelines are not equivalent to statute or regulation, but they do reflect the state's views of the issue.

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

### **Mechanical & Chemical Restraint**

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

As of April 2012, only 16 states ban mechanical restraints by law: Alabama, Colorado (except armed security officers), Georgia, Iowa, Illinois, Louisiana, Maine, Montana, New Hampshire, Oregon, Pennsylvania, Tennessee, Vermont, Wyoming, West Virginia, and Wisconsin (2012), leaving 35 that do not. Another 4 impose limitations: Massachusetts (permitted with parental consent and physician instructions); Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and Washington (limited to binding limbs to object, unless included in IEP with parental consent). Thus, 31 states have no limits in law.

**16 states ban mechanical restraints; 11, chemical ones.**

Chemical restraints can kill and injure. Only 11 states ban them by law in school: Alabama, Colorado, Georgia, Iowa, Illinois, Maine, New Hampshire, Oregon, Rhode Island, and Vermont, and Wisconsin (2012, changing from nonbinding guidance suggesting they be allowed with medical oversight). Another 3 restrict them: Connecticut (bans chemical restraints unless otherwise stated in IEP), Massachusetts (permitted with parental consent and physician instructions), and Tennessee (permitted with parental consent and physician instructions). The remaining 37 states have no laws.

There are 5 states that have nonbinding guidelines urging that mechanical restraints not be used: Nebraska, New Mexico, Oklahoma, South Carolina, and Washington, D.C.. The remaining 26 states are completely silent. Three states have guidance urging that chemical restraints not be used: Missouri, Nebraska, and Washington, D.C..

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

### **Mechanical Restraints Magnify Seclusion Harm**

The risks from seclusion are magnified if the state permits mechanical restraint, as children may

be locked or strapped into therapy chairs or other devices, and left for hours in rooms and closets, hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom because she was screaming. She flipped the chair over on herself and was hanging by the restraints. She also urinated on herself.<sup>47</sup> In Massachusetts, a preschooler was allegedly strapped into a chair for being rambunctious, and left alone by a teacher in a closed closet as he cried--until another teacher rescued him.<sup>48</sup>

## B. OTHER SECLUSION REQUIREMENTS

### Monitoring and Other Conditions of Seclusion

A number of states with laws restricting seclusion require that children be monitored. Monitoring can range from continuous visual monitoring to simply being capable of seeing inside the room or checking the room occasionally. In 2004, 13-year-old Jonathan King killed himself in a seclusion room, while the teacher sat outside, checking the room occasionally.<sup>49</sup> In January 2011, an Indiana student attempted suicide by hanging in a seclusion room, where he was not observed. He previously had been placed in the room and forbidden to use the bathroom, causing him to urinate on himself, and then secluded for another day for relieved himself.<sup>49.1</sup> Continuous visual monitoring would have prevented the attempted hanging and also disclosed his need for the restroom. Other children locked unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized.

**13 year old Jonathan King killed himself in a seclusion room as the teacher sat outside, occasionally checking on him.**

Four states appear to ban all forms of seclusion, regardless of whether the door is locked or blocked (Georgia, Nevada, Pennsylvania, and Texas). Of those permitting seclusion, only 17 by law require continuous, direct visual monitoring of children in seclusion rooms: Alabama, Arkansas, Iowa, Illinois, Louisiana, Maryland, Maine, Minnesota, Montana, New York, Oregon, Rhode Island, Tennessee, Vermont, Washington, Wisconsin, and Wyoming (“isolation” rooms).

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

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

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

<sup>47</sup> ALABAMA DISABILITIES ADVOC. PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

<sup>48</sup> James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

<sup>49</sup> Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

<sup>49.1</sup> NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT 11 (2012).

supervision for unlocked seclusion); Colorado (“reasonably monitored”), Connecticut (IEP team determines frequency of monitoring), Massachusetts (“access” to staff required), North Carolina (require staff to be “able to see and hear the student at all times”). Requiring staff to be able to see the child at all times is not the same as requiring that staff actually do so. A child can be left alone and unwatched for stretches of time in a room that has an observation window.

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

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

### **Minimum Room Condition Requirements.**

There have been complaints that students have been secluded in small, darkened closets or boxes, and injured by furniture they can overturn or other dangerous items. There have also been reports that children have been routinely denied access to the bathroom, food, and water. In some cases, children have removed their clothing to be able to urinate in the room or urinated on themselves.<sup>50</sup>

Some states regulate seclusion room conditions through statutes and regulations, including two which added such requirements in 2012 (Maine and Wisconsin). States are more likely to impose lighting (15 states) and ventilation (13 states) requirements than access to essential bathroom facilities (7 states).

**Only 7 states require bathroom access for children in seclusion rooms.**

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

Room must be lit (15 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maine, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, West Virginia, and Wyoming.

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<sup>50</sup> See generally NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009); J. BUTLER, UNSAFE IN THE SCHOOLHOUSE; OUT OF THE DARKNESS... INTO THE LIGHT (WISCONSIN); MPAS, SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS.

Heating/cooling/ adequate ventilation (13 states by law): Arkansas, Colorado, Iowa, Louisiana, Maine, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, and Wyoming.

Free of dangerous furniture, objects, and conditions (14 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maine, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Wisconsin, and Wyoming.

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

Bathroom access (7 states by law): Iowa, Maryland (hard 30 minute limit on seclusion), MN, New York (denial is forbidden aversive), North Carolina (same), and Wisconsin.

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

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

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

Nonbinding guidelines in 4 states also suggest room condition requirements: Indiana, Kansas, Michigan, and South Carolina. (Fire, building, and safety code requirements are always mandatory.)<sup>51</sup>

In the United States Congress, the Senate bill would ban all seclusion in no-exit rooms, rendering such requirements unnecessary. The House bill would permit locked seclusion rooms and requires the Secretary of Education to regulate them, with the understanding that those regulations will include rules regarding room safety and conditions.<sup>52</sup> Limiting seclusion to threats of physical injury and requiring it to end when the emergency ends also limits the duration in the rooms.

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

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<sup>51</sup> See *supra* n. 33 and accompanying text for a discussion of fire and other codes.

<sup>52</sup> See H.R. REP. NO. 111-417 at 17-18. The House bill also requires staff to be physically present in the room unless it is dangerous, which likely would ensure that rooms are of proper temperature, lit, etc.

## IV. AWARENESS OF SECLUSION/RESTRAINT & OTHER ISSUES

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

### A. NOTICE TO PARENTS

Because of the dangers posed by seclusion/restraint, it is important that school staff notify parents promptly. Far too often, parents are unaware of what has happened to their child. Numerous reports also describe many cases in which schools failed to notify parents that their child was secluded/restrained.

For example, Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door, causing him to miss 8 full days of school over a 2-week period. He was also repeatedly restrained and subjected to aversive interventions, including denial of 40 percent of his meals. His parents did not know about any of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.<sup>53</sup> Phyllis Musemici's son, Christian, was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his parents' removing him from school. His parents only found out a year later, when they requested school logs (those for one year were even missing).<sup>54</sup>

This section examines state parental notification requirements. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/next day notification, followed by a fuller written report to parents. (Numbers may add up to 52 "states." The District of Columbia is included and New Hampshire appears twice due to differing restraint and seclusion requirements.)

#### First Notice on the Same Day or Within 24 Hours

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

**20 states have same day or 24 hour parental notification requirements.**

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<sup>53</sup> *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearing Before the House Comm. on Education and Labor, 111th Congress, 60-61 (2009).*

<sup>54</sup> *Gradebook: A Weekend Interview with Phyllis Musumeci*, TAMPA BAY TIMES, Jan. 24, 2009. Although Ms. Musumeci was able to access such laws, most states and school districts do not require that they be maintained. Hence, most parents are unable to determine whether their child was restrained or secluded.

As of April 2012, parental notification is required by law in 27 states, of which 20 by law require that the school take steps to notify parents on either the same day or within 24 hours.

Of these, 13 have laws requiring schools to take steps to notify the parent on the same day the event occurs: Colorado<sup>†</sup>, Connecticut<sup>†</sup> (attempted, for restraint and seclusion (if seclusion is not in the IEP)), Florida<sup>†</sup>, Iowa<sup>†</sup> (attempted), Maine (2012), Massachusetts<sup>†</sup> (unless parents waive requirement or restraint lasts less than 5 minutes), Minnesota<sup>†</sup>, Oregon<sup>†</sup>, Rhode Island<sup>†</sup>, Tennessee (“reasonable efforts”), Texas<sup>†</sup> (“good faith effort”), Vermont<sup>†</sup> (documented attempt), and West Virginia<sup>†</sup> (“good faith”). Six require actual notice and six require that schools make reasonable attempts and good faith efforts to notify parents.

Another 7 states by law require schools to take steps to notify the parent within one calendar day or 24 hours: Illinois, Louisiana<sup>†</sup>, Maryland (unless otherwise stated in IEP/BIP), Montana (“as soon as possible, but not less than 24 hours”), New Hampshire<sup>†</sup> (attempt, restraint only), Utah, and Wyoming (written notice required unless parent agrees otherwise).

Fourteen of the states mandating notice to parents require a fuller written report afterwards: Colorado, Connecticut, Florida, Iowa, Louisiana, Maine (2012), Massachusetts, Minnesota, New Hampshire (restraint only), Oregon, Rhode Island, Texas, Vermont, and West Virginia. Of the 8 states requiring an attempt or good faith effort on the same day of the event or within 24 hours, 7 require fuller written notice later: Connecticut (written report within 2 school/business days), Iowa (written report mailed within 3 days); Maine (1 day); New Hampshire (allowing several days for written notice); Texas (written within 1 school day); Vermont (written within 24 hours); West Virginia (written within 1 school day).

### **Permitting Longer Notification Period**

Four states require notification within one school or business day: Alabama, California, Georgia, and Wisconsin (2012). Three states by law set a longer deadline for first notice: New York (required, but no deadline), Pennsylvania (setting no deadline, but requiring an IEP meeting within 10 days which effectively is the outer deadline); and North Carolina (notify parents “promptly” with written follow up within 30 days if child was injured or if event lasted longer than 10 minutes; also requires notification if the school violated statutory prohibitions).

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

The remaining 26 states do not set deadlines by law. Without laws, it may be difficult to enforce the right to notice. In those states without statutes or regulations, 10 have nonbinding, suggested guidelines. Six of these seek same-day first notice: Michigan, Missouri<sup>†</sup>, Nebraska<sup>†</sup>, Oklahoma, South Carolina<sup>†</sup>, and Washington, D.C.<sup>†</sup> (The states with the daggers also suggest a fuller written notice afterwards.) In addition, Nevada has guidance urging notification within one calendar day, and Kansas, within one school day. Indiana’s guidelines would leave it up to the

IEP team, and Virginia suggests the school/school district set a time period. There are 17 states that do not even have suggestions: Alaska, Arkansas, Arizona, Delaware, Hawaii, Idaho, Kentucky, Mississippi, Montana, North Dakota, New Hampshire (seclusion only), New Jersey, New Mexico, Ohio, South Dakota, Washington, and West Virginia.

### **Loopholes**

Of the states that ostensibly require notice in 24 hours or less, 4 have sizeable loopholes. They allow the IEP team to set another deadline (Maryland); leave the decision entirely to the IEP team when seclusion is included in the IEP (Connecticut); allow parents to agree to a different deadline (Wyoming); or allow schools to request that parents waive the right to notice (Massachusetts). Massachusetts forbids waiving the right to notice if the restraint lasts longer than 20 minutes or if it results in “serious injury,” but this term is not defined, giving schools broad discretion. In addition, a restraint lasting far less than 20 minutes can cause injury and trauma. California requires notice within 1 school day when an emergency intervention has been used. Yet, because the law does not apply when restraint or seclusion is used for non-emergencies, California does not require notification in non-emergencies.

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

### **B. DEBRIEFING**

A debriefing is a meeting that occurs after an incident of restraint or seclusion. Staff members, the parents, and the student may attend. Debriefings help reduce and eliminate restraint and seclusion, by determining what caused the event, how it could be avoided, and by analyzing, planning for, and implementing positive interventions.<sup>55</sup> They have been described as “critical.”<sup>56</sup> They are one of the six core strategies identified for decreasing the use of seclusion and restraint by the National Association of State Mental Health Program Directors (NASMHPD).<sup>57</sup>

As of April 2012, 15 states by law require a debriefing: Alabama, California, Colorado, Connecticut, Louisiana, Maine (2012), Massachusetts, Maryland, Minnesota, Nevada, Oregon,

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<sup>55</sup> *Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Interim Final Rule*, 66 FED. REG. 7148, 7152 (Jan. 22, 2001). A systematic debriefing process also counters implementation drift—the tendency to go back to prior patterns of routinely using seclusion/restraint as a response. BethAnn Glew, *Reducing The Use Of Seclusion And Restraint In Segregated Special Education School Settings Through Implementation Of The Collaborative Problem Solving Model* (2012) (unpublished dissertation, Duquesne University).

<sup>56</sup> *Psychiatric Facilities Interim Final Rule*, 66 FED. REG. at 7152.

<sup>57</sup> 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).

Pennsylvania, Rhode Island, Vermont, Wisconsin (2012), and Wyoming. No other states require a debriefing by law. Seven states suggest a debriefing in their nonbinding guidelines: Indiana, Michigan, Missouri, Nebraska, Oklahoma, South Carolina (seclusion only), and Washington, D.C.

For comparison, Senator Harkin's bill would also require a debriefing, where school, parent, and student analyze the antecedents to the event, plan for positive behavioral interventions to prevent further use of restraint, and plan for a functional behavioral analysis.

## C. DATA

### Data Reporting to the State Education Agency (SEA)

In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. The GAO wrote about six states that collected data: California, Connecticut, Kansas, Pennsylvania, Texas, and Rhode Island.<sup>58</sup> Texas and California reported 33,000 instances alone in 2007-08. Indeed, the GAO had previously reported that seclusion/restraint data is likely to be understated due to the absence of consistent reporting requirements.<sup>59</sup>

**There were at least 33,000 incidents of seclusion and restraint in TX and CA in 2007-08. But only 13 states collect even minimal data on S/R use each year.**

As of April 2012, 13 SEAs by law collect data at least annually: Alabama, California (but only for emergency interventions, not those used in non-emergencies), Florida (monthly and annually), Louisiana, Maine (2012), North Carolina, New Hampshire (restraint only), Nevada, Oregon, Rhode Island, Tennessee, Texas, and Wyoming. Of these, 8 states appear to have added this requirement after 2009 to mirror Congressman Miller's and Senator Harkin's bills. A fourteenth state, Pennsylvania requires that the data be made available to the SEA when it monitors an LEA, and a fifteenth, Connecticut, requires that it be made available for review prior to relicensure. (There is currently a Connecticut bill pending to expand data collection.) Nevada further requires a report when the rights of a child are violated by restraint or seclusion. Massachusetts and Minnesota have limited data collection requirements. In Massachusetts, data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported. In Minnesota, only prone restraint data is collected.

Kansas and Michigan recommend data collection in nonbinding guidance. Kansas is known to collect the data; Michigan's status is unclear. In any event, the requirement is subject to change. For example, in 2003, Vermont began collecting seclusion/restraint data. But since the state law did not require it, Vermont stopped doing so a few years later.

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<sup>58</sup> GAO REPORT at 5, 7. This was not intended to be a full list.

<sup>59</sup> H.R. REP. NO. 111-417 at 13.

Even the mandatory state data requirements are not as robust as the data requirements in either Congressman Miller's or Senator Harkin's bills. The two bills contain data requirements designed to break information down by subgroup (disability, race, etc.) and also to report information for each LEA. This data collection will better inform decision-making, and make public practices long hidden from public view. The state data collections signal that states seem to favor reporting.

### **Data Reporting to the School or LEA**

Some states mandate data collection at lower levels, indicating that data could readily be collected at the state level. By law, data is reported to the LEA or school board in 9 states: Alabama, Florida, Maine (2012) North Carolina, Nevada, Oregon, Tennessee, Vermont (certain circumstances), and Wisconsin (2012). Other states keep data at the school-wide level, including Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Iowa, Massachusetts (if the restraint lasts for more than 5 minutes or there is an injury, unless the parent waives the requirement), Nevada, Rhode Island, and Tennessee. In addition, the following 22 states by law require that an incident report be completed after each use of restraint and placed in the child's file: California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts (if the incident lasted more than 5 minutes or led to an injury), Maryland, Maine, Minnesota, North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada, New York, Rhode Island, Texas, Vermont, Washington, Wisconsin, and Wyoming.

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

The fact that states complete these kinds of reports indicates that they could readily provide information through a computerized system to the state. There are indications that not all school districts properly report data, however, and that not all states collect it properly, possibly resulting in under-reporting.<sup>60</sup>

### **D. TRAINING AND OTHER MATTERS**

A number of the deaths and injuries in the GAO report involved poorly trained or untrained staff.<sup>61</sup> Disability Rights California has also documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year-old child down the hall by his wrists.<sup>62</sup>

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<sup>60</sup> Jordan Fenster, *Connecticut Education Department Data Shows 18,000 Instances of Restraint or Seclusion in 2009-10*, NEW HAVEN REGISTER, Jan. 26, 2012.

<sup>61</sup> H.R. REP. NO. 111-417 at 18.

<sup>62</sup> DISABILITY RIGHTS CALIFORNIA, *RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE* (June 2007).

There are 22 states with seclusion/restraint laws that require some kind of staff training, although many are fairly minimal. Training requirements also vary widely. Therefore, this report does not attempt to catalogue all of them, but only to highlight some of the more significant elements. It is likely that certain training provisions are included in other laws, such as positive behavioral support regulations. It would be very difficult to include all such laws here. Therefore, this report focuses only on the requirements within seclusion/restraint laws.

For comparison, the House and Senate bills require training in the following: (1) evidence-based techniques “shown to be effective” in preventing the use of restraint and in keeping personnel and students safe in imposing restraint (and seclusion in the House bill); (2) positive behavioral interventions, behavioral antecedents, functional behavioral assessments, and de-escalation; (3) first aid and cardiopulmonary resuscitation; and (4) State seclusion/restraint policies and procedures. Certification and periodic re-training are also required. No state laws include all of these requirements; most require much less. Only Oregon and Wyoming refer to evidence-based techniques at all, and only for certain requirements.

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

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

Training in conflict de-escalation and prevention of seclusion/restraint (19 state laws): Alabama, Colorado, Connecticut, Georgia, Illinois, Massachusetts, Maryland, Maine (restraint only), Minnesota, North Carolina, Nevada, Oregon, Rhode Island, Tennessee, Texas, Vermont, Wisconsin (2012), West Virginia, and Wyoming.

Training in positive behavioral support training as part of seclusion/restraint laws (13 states): Alabama, California, Georgia, Iowa, Minnesota, Montana (requiring person trained in positive interventions on IEP team), North Carolina, Nevada, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wyoming.

Training in safe and appropriate use of seclusion/restraint (18 state laws): Alabama (restraint only), Colorado, Connecticut, Georgia (restraint only), Iowa, Illinois, Massachusetts, Maine (restraint only) Maryland, Minnesota, North Carolina, New York, Oregon, Rhode Island, Tennessee, Texas, Vermont, and West Virginia.

Explicit mandate for training related to first aid, signs of medical distress, cardiopulmonary resuscitation or similar issues (8 states): Connecticut, Illinois, Maine (2012), Massachusetts, Maryland, Minnesota, Rhode Island (for staff trained in-depth), 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 medical and health training.

Training in dangers of seclusion/restraint (9 states): Colorado, Connecticut, Iowa, Illinois, Massachusetts, Maryland, Minnesota, Rhode Island, and Vermont.

Training in state, LEA, and school policies and procedures (7 states): Iowa (school only), Massachusetts (school only), Maryland, New York, Rhode Island (school only), Tennessee (if funding is available for training), and Wyoming (school only).

Certification, proof of proficiency, or periodic re-training required (6 states): Colorado (retrain every two years), Iowa (periodic retraining), Illinois (retrain every 2 years), Maine (certification), Maryland (proficiency required for special school-wide resource staff), Rhode Island (special school-wide resources staff), and Wyoming.

Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. These 6 states have voluntary guidance urging training in conflict de-escalation and prevention of seclusion/restraint: Indiana, Missouri, Nebraska, Oklahoma, South Carolina, and Virginia. There are 8 states with nonbinding guidelines urging training in safe and appropriate use of seclusion/restraint: Indiana, Kansas, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, and Washington, D.C.. Five states have guidelines that seek training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Washington, D.C., Oklahoma, South Carolina, and Virginia. Four states incorporate training in the dangers of seclusion/restraint in their guidance: Indiana, Oklahoma, South Carolina, and Virginia.

## **V. CHANGES IN RESTRAINT/SECLUSION LAW**

### **A. IMPACT OF CONGRESSIONAL BILLS ON STATE ACTION (CONGRESSMAN MILLER; SENATOR HARKIN)**

In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. Prior to this, the only proposals had been at the state level or by independent academicians and organizations. Occasionally, states would appear to incorporate each other's policies in their own. But the Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws and to incorporate several of its features. The Harkin bill, introduced in late 2011, is expected to have the same significant impact. Aspects of it appear to be present in laws adopted in 2012. Since many features are present in both bills, they can both be expected to influence future state proposals in a positive direction. This is not, however, to say that state laws are substitutes for a federal law. Many state laws are slim and have inadequate features. Other states are unable to adopt state laws or regulations, leaving children without any protection.

As of April 2012, there are 30 states with meaningful protections in law: Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire,

Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming.<sup>63</sup>

Of these, 8 states adopted their laws after Congressman Miller introduced his bill (Alabama, Florida, Georgia, Louisiana, Vermont, Wisconsin (2012), West Virginia, and Wyoming), and 4 substantially strengthened theirs (Maine (2012), New Hampshire, Oregon, and Tennessee). Minnesota also revised certain statutory provisions in April 2012, but it did not overhaul its law as other states did.

**12 states have adopted new laws or overhauled old ones to use features of Congressman Miller's bill, introduced two years ago.**

All 12 include important elements of the Miller and Harkin bill, although to varying degrees.

The following analyzes some features of the two Congressional bills and their adoption into state law. The report does not analyze all features of the bill. Many of the features discussed below are in both Congressman Miller's and Senator Harkin's bills. But the primary focus of this analysis is what has happened since the first federal bill on restraint and seclusion was introduced two years ago by Congressman Miller.

Of the 12 states, 9 incorporate the requirement that physical restraint may not be used unless there is an imminent danger of physical injury, 1 allows restraint also for threats of serious property destruction, and 1 is silent. These states are the majority of the 14 states limiting restraint to emergency threats of physical danger. The Miller and Harkin bills differ on the exact wording of the physical danger requirements, but each would impose such a requirement.

Of the 11 states that adopted or updated their seclusion laws, 7 limit seclusion to emergencies in which there is an imminent danger to physical safety, and 1 bans all seclusion.<sup>64</sup> These new states comprise the majority of states that either ban all locked seclusion or limit it to physical safety emergencies. The Miller bill would limit seclusion to immediate threats of physical injury; the Harkin bill would ban it.

Similarly, 8 of the states that took action in the last two years require less restrictive measures to have failed/been ineffective. In addition, 8 explicitly require the intervention to end when the emergency ends. They make up nearly half of the states with each provision. These are both features of the Miller and Harkin bills.

Moreover, 11 of the 12 states that have taken recent action ban mechanical restraint; 7 ban chemical restraint, and all 12 ban either restraint that restricts breathing or prone restraint. (The Miller and Harkin bills would prohibit restrictions on breathing--which by definition include

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<sup>63</sup> West Virginia's regulation was approved on December 16, 2011, almost a year after Congressman Miller introduced his bill, and the same day Senator Harkin introduced his bill.

<sup>64</sup> There are only 11 states counted because New Hampshire did not revise its seclusion regulations when it adopted its new restraint law in 2010. For Wyoming, see footnote above stating how its differing forms of seclusion and isolation are treated in this report.

prone restraint--and mechanical and chemical restraints). Again, these make up nearly half or more of the states that ban each restraint.

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

In addition, the Miller and Harkin bills would require the collection of data. Of the recently-acting states, 8 require some data collection, making up the majority of the 13 states that require data to be reported to the SEA. Of course, the Miller and Harkin bills would require a fuller data collection to better enable informed decision-making and put sunshine on practices long obscured.

The Harkin bill would require a debriefing, a feature also adopted in Wisconsin and Maine in 2012. The bill also would forbid restraints that prevent children from communicating (e.g., communicating physical distress or a medical emergency), a feature adopted by Minnesota (2012) and proposed in other states considering action.

Nevertheless, states have not adopted all elements of the Miller bill (and by extension, the Harkin bill). The Miller bill would require personnel to provide in-person monitoring of children in seclusion, and if this is not safe, other continuous visual monitoring of the student. Only 1 of the 11 states that took recent seclusion action has adopted the same provision (Vermont). By contrast, 5 mandate continuous visual monitoring (the most common monitoring requirement in states that have them); 2 require staff to be "able" to see and hear the student at all times (but not actually to do so at all times); 2 leave it up to the school district, and 1 is silent. No state has adopted all of the Miller bill's training components, and some states simply leave training details to the school district.

The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than Congressman Miller's bill, and equal to it in others. Together, the two national bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action. This likely impact is magnified because most states have seclusion/restraint regulations, which are more readily changed than state legislation. Of course, no state scheme exactly duplicates the Miller or Harkin bill and some vary significantly in certain respects. Florida, the weakest state, adopted the fewest features of the Miller bill.

This analysis should not be read as suggesting that state laws are effective substitutes for a national bill that would protect all American children. Even the 12 states that took action in the last two years did not adopt all features of the Congressional bills, and some weakened or changed features. Moreover, there are still only 30 states with meaningful protections by law, and 2 of these regulate just restraint or seclusion. There are 21 states without meaningful laws.

The protection a child receives is still randomly decided by where he/she lives, just as it was in December 2009. Families who move a few miles east from Augusta, Georgia to North Augusta, South Carolina; or who move an hour away from Nashville, Tennessee to Bowling Green, Kentucky will lose their protections. Furthermore, attempts to regulate or adopt statutes have failed in several states. Other states with weaker provisions have not changed them (*e.g.*, most of the states that explicitly permit seclusion/restraint for mere educational disruption have made no efforts to change their laws, despite the danger.) Other states simply have nonbinding guidelines, which are not equivalent to binding statutes and regulations. They lack the force of law, do not provide mandatory protection, and are easily changed by the State Department of Education.

Furthermore, the existence of state laws does not support the position that legislation need only provide aspirational or basic goals for states to consider. Some state statutes, like Florida's, use a more aspirational model and simply require school districts to write their own policies. These statutes, however, provide little protection for children. A law suggesting but not mandating the conditions for using restraint/seclusion, or suggesting states pick a deadline for parental notification does little to protect children from the serious physical and psychological dangers of these interventions. Put simply, a 24-hour notification provision enables parents to seek medical assistance promptly; a 7-day period or leaving the decision to the IEP team does not.

The harm of leaving choices up to the states is apparent from the recent situation in Connecticut. In January 2012, the media reported about "scream rooms" (seclusion rooms) in one district. Parents complained that children were alone in these rooms for long periods of time, and alleged blood was cleaned from them, indicating that children were injured. School officials responded that the rooms were used regularly only with children with disabilities who had seclusion in their IEPs. When other parents complained of the noise, they simply offered to move the rooms so they would be less of a distraction.<sup>65</sup> They said nothing about eliminating the rooms or moving to positive interventions, and did not seem to question what they appeared to describe as routine use of the rooms for children with disabilities.

Connecticut law allows schools to use seclusion for any reason when it is included in an IEP. Connecticut also leaves many decisions about seclusion up to the IEP team--including whether and why seclusion can be used; the conditions of the room; requirements for monitoring children in seclusion; and how (or whether) to notify parents.<sup>66</sup> Connecticut further does not require that less restrictive interventions fail before seclusion is used--as long as it is in the IEP. By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail, and requires schools to take steps to notify parents within 24 hours, followed by full written notification within 2 business days. There is no ability to simply add restraint to a student's IEP for any reason and thereby avoid the protections in the law. Like restraint, seclusion should not be a routine intervention. But leaving the decision up to the states has allowed this kind of situation to exist.

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<sup>65</sup> See, *e.g.*, Julie Stagis, *Middletown: "Scream Rooms" Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 14, 2012; Kathleen Magen, *Experts Call 'Scream Rooms' Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 14, 2012; Lauren Petty, *Parents Protest "Scream Rooms" In Schools*, NBC CONNECTICUT, Jan. 11, 2012.

<sup>66</sup> See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

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

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

### Ensuring Children in Restraint/Seclusion Can Communicate

It is important that all children be able to communicate if they cannot breathe or are in medical distress. The GAO reported on at least four cases in which verbal children who died or were injured in restraint told staff that they could not breathe.<sup>67</sup> 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.<sup>68</sup> Other children who cannot speak use augmentative communication devices, which can range from simple symbol cards to dynamic computerized devices which “speak” for a child. There are popularly-reported estimates that up to 25 percent of children with autism are nonverbal.

**It is dangerous to restrain children who cannot talk so that they cannot communicate that they are in danger.**

To ensure that students who cannot speak can communicate medical distress, a number of states forbid restraint and seclusion from impairing communication in their primary language. Three examples include

- Colorado: “No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating.” (Colorado defines restraint to include seclusion.)
- 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.’”

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<sup>67</sup> GAO REPORT at 14, 16-17, 26, 29.

<sup>68</sup> GALLAUDET RESEARCH INSTITUTE, REGIONAL AND NATIONAL SUMMARY REPORT OF DATA FROM THE 2009-10 ANNUAL SURVEY OF DEAF AND HARD OF HEARING CHILDREN AND YOUTH 11 (2011).

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- Minnesota (2012): Forbids “physical holding that...restricts or impairs a child's ability to communicate distress . . .”

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

### **Force Limited to That Necessary to Prevent Threatened Injury**

As noted above, the GAO, NDRN, COPAA, and numerous other reports have documented the significant number of children killed and injured by restraint. Injuries include broken limbs, severe sprains, bloody noses, and other injuries. Often the degree of force used is much greater than the threatened injury. In one Tennessee case, two adults allegedly lay on top of a 51 pound, 9-year-old boy with autism.<sup>69</sup>

**The force used should be limited to that necessary to prevent injury. Children should not suffer more forceful restraints resulting in broken limbs and other injuries.**

Several states have incorporated the basic principle that restraint should be limited to the force needed to prevent the threatened injury. If holding a child by the arm and taking away scissors is sufficient, she should not be subjected to a more forceful, dangerous restraint. Four examples of states which incorporate this provision are:

- Rhode Island: “Limitations on the Use of Restraints. Physical restraint/crisis intervention in a public education program shall be limited to the use of such reasonable force as necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.”
- Texas: “Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.”
- Nevada: “The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.”
- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”

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<sup>69</sup> Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.  
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For comparison, Senator Harkin's bill would provide that "When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury." Congressman Miller's bill is silent.

### **Medical and Psychological Contraindications**

Restraint and seclusion are dangerous for all children. But for some children, health, medical, and psychological conditions mean that the interventions would cause even more damage. Hence, there are states which further restrict seclusion/restraint in these situations. Some examples include

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

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

### **Anti-Retaliation Clause**

Many incidents of restraint and seclusion are reported by teachers and staff. In doing so, some may risk their jobs. Other incidents are reported by parents, children, and advocates. All could face retaliation.<sup>70</sup> 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

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<sup>70</sup> James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009; Katie Mulvaney, *Block Island Officials Defend Room in School Basement*, RHODE ISLAND PROVIDENCE JOURNAL, June 14, 2008 (individual who disclosed existence of locked seclusion room by DVD feared retribution and requested anonymity); Jessica Butler, UNSAFE IN THE SCHOOLHOUSE (Appendix).

retaliate against any person for having: (1) Reported a violation of [the seclusion/restraint statute], inclusive; or (2) Provided information regarding a violation of [the statute], inclusive, by a public school or a member of the staff of the public school.”

For comparison, Senator Harkin’s bill would likewise prohibit retaliation, using language similar to that in Nevada.

## **CONCLUSION**

Two years after the first national restraint/seclusion bill was introduced, there are 30 states with meaningful protections in statutes and regulations. A number of states have taken steps to ensure that children are not subjected to abusive restraint and seclusion in the guise of education. Yet, children in 22 states lack legal protections. Even among the 30 states with meaningful laws, state requirements vary widely. Only 16 states limit restraint to emergencies threatening physical harm. Four states ban seclusion and eight restrict it to emergencies where seclusion is necessary to protect someone from physical harm. Some states require parental notification on the same day or within 24 hours. Other states are content to allow several days, a delay that can further harm injured children.

Abusive interventions are neither educational nor effective. They are dangerous and unjust. It is time to provide meaningful protections against restraint and seclusion for children in all states across America.

**BIBLIOGRAPHY OF STATE MATERIALS  
AND SUMMARY OF STATE LAWS AND POLICIES  
ON RESTRAINT AND SECLUSION, EFFECTIVE APRIL 2012**

This report has focused on state restraint and seclusion laws and policies in force and applicable to children in elementary and secondary schools. Statutes and regulations were given priority since they are legally binding and have the force of law. There are a number of states which have considered proposed bills, regulations, and guidance, but never adopted them. They were excluded. Some states have nonbinding guidance applicable only to limited groups of children (often children with certain disabilities or in certain kinds of classrooms.) This report excluded nonbinding guidance that was not applicable to either all children with disabilities or all children in school. Finally, the report used only statutes and regulations applicable to elementary and secondary schools in the state. Laws regulating restraint and seclusion in other settings that were not applicable to elementary and secondary schools were excluded. Finally, some states had nonbinding guidance and later adopted statutes or regulations. Priority was given to the statutes and regulations because they are legally binding and create legal protections.<sup>71</sup>

**ARIZONA.** Arizona has a limited statute that created a task force to propose restraint/seclusion guidelines for school districts and charter schools to consider, but that did not require them or the State Department of Education to take action. **ARIZ. S.B. 1197 (CH. LAW 62) (JULY 10, 2009).**

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

**ALASKA.** Alaska has regulations providing minimal protections against restraint. Alaska is silent on seclusion. **ALASKA ADMIN. CODE tit. 4, §§ 07.010 to 07.900.**

**ARKANSAS.** Arkansas has meaningful protections against seclusion, but is silent on restraint. **ARKANSAS SPECIAL EDUC. PROC. REQUIREMENTS & PROGRAM STANDARDS § 20.00.**

**CALIFORNIA.** California has meaningful protections against seclusion and restraint in statute and regulation. **CAL. EDUC. CODE §§ 56520-56525; CAL. CODE REGS. tit. 4, § 3052.**

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

**CONNECTICUT.** Connecticut has meaningful protections against seclusion and restraint in statute and regulation. **CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.**

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<sup>71</sup> In addition, searches were performed of the statutes, administrative regulations, and state Department of Education websites for Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. No materials in force were discovered.

**DELAWARE.** Within its special education regulations, Delaware has a very limited set of regulations regarding using restraint and seclusion upon students with autism in emergencies. It does not protect other children with or without disabilities or protect students in non-emergencies. **DEL. EDUC. ADMIN. CODE tit. 13 §929: 2.0.**

**DISTRICT OF COLUMBIA.** Washington, D.C. has very limited regulations regarding the use of unreasonable restraint. In 2011, it adopted nonbinding guidelines regarding restraint and seclusion that are fuller and more complete, but not the equivalent of law and regulation. **5E D.C. MUN. REGS. §2403.5; District of Columbia Public Schools, DCPS PHYSICAL RESTRAINT AND SECLUSION POLICY (2011).** Washington, D.C. has twice considered full restraint/seclusion regulations, in 2009 and 2010. These regulations were never enacted, however. All regulations in force can be found on the D.C. Municipal Regulations website in Chapter 5E.

**FLORIDA.** In 2010 and 2011, Florida adopted substantive protections against seclusion and restraint by statute. **FLA. STAT. §1003.573.** Florida had issued nonbinding guidance under the 2010 statute, but portions of it may no longer be applicable in light of the 2011 statute. In 2011, Florida issued guidance about the documentation requirements under the new 2011 statute. Fla. Dept. of Educ., Technical Assistance Paper: Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities, No. 2011-165 (October 14, 2011).

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

**HAWAII.** Hawaii has a limited statute and a board of education policy, both of which provide only limited protections. **HAW. REV. STAT. § 302A-1141; BOARD OF EDUCATION POLICY NO. 4201.**

**IDAHO.** Idaho does not have any statute, regulation, or guidance specific to schools and restraint/seclusion. It considered a proposed regulation, IDAHO DEPT. OF EDUC., PROPOSED RULE IDAPA 08.02.03.160-161 SAFE AND SUPPORTIVE SCHOOLS (Aug. 2010), but in December 2010 reported that no action would be taken. Idaho Dept. of Educ., *Special Education Newsletter 2* (Dec. 2010).

**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.**

**INDIANA.** In 2009, Indiana adopted nonbinding guidance. **INDIANA DEPT. OF EDUC., POLICY GUIDANCE FOR USE OF SECLUSION AND RESTRAINT IN SCHOOLS (2009).**

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

**KANSAS.** Kansas has nonbinding guidance. **KANSAS STATE DEPT. OF EDUC., KANSAS SECLUSION AND RESTRAINT GUIDELINES: GUIDANCE DOCUMENT (2008).**

**KENTUCKY.** Kentucky has nonbinding guidance. **KENTUCKY DEPT. OF EDUC., EFFECTIVE USE OF TIME-OUT (2000).**

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

**MAINE.** Maine has meaningful protections against seclusion and restraint in statute and regulation adopted in April 2012. In 2011, Maine proposed regulations, **CODE ME. R. § 05-071, Chapter 33**, which are available here: [http://www.maine.gov/doc/rule/changes/chapter33/prov\\_adopted\\_33.pdf](http://www.maine.gov/doc/rule/changes/chapter33/prov_adopted_33.pdf). In April 2012, the legislature and governor approved these regulations by statute, but amended them, as stated in **Committee Amendment, C-A H820 to L.D. 1838 (April 2012)**. These replaced the prior regulations.

**MARYLAND.** Maryland has meaningful protections against in statute and regulation. **MD. CODE. EDUC. §§ 7-1101 TO 7-1104; MD. REGS. CODE tit. 13A, §13A.08.04.01-.06.**

**MASSACHUSETTS.** Massachusetts has meaningful protections against seclusion and restraint in statute and regulation. **603 CODE OF MASS. REGS. §§ 46.00 - 46.07.**

**MICHIGAN.** Michigan has a limited provision regarding restraint in its statutes and a full treatment of restraint and seclusion in non-binding guidance. **MICH. COMP. LAWS § 380.1312; MICHIGAN STATE BD. OF EDUC., SUPPORTING STUDENT BEHAVIOR: STANDARDS FOR THE EMERGENCY USE OF SECLUSION AND RESTRAINT (2006).**

**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, and 2012. **MINN. STAT. § 125A.0941, 125A.0941, 125A.0942; MINN. R. 3523.2710(4)(F).**

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

**MISSOURI.** Missouri has a limited provision regarding restraint in its statutes and a full treatment of restraint and seclusion in non-binding guidance. **MO. REV. STAT. § 160.263; MISSOURI DEPT. OF ELEM. AND SEC. EDUC., MODEL POLICY ON SECLUSION AND RESTRAINT (2010).**

**MONTANA.** Montana has meaningful protections against seclusion and restraint in regulation. **MONT. ADMIN. R. 10.16.3346 (amended 2010).** Montana published guidance, *Aversive Treatment Procedures*, in 2001. This guidance largely described the regulations in force at the

time. The regulation was updated a decade later and portions of the guidance may no longer be applicable.

**NEBRASKA.** Nebraska has nonbinding guidance. **REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS, A TECHNICAL ASSISTANCE DOCUMENT (Nebraska Dept. of Educ. 2010).**

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

**NEW HAMPSHIRE.** New Hampshire has meaningful protections against restraint in statute, and against seclusion in regulation. **N.H. REV. STAT. ANN. §§ 126-U:1- 126-U:13; N.H. RULES FOR THE EDUC. OF CHILDREN WITH DISABILITIES, §§ 1102.01, 1113.04 - 1113.07 (Amended Dec. 1, 2010).** In November 2010, New Hampshire enacted a statute restricting the use of physical restraint. In December 2010, New Hampshire revised its 2008 special education regulations, making few, if any, changes to the restraint and seclusion provisions. To the extent the statute and regulation conflict, the statute controls.

**NEW JERSEY.** New Jersey does not have any statute, regulation, or guidance specific to schools and restraint/seclusion. A bill, Matthews Law, has been introduced every legislative session and failed.

**NEW MEXICO.** New Mexico has nonbinding guidance. **NEW MEXICO PUBLIC EDUCATION DEPARTMENT, USE OF PHYSICAL RESTRAINT AS A BEHAVIORAL INTERVENTION FOR STUDENTS WITH DISABILITIES MEMORANDUM (2006); NEW MEXICO PUBLIC EDUCATION DEPARTMENT, POLICY ON THE USE OF TIME OUT ROOMS AS A BEHAVIORAL INTERVENTION (2003).**

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

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

**NORTH DAKOTA.** North Dakota does not have any statute, regulation, or guidance specific to schools and restraint/seclusion.

**OHIO.** Ohio's primary protection is in an Executive Order. **OHIO EXEC. ORDER No. 2009-13S (Aug. 3, 2009); see also OHIO ADMIN CODE 3301-35-06.**

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

**OREGON.** Oregon has meaningful protections against seclusion and restraint in statute. **2011 OREGON LAWS CHAP. 665** (former H.B. 2939; approved by Governor Aug. 2, 2011; restraint/seclusion terms, other than training, become effective July 2012). Oregon previously had regulations adopted in 2007. These were superseded by the new statute.

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

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

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

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

**TENNESSEE.** Tennessee has meaningful protections against seclusion and restraint in statute. **TENN. CODE. §§ 49-10-1301 to 49-10-1307 (2011).** The new statute superseded the prior statute and regulations under it.

**TEXAS.** Texas has meaningful protections against seclusion and restraint in statute and regulations. **TEX. EDUC. CODE § 37.0021; 19 TEX. ADMIN. CODE § 89.1053.**

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

**VERMONT.** Vermont has meaningful protections against seclusion and restraint in regulations. **VERMONT STATE BD. OF EDUC., RULE 4500** (State Rules for the Use of Restraint & Seclusion in School effective Aug. 2011).

**VIRGINIA.** Virginia has nonbinding guidance. **VIRGINIA DEPT. OF EDUC., GUIDELINES FOR THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR MANAGING STUDENT BEHAVIORS IN EMERGENCY SITUATIONS IN VIRGINIA PUBLIC SCHOOLS (2009).**

**WASHINGTON.** Washington has meaningful protections against seclusion and restraint in regulations. **WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135.**

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

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

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

## CHARTS AND MAPS

All information in the charts and maps is contained in the text. They simply provide a visual representation for those readers who need visual aids.

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- Map: By Law, Less Restrictive Methods Must Fail/ Be Deemed Ineffective First.
- Map: By Law, the Intervention Must End When the Emergency Ends.

### III. OTHER LIMITS ON RESTRAINT AND SECLUSION

- Chart: State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint.
- Map: States With Laws Regarding Restraints that Impair Breathing or Prone Restraint (Combination Map for color printers only).
- Map: Does State By Law Ban All Restraints that Impede Breathing? (b/w printers.)
- Map: States that By Law Ban Prone Restraint Only (b/w printers.)
- Map: States that Ban or Limit Mechanical Restraint By Law
- Map: Chemical Restraint is Prohibited or Restricted By Law.

### IV. AWARENESS OF SECLUSION/RESTRAINT AND OTHER ISSUES

- Chart: Notifying Parent of Restraint/Seclusion Event.
- Map: State Laws Requiring Steps to Notify Parent on Same Day, Within 24 Hours, or Within One School Day.
- Chart: Training Requirements in State S/R Laws.

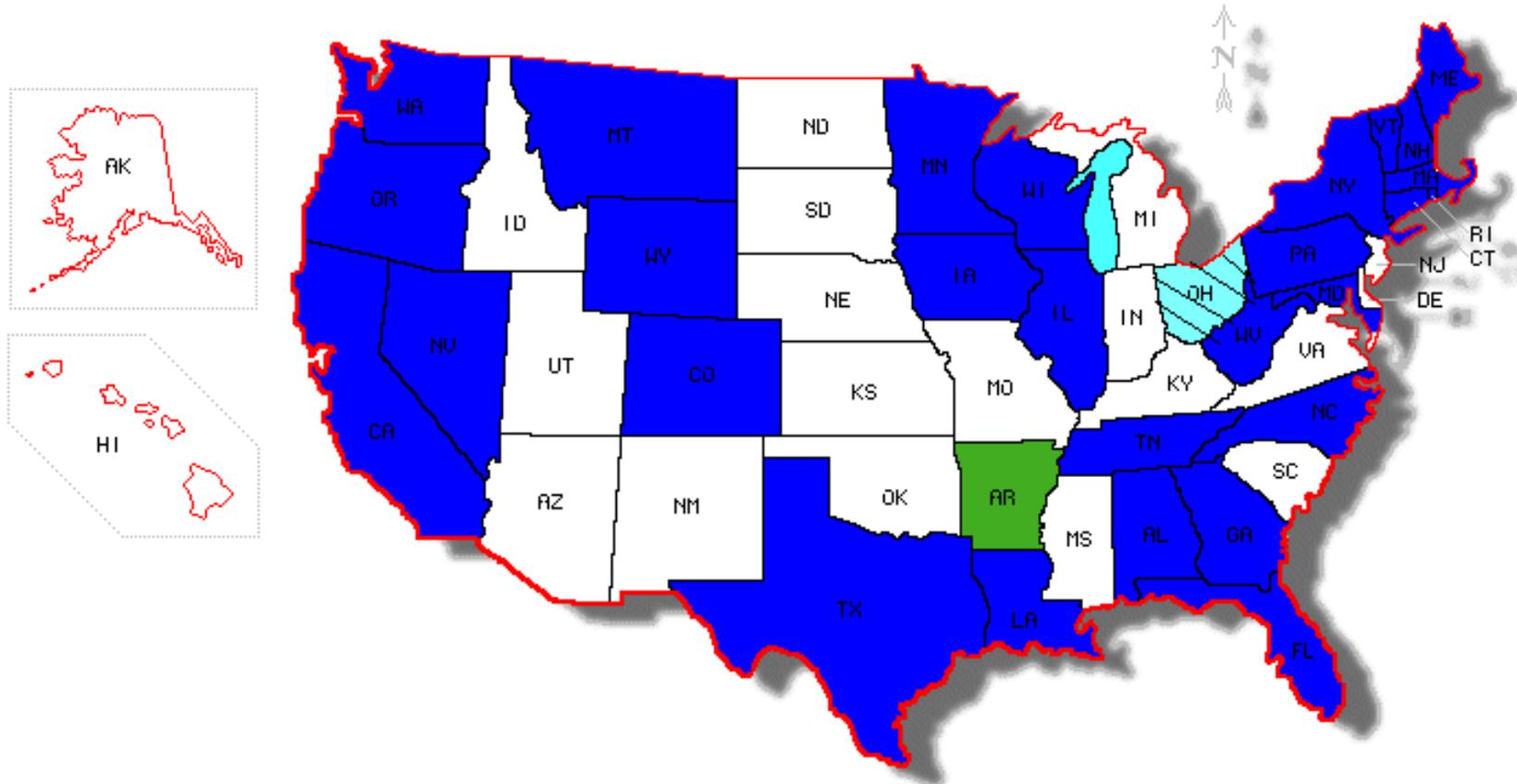
- Map: State By Law Requires SEA to Collect Data.

## **V. CHANGES IN RESTRAINT/SECLUSION LAW**

- Map: States that Adopted or Overhauled Laws Since Congressional Bill Introduced in Dec. 2009.

**STATE BY STATE SUMMARY OF SECLUSION/RESTRAINT LAWS FOLLOWS THE CHARTS AND MAPS. This allows readers to look up a state and read its policies and laws.**

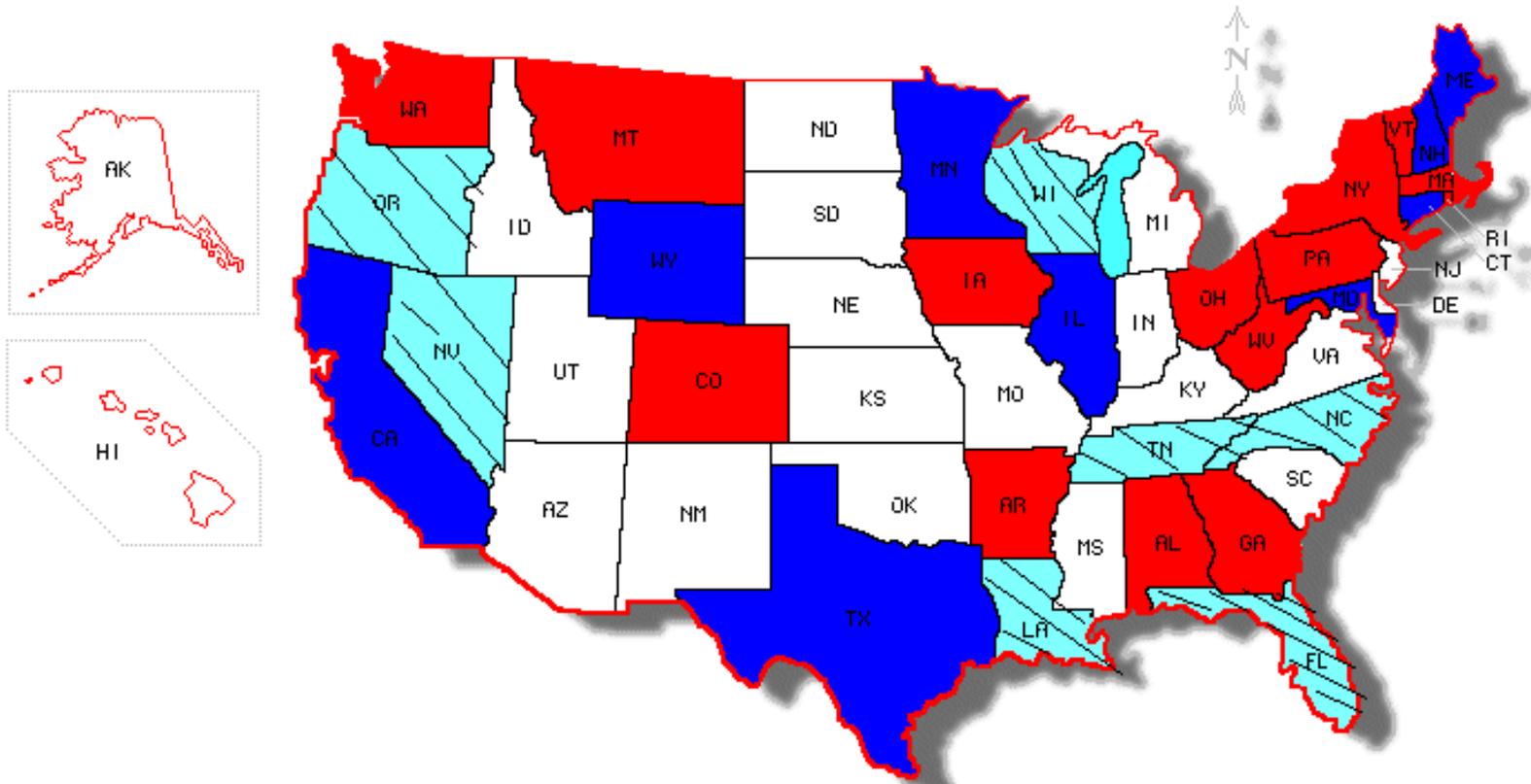
### 30 States Have Meaningful Protections By Law (April 2012)



Blue: (dark): Meaningful protection in law against restraint and seclusion.  
Green (medium): Meaningful protection in law against seclusion (Arkansas only).  
Cyan (light blue; slash mark): Meaningful protection in law against restraint (Ohio only).

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Does the State Have a Statute, Regulation, or Both (April 2012)?



In this map, red (dark) is regulation; blue (medium) is both; cyan (light, slash marks) is statute.

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**Does State Cover All Students or Only Those With Disabilities? (April 15, 2012)**

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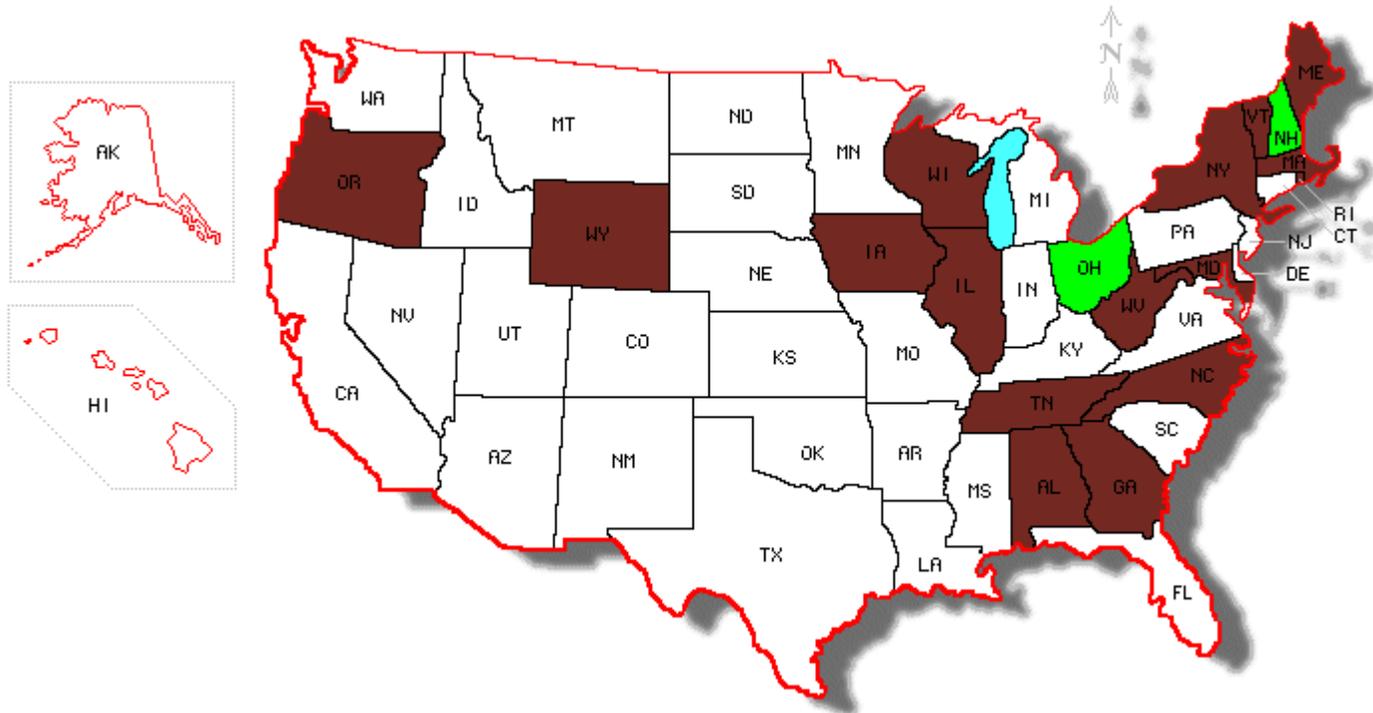
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<b>State</b>	<b>Students w/Disabilities Only</b>	<b>All Students</b>	<b>Nothing</b>
CA	<b>Meaningful Law</b>		
CO	<b>Meaningful Law</b>		
CT	<b>Meaningful Law</b>		
FL	<b>Meaningful Law</b>		
LA	<b>Meaningful Law</b>		
MN	<b>Meaningful Law</b>		
MT	<b>Meaningful Law</b>		
<b>NH</b>	<b>Meaningful Regulation (seclusion only)</b>		
NV	<b>Meaningful Law</b>		
PA	<b>Meaningful Law</b>		
TX	<b>Meaningful Law</b>		
WA	<b>Meaningful Law</b>		
AR	<b>Meaningful Law (seclusion only)</b>		
HI	Weak Law		
DE	Weak Law - Autism Only		
KY	<i>Nonbinding Guidance - Seclusion Only (Not Law; easily changed by state)</i>		
KS	<i>Nonbinding Guidance (Not Law; easily changed by state)</i>		
OK	<i>Nonbinding Guidance (Not Law; easily changed by state)</i>		
UT	<i>Nonbinding Guidance (Not Law; easily changed by state)</i>		

State	Students w/Disabilities Only	All Students	Nothing
VA	<i>Nonbinding Guidance (Not Law; easily changed by state)</i>		
AL		<b>Meaningful Law</b>	
GA		<b>Meaningful Law</b>	
IA		<b>Meaningful Law</b>	
IL		<b>Meaningful Law</b>	
MA		<b>Meaningful Law</b>	
MD		<b>Meaningful Law</b>	
ME		<b>Meaningful Law (2012)</b>	
NC		<b>Meaningful Law</b>	
NH		<b>Meaningful Law (restraint only)</b>	
NY		<b>Meaningful Law</b>	
OH		<b>Meaningful Law</b>	
OR		<b>Meaningful Law</b>	
TN		<b>Meaningful Law</b>	
VT		<b>Meaningful Law</b>	
WI		<b>Meaningful Law (2012)</b>	
WV		<b>Meaningful Law</b>	
WY		<b>Meaningful Law</b>	
RI		<b>Meaningful Law</b>	
AK		Weak Law(restraint can be used for threats of physical harm, property destruction, educational disruption)	
MI		Weak Law (restraint only; force purpose) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	

State	Students w/Disabilities Only	All Students	Nothing
MO		Weak Law (unlocked, unattended seclusion while awaiting law enforcement) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	
DC		Weak Reg (bans "unreasonable restraint"). <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	
IN		<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	
NE		<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	
SC		<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>	
AZ			Nothing
ID			Nothing
MS			Nothing
ND			Nothing
NJ			Nothing
SD			Nothing

**States with Laws Protecting All Students (Regardless of Disability Status) From Restraint/Seclusion (April 2012)**



**Brown (dark):** State statute or regulation protects students regardless of disability status from restraint and seclusion.

**Green (light):** State statute or regulation protects students regardless of disability status from restraint only.

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## Is Restraint Limited to Immediate Emergency Threats to Physical Safety? (Updated Apr. 2012)

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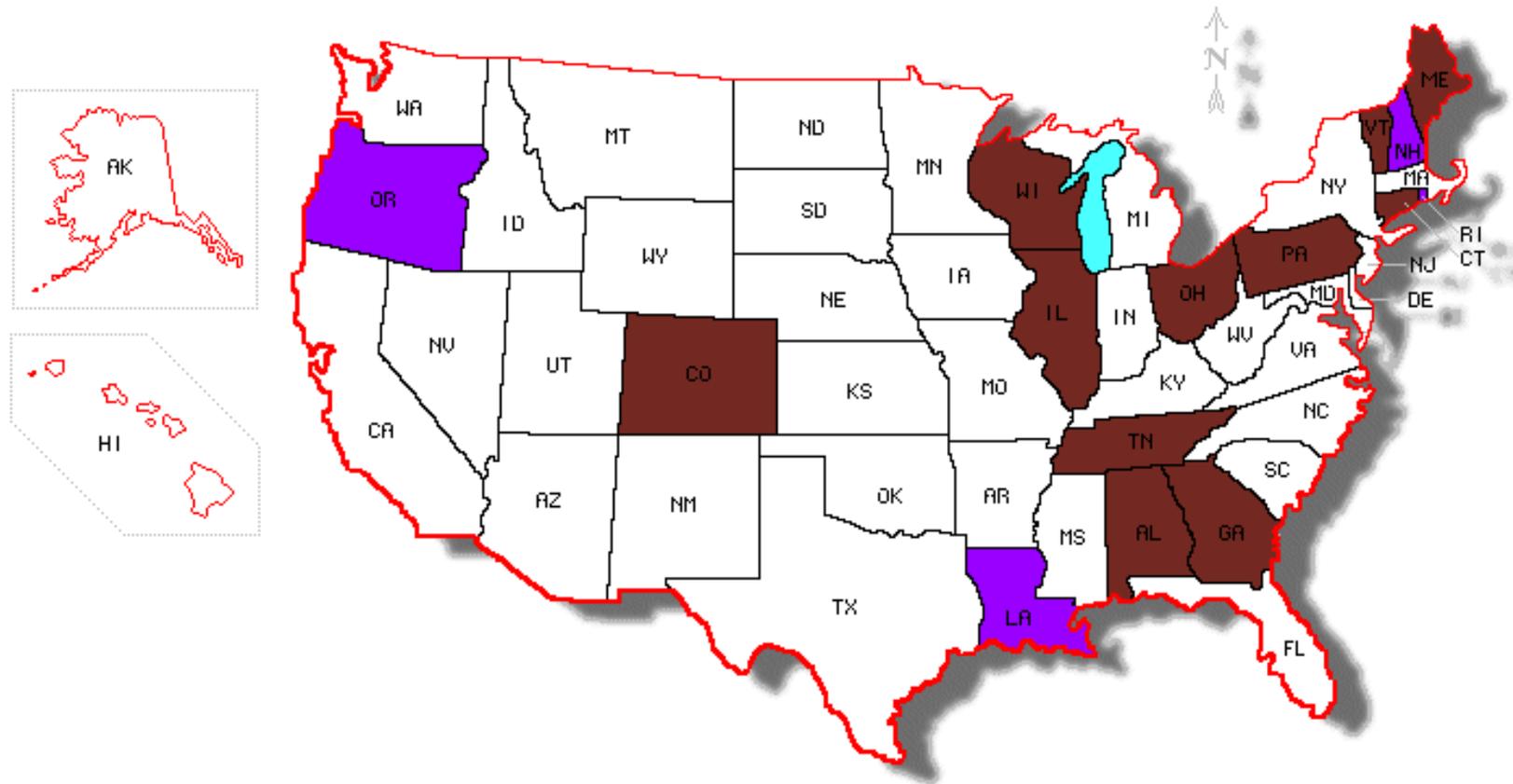
	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or as per IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
Total by law	<b>5</b>	<b>10</b>	<b>3</b>	<b>1</b>		<b>5</b>	<b>2</b>
AK							
AL		<b>X</b>					
AR							
AZ							
CA							X (CA permits use of restraint in non-emergencies with little limitation due to law's wording)
CO							
CT		<b>X</b>					
DE							
DC		<i>Guidance - Not law - Can Change</i>					
FL	<b>implied</b>						
GA		<b>X</b>					
HI							
IA						X	
ID							
IL		<b>X</b>					
IN		<i>Voluntary Guidance - Not law - Can Change</i>					
KS		<i>Voluntary Guidance - Not law - Can Change</i>					
KY							
LA	<b>X</b>						
MA			X				

	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Serious Phys. Harm/ Phys. Harm or as per IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
MD			X				
ME		<b>X (2012)</b>					
MI						X	
MN				X [1]			
MO							<i>Voluntary Guidance - Not law - Can Change</i>
MS							
MT						X	
NC							X
ND							
NE		<i>Voluntary Guidance - Not law - Can Change</i>					
NH	<b>X</b>						
NJ							
NM					<i>Voluntary Guidance - Not law - Can Change</i>		
NV				X			
NY						X	
OH		<b>X</b>					
OK	<i>Voluntary Guidance - Not law - Can Change</i>						
OR	<b>X</b>						
PA		<b>X</b>					
RI	<b>X</b>						
SC							
SD							
TN		<b>X</b>					
TX				X			
UT				<i>Voluntary Guidance - Not law - Can Change</i>			

	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Serious Phys. Harm/ Phys. Harm or as per IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
VA		<i>Voluntary Guidance - Not law - Can Change</i>					
VT		<b>X</b>					
WA						X	
WI		<b>X (2012)</b>					
WV				X			
WY							

[1] MN: As described in the text, the new Minnesota statute appears to have an unintended loophole permitting restraint under other circumstances.

**Only 16 States Limit Restraint to Emergency Threats of Physical Harm (April 2012)**



Brown (dark): state limits restraint to emergency threats of imminent physical harm  
Purple (lighter): state limits restraint to emergency threats of imminent, serious physical harm

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## How is Seclusion Defined, and Is It Banned? (Updated Apr. 2012)

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	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans all No-Exit Rooms	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion	State Requires Locks to Automatically Release	No limit on seclusion
AK						X
AL			X	X		
AR				X		
AZ						X
CA			X	X (except certain licensed facilities)		
CO	X					
CT	X					
DE						X
DC	<i>Guidance - Not law - Can Change</i>					
FL			X			
GA	X	Total Ban				
HI						X
IA	X					
ID						X
IL	X					
IN	<i>Voluntary Guidance - Not law - Can Change</i>					
KS	<i>Voluntary Guidance - Not law - Can Change</i>					
KY						X
LA	X					
MA	X (if child lacks staff "access")					
MD	X (if alone)					
ME	X (2012)			X (2012)		
MI	<i>Voluntary Guidance - Not law - Can Change</i>					
MN	X					
MO	<i>Voluntary Guidance - Not law - Can Change</i>					
MS						X

	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans all No-Exit Rooms	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion	State Requires Locks to Automatically Release	No limit on seclusion
MT	X			X (except certain residential facilities)		
NC	X					
ND						X
NE	<i>Voluntary Guidance - Not law - Can Change</i>					
NH	X					
NJ						X
NM	<i>Voluntary Guidance - Not law - Can Change</i>			X		
NV	X	Total Ban				
NY				X		
OH						X
OK						
OR	X					
PA		Total Ban				
RI	X (if child unobserved)					
SC	<i>Voluntary Guidance - Not law - Can Change</i>					
SD						X
TN	X					
TX	X (if alone in room)	Total Ban				
UT	<i>Voluntary Guidance - Not law - Can Change</i>					
VA	<i>Voluntary Guidance - Not law - Can Change</i>					
VT	X					
WA						
WI	X (2012)			X (2012)		
WV	X iif child is unsupervised)					
WY	X (called "isolation" in WY)			X		

## Is Seclusion Banned or Limited to Emergencies Involving Immediate Threats to Physical Safety? (Updated April 2012)

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

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusion as per IEP or BIP
IN			<i>Voluntary Guidance - Not law - Can Change</i>				
KS							<i>Voluntary Guidance - Not law - Can Change. Regards S as legit. behavior modif. technique, and permits if in IEP for any reason.</i>
KY							
LA		X					
MA							X [1]
MD				X			
ME			<b>X (2012)</b>				
MI			<i>Voluntary Guidance - Not law - Can Change</i>				
MN					X		
MO							<i>Voluntary Guidance - Not law - Can Change</i>
MS							
MT						X	
NC							X
ND							
NE			<i>Voluntary Guidance - Not law - Can Change</i>				

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusn as per IEP or BIP
NH							X [2]
NJ							
NM							<i>Voluntary Guidance - Not law - Can Change. Considers seclusion legit. behavior modif. technique.</i>
NV	X						
NY						X	
OH							
OK		<i>Voluntary Guidance - Not law - Can Change</i>					
OR		X					
PA	X						
RI							X [3]
SC			<i>Voluntary Guidance - Not law - Can Change</i>				
SD							
TN			X				
TX	X						
UT					<i>Voluntary Guidance - Not law - Can Change</i>		
VA			<i>Voluntary Guidance - Not law - Can Change</i>				
VT			X				

	<b>Bans Seclusion</b>	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusn as per IEP or BIP
WA							
WI	<b>X (2012)</b>						
WV							X [4]
WY			<b>X</b>				

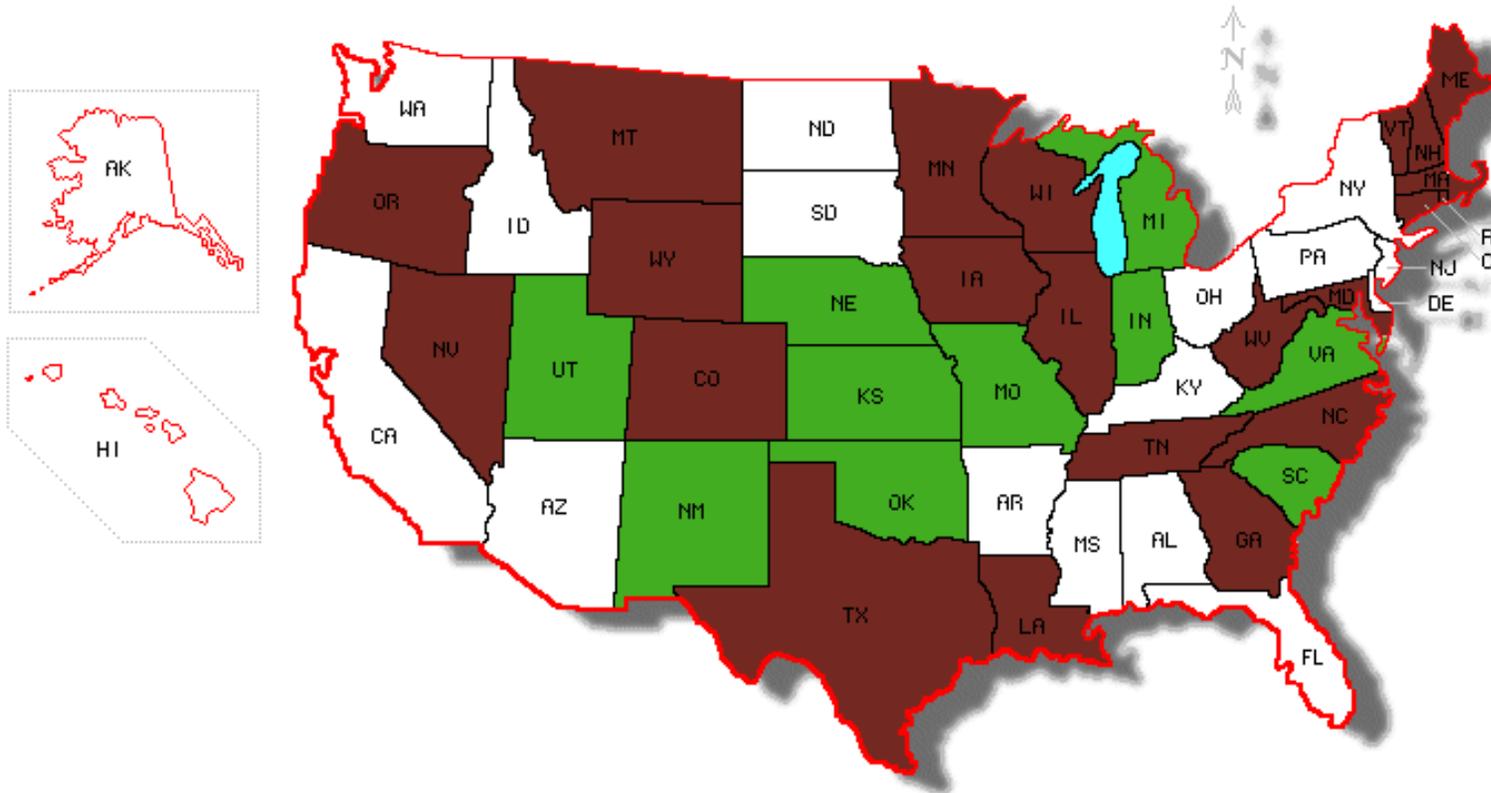
Notes: [1] MA forbids locking children in rooms without access to "staff." If staff is accessible (perhaps by call or signal), MA does not regulate the rooms or limit the reasons they can be used.

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

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

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

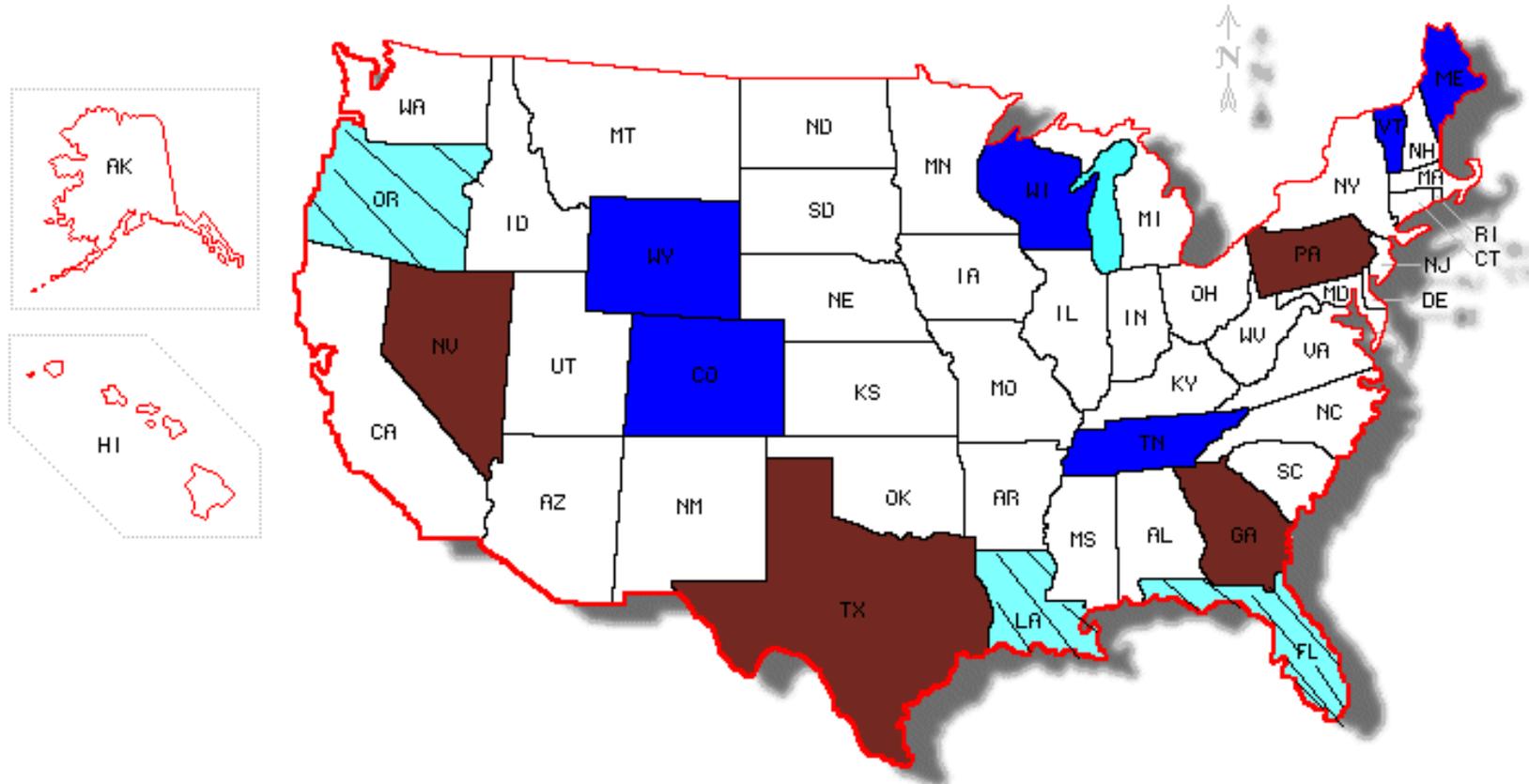
### 33 States Would Define Seclusion as Rooms/Spaces Child Cannot Exit



Brown (dark): By law, seclusion is defined as rooms/spaces child prevented from exiting  
Green (light): By guidance, state suggests defining seclusion as rooms/spaces child is prevented from exiting



**States that Ban Seclusion or Limit it to Physical Danger Emergencies (April 2012)**



Brown (dark): By law, seclusion is banned.

Blue (medium): By law, seclusion is limited to emergency threats of physical harm.

Cyan (light, slashes): By law, seclusion is limited to emergency threats of serious or substantial physical harm.

**A Summary of State Monitoring Requirements for  
Children in Seclusion Rooms (April 2012)  
Copyright Jessica Butler April 15, 2012 (jessica@jnba.net)**

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



**By Law, Does State Permit Seclusion/Restraint Only As a Last Resort  
(i.e., after less-intensive interventions have failed or been deemed ineffective?)  
Updated April 2012  
(Copyright Jessica Butler April 15, 2012 (jessica@jnba.net))**

<b>Does State Permit S/R Only as a Last Resort?</b>	<b>Number States</b>	<b>State Names</b>
Less-Intensive Measures Must Fail/ Be Ineffective, by Law	18	AL, CA, CO, GA, IA, LA, ME, MA, MD, MN, NY, OR, PA, RI, VT, WI.
Try Less-Intensive Measures First; Need Not Fail	2	ME, MT
No Laws Requiring that Less Intensive Interventions Fail. Likely Results in Quicker Escalation to S/R.	33	AK, AR, AZ, DC, DE, FL, HI, ID, IL, IN, KS, KY, MI, MO, MS, NC, ND, NE, NJ, NM, NV, OH, OK, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY.
Must Fail for Restraint; Need Not Fail to use seclusion.	2	CT (Less-restrictive measures must fail for restraint or if seclusion not IEP. Less-restrictive measures need not fail if seclusion in IEP; permits seclusion in IEP for any reason).  NH (less-restrictive measures must fail for restraint, no limit for seclusion).

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

<b>Does State Permit S/R Only as a Last Resort?</b>	<b>Number States</b>	<b>State Names</b>
By Law, S/R Must End When the Emergency Ends	15	AL, CA, CO, GA, LA, ME, MA, MN, NV, OR, RI, TX, VT, WI, WV.
Other Provision for When S/R Should End.	3	CT (Seclusion must end when child is "compose[d]" or 1 hour). IA (After "reasonable" period). MD (Seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm). MT (IEP team decides).
No Laws Requiring S/R to Stop When the Emergency Ends.	32	AK, AR, AZ, DC, DE, FL, HI, ID, IN, KS, KY, ME, MI, MO, MS, NC, ND, NE, NJ, NM, NY, OH, OK, PA, SC, SD, TN, UT, VA, WA, WI, WY.
Must Stop When Emergency Ends for Restraint; Need Not Stop for Seclusion.	3	NH (IEP team decides when seclusion ends). IL (seclusion ends 30 minutes after behavior resulting in seclusion has ended).





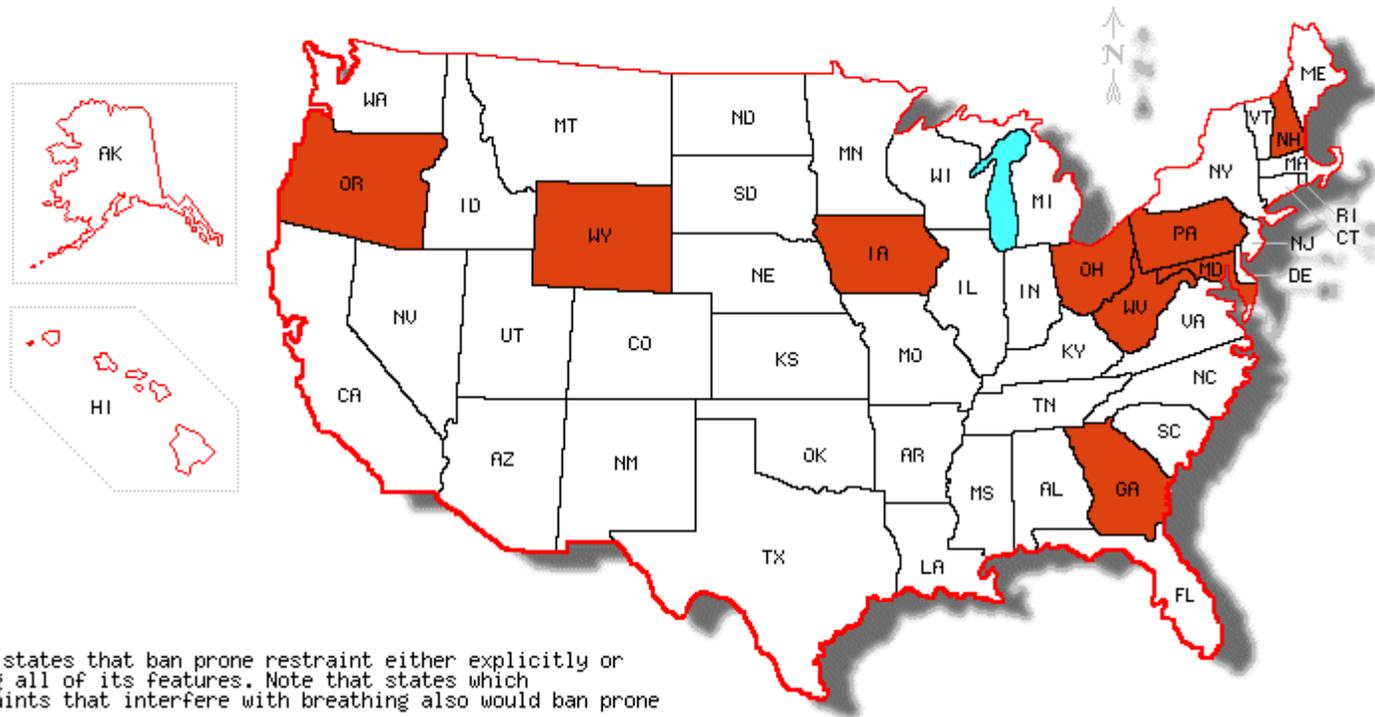
<b>State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, &amp; Chemical Restraint (Updated April 2012)</b> Copyright Jessica Butler April 15, 2012 (jessica@jnba.net) Permission to copy, share, and redistribute granted, but please leave my name and email on the chart.				
	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
total by law	14	10	15	10
AK				
AL	ban		ban	ban
AR				
AZ				
CA				
CO	ban		ban	ban
CT	ban			unless otherwise in IEP
DE				
DC		<i>Suggests ban in guidance- not law - can change</i>	<i>Suggests ban in guidance- not law - can change</i>	<i>Suggests ban in guidance- not law - can change</i>
FL	ban			
GA		ban	ban	ban
HI				
IA	ban	ban	ban	ban
ID				
IL			ban	ban
IN				
KS				
KY				
LA	ban		ban	
MA	ban	permits prone restraint if staff is trained in the technique	permitted w/parent consent & physician instruct.	permitted w/parent consent & physician instruct.
MD	ban	ban	ban except certain schools w/hospital accreditation.	
ME	ban (2012)		ban	ban
MI				
MN		specific limiting regulations imposed on prone restraint through Aug. 2013, per new Apr. 2012 statute.		
MO	<i>Suggests ban in guidance- not law - can change</i>			
MS				
MT			ban (except in certain residential facilities)	
NC				

	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
ND				
NE	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
NH	ban	ban	ban	ban
NJ				
NM	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
NV			permitted w/doctor order, but must loosen every 15 min	
NY				
OH		ban		
OK	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
OR		ban	ban	ban
PA		ban	ban	
RI	ban			ban
SC	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
SD				
TN	ban		ban	permitted w/parent consent & physician instruct.
TX				
UT				
VA				
VT	ban	allowed in certain circumstances if less restrictive restraints would not be effective	ban	ban
WA	ban		can't bind limbs to object or each other, unless in IEP	
WI	ban (2012)		ban	ban
WV	ban	ban	ban	
WY		ban	ban	





## States that By Law Ban Prone Restraint.



### **NOTES:**

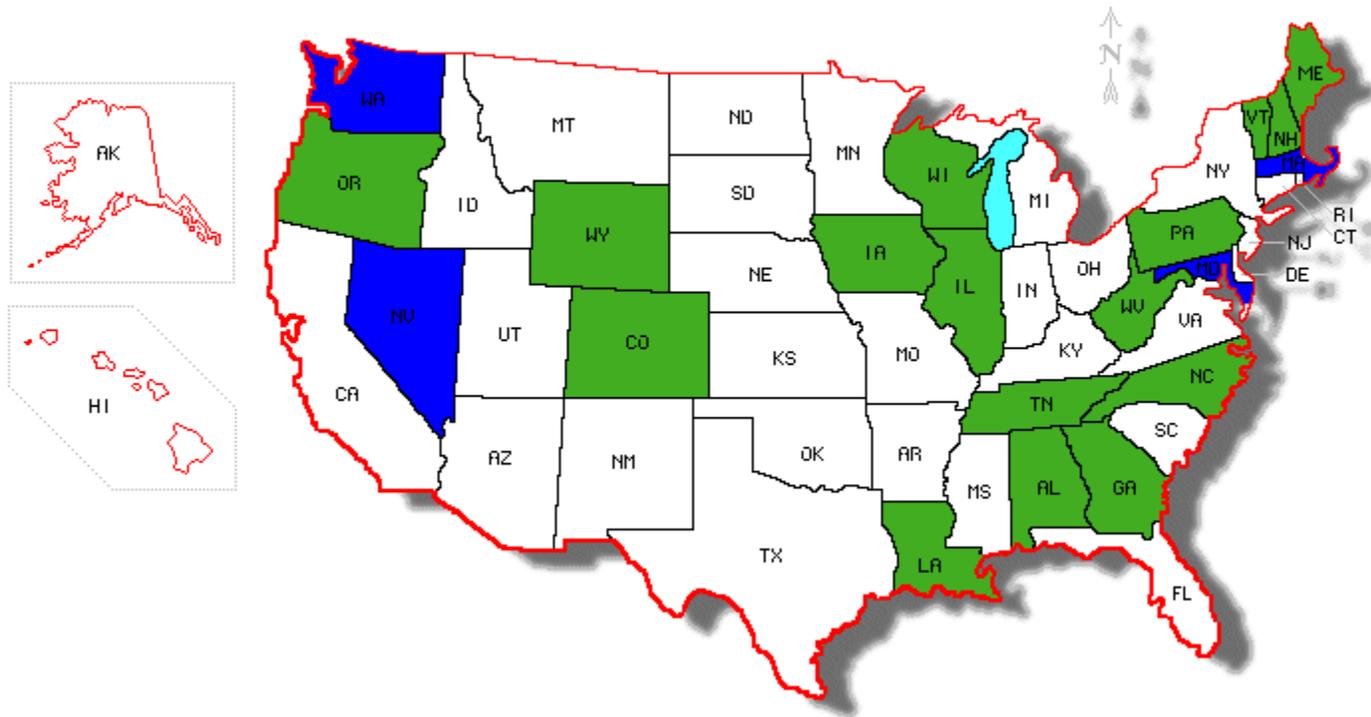
These are states that ban prone restraint either explicitly or by banning all of its features. Note that states which ban restraints that interfere with breathing also would ban prone restraint.

This map is designed for those with black and white printers/copiers. It shows only those states that ban prone restraint, either by name or by describing its features. It does not include those states which have a more generalized ban on restraints that impair breathing. (Because prone restraint generally is understood to impair breathing, laws that ban restraints that impair breathing by definition would include prone restraint).

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## States that Ban or Limit Mechanical Restraint By Law (April 2012)



**Blue (dark):** By law, mechanical restraint is prohibited.

**Green (light):** By law, mechanical restraint is limited. Massachusetts (permitted with parental consent and physician instructions); Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and Washington (limited to binding limbs to object, unless included in IEP with parental consent).

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### Notifying Parent of Restraint/Seclusion Event. (Updated April 2012)

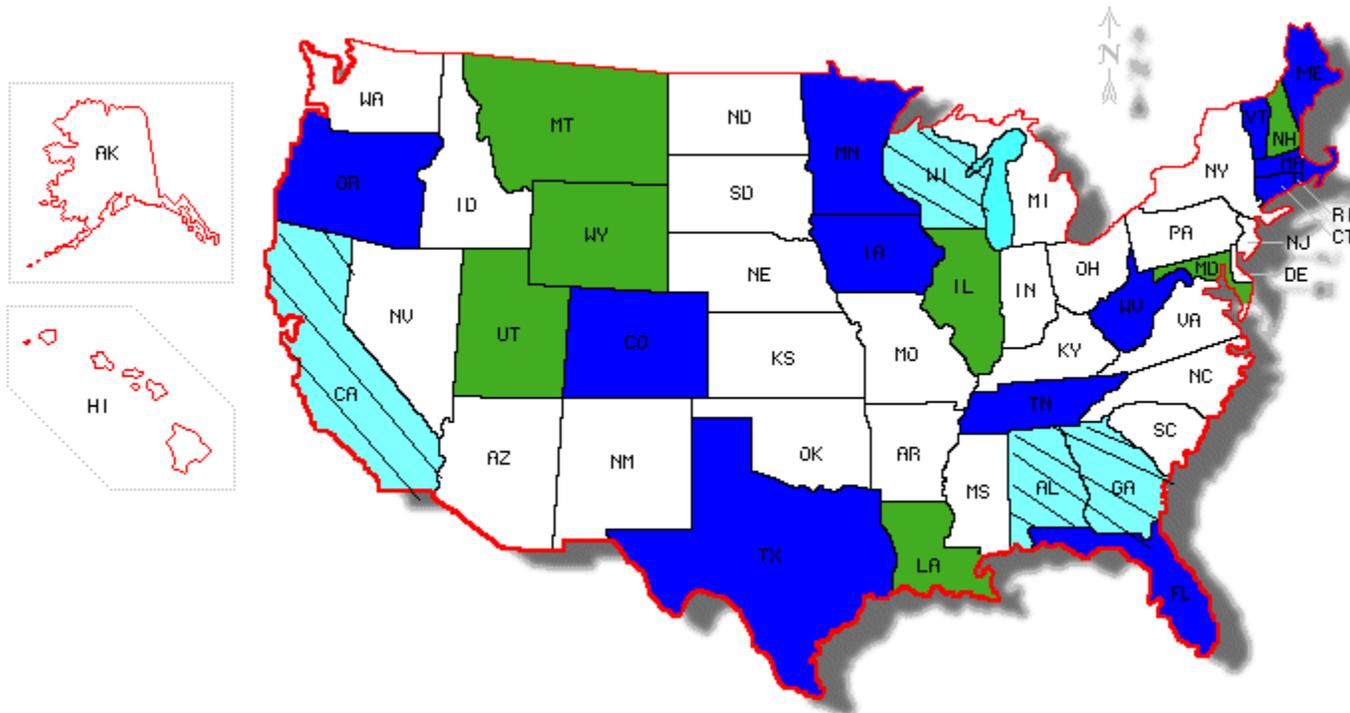
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	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer deadline	Fuller written followup required
AK					
AL					
AR					
AZ					
CA					
CO	X				X
CT	attempted (for seclusion if not in IEP and for restraint)			X (if seclusion is in IEP, IEP team sets deadline)	X (for seclusion if not in IEP and for restraint. If seclusion in IEP, not required.)
DE					
DC					
FL	X				X
GA					
HI					
IA	attempted				X
ID					
IL		X			
IN					
KS					
KY					
LA		X			X
MA	X	No notice if parent waives notice (at school request) or lasts for less than 5 mins.			X
MD		X	unless otherwise stated in IEP/BIP.		
ME	X (2012)				X (2012)
MI					
MN	X				x
MO					

	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer deadline	Fuller written followup required
MS					
MT		X			
NC					
ND					
NE					
NH		attempted (restraint only)			X
NJ					
NM					
NV					
NY					
OH					
OK					
OR	X				
PA					
RI	X				X
SC					
SD					
TN	Required. If reasonable efforts were made, school held harmless.				
TX	good faith efforts				X
UT		X			
VA					
VT	attempted				X
WA					
WI			X (2012)		
WV	"good faith"				X
WY		X	unless parent agrees otherwise.		

**24 State Laws Requires Steps to Notify Parent on Same Day, within 24 hours (1 Calendar Day), or Within 1 School Day (April 2012)**



**Blue (dark):** Law requires school to take steps to notify parent on same day. Note that in Connecticut, if seclusion is included in the IEP, then the IEP team selects the notification period, if any. Maryland allows the IEP team to pick another notification period, potentially lengthening the delay for parents to learn what happened to their child. Massachusetts permits parents to waive notification and does not require notification for restraints of 5 minutes or less.

**Green (medium):** Law requires school to take steps to notify parents within 24 hours or within 1 calendar day.

**Cyan (lightest, slashes):** Law requires notification within 1 school day or business day.

<b>Training Requirements in State S/R Laws [1], Updated Apr. 2012</b> Copyright Jessica Butler April 15, 2012 (jessica@jnba.net) Permission to copy, share, and redistribute is granted, but please leave my name and email on the chart.							
	Conflict De-escalation & Preventing S/R	PBS training included in S/R laws	Safe/ Appropriate Use S/R	Specifically require some medical training [2]	Specific training in s/r dangers	Training in State, LEA, School Pols & Procs	Periodic training or certif.
AK							
AL	X	X					
AR							
AZ							
CA		X					
CO	X		X		X		X
CT	X		X	X	X		
DE							
DC							
FL							
GA	X	X	X				
HI							
IA		X	X		X	X (school only)	X
ID							
IL	X		X	X	X		X
IN							
KS							
KY							
LA							
MA	X		X	X	X	X (school only)	
MD	X		X	X	X	X	X
ME	X		X		X (2012)		X (2012)
MI							
MN	X	X	X	X	X		
MO							

	Conflict De-escalation & Preventing S/R	PBS training included in S/R laws	Safe/ Appropriate Use S/R	Specifically require some medical training [2]	Specific training in s/r dangers	Training in State, LEA, School Pols & Procs	Periodic training or certif.
MS							
MT		X					
NC	X	X	X				
ND							
NE							
NH							
NJ							
NM							
NV	X	X					
NY			X			X	
OH							
OK							
OR	X		X				
PA		X					
RI	X	X	X	X [3]	X	X (school only)	X
SC							
SD							
TN	X [4]	X [4]	X [4]			X [4]	
TX [5]	X		X				
UT							
VA							
VT	X	X	X	X	X		
WA							
WI	X (2012)						
WV[5]	X		X				
WY	X	X				X (school only)	X

Please see notes on following page

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Notes to Training Chart:

[1] It is possible that some areas of training are required by other laws, such as positive behavioral intervention laws or others. This analysis focused only on the requirements in the state's seclusion/restraint laws.

[2] It is possible that topics like medical training (first aid, identifying medical distress, CPR) and even the dangers of restraint may be covered in training about safe and appropriate use of seclusion/restraint. But when states do not define what "safe and appropriate use" training will cover, schools and training programs define it for themselves, and there are no guarantees that medical training or dangers of restraint will be taught.

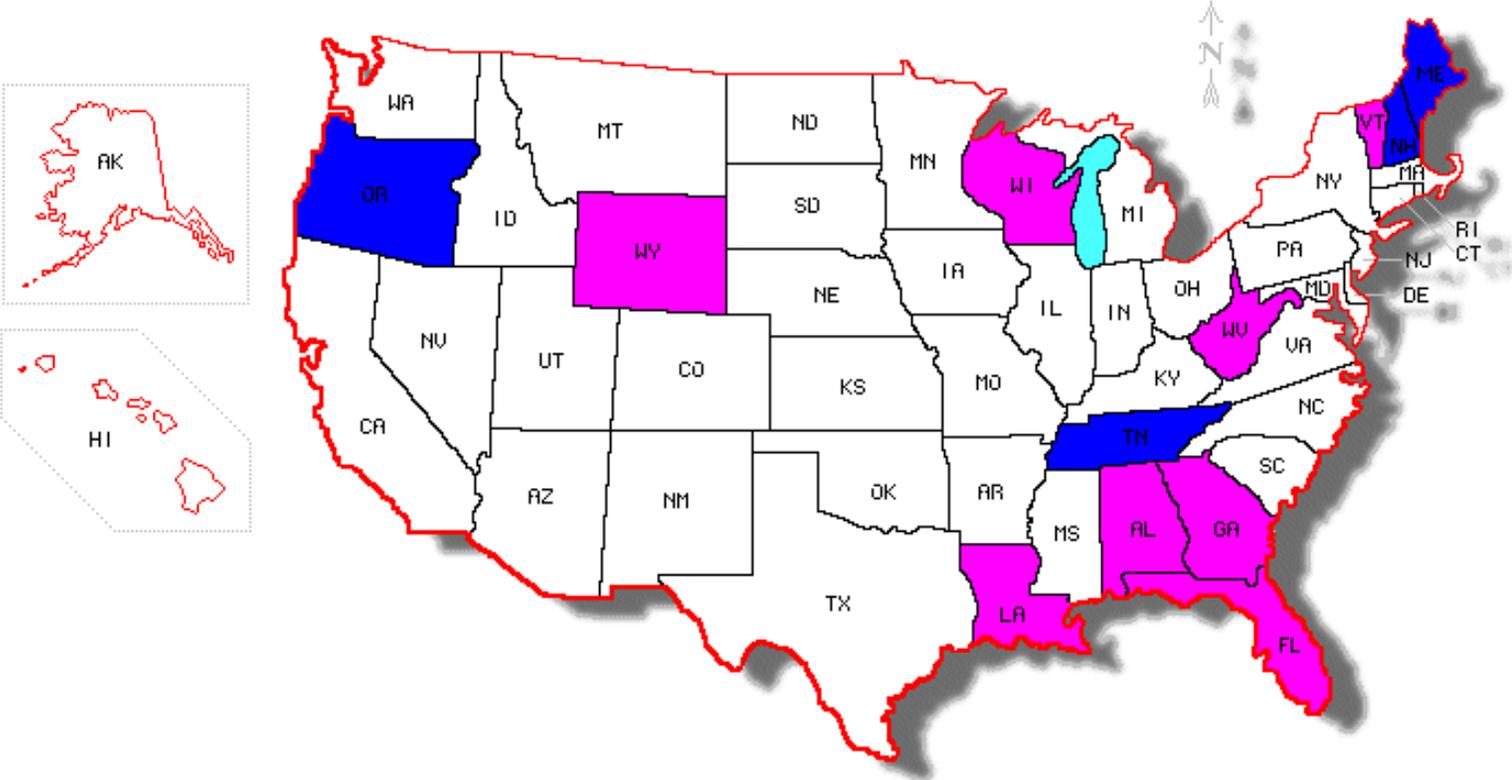
[3] Rhode Island requires the medical training only for staff who receive in-depth S/R training, not all staff.

[4] TN imposes the training requirements only if funding is available.

[5] TX and WV also require that if untrained personnel use S/R, they will go to training within a certain time period.



**12 States Have Adopted or Overhauled Laws Since the First  
Congressional Bill Was Introduced in Dec. 2009**



Effective April 2012.  
Pink (light): Adopted new statute or regulation.  
Blue (dark): Overhauled existing statute or regulation.



**STATE-BY STATE SUMMARY OF  
STATE SECLUSION AND RESTRAINT LAWS AND  
POLICIES**

**STATE BY STATE SUMMARY: RESTRAINT/SECLUSION LAWS**  
**(Updated April 2012)**

Jessica Butler (jessica@jnba.net)

This is a quick summary of key state law/policy provisions. It does not include features of the state law. Refer to main document for fuller information.

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**AL.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Bans locked seclusion. There are no restrictions if door blocked, held closed by staff, or Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

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

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

SEA collects data at least annually regarding use of interventions.

**AK.**

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

Restraint not limited to emergencies.

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

No limits or requirements for seclusion.

No parental notification requirements and no data collection.

**AR.**

Statute or regulation with meaningful protections.

Applicable only to Seclusion.

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

Locked rooms forbidden.

Staff must continuously and directly watch children in seclusion.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Does not require monitoring of secluded child.

No parental notification requirements and no data collection.

**AZ.**

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

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**CA.**

Statute or regulation with meaningful protections.

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

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

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

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

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

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

**CO.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Bans mechanical restraint (except by armed security officers).

Bans chemical restraint.

Seclusion only for emergencies: immediate threats of physical harm.

“Reasonable” monitoring of seclusion required.

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

Intervention must end when the emergency ends.

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

**CT.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

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

Bans chemical restraint (unless otherwise stated in IEP).

IEP team determines frequency of monitoring of children in seclusion.

Same day attempted parent notification; written report required later.

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

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

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

**DE.**

DE permits committees to authorize “emergency interventions” for children with autism that may be used if there is a threat of physical harm or destruction of property. But Delaware is silent on the use of such interventions for other children and also silent on the use of restraint, seclusion, or other aversives in non-emergencies for children with

**DC.**

***Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring***

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

*Guidelines state that prone and supine restraints are not authorized; nor are mechanical*  
 Statute forbids "unreasonable restraint."

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

*Seclusion only for emergencies: immediate threats of physical harm.*

*Children in seclusion should be continuously and directly visually monitored.*

*Intervention should end when the emergency ends, per guidelines.*

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

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

**FL.**

Statute or regulation with meaningful protections.

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

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

No limit on mechanical or chemical restraints.

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

Lock on door to seclusion room should automatically release.

Notify parents same day; full written report later.

SEA collects data at least annually regarding use of interventions.

**GA.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans prone restraint; mechanical & chemical restraints.

Bans all rooms from which children are physically prevented from exiting (locked, blocked by furniture, held shut by teachers, child proofing, etc.).

Bans seclusion of child in room from which child cannot exit, so seclusion monitoring irrelevant.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

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

**HI.**

Weak Statute or regulation; some very minimal protection for restraint only. No limits on seclusion.

Permits use of reasonable force to prevent injury to person or property, including implementing “therapeutic behavior plans” contained in a child’s IEP.

Otherwise, Hawaii is silent and provides no protections.

**IA.**

Statute or regulation with meaningful protections.

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

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

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

Restraint for “reasonable and necessary” period; seclusion for “reasonable” period.

Less restrictive interventions must fail/be ineffective.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

**ID.**

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

**IL.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing; mechanical; chemical.

Seclusion permitted for threats of physical harm or educational disruption.

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

Restraint should end when the emergency ends. Seclusion should end 30 minutes after behavior resulting in seclusion has ended.

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

**IN.**

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

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

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

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

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

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

*Suggests parental notice to be decided by IEP team.*

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

**KS.**

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

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

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

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

*Suggests lock on door to seclusion room should automatically release.*

*Suggests staff must continuously and directly watch children in seclusion.*

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

*Suggests parents notified within 1 business/school day.*

**KY.**

Restraint: no limits.

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

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

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

**MA.**  
 Statute or regulation with meaningful protections.  
 Restraint: only threats of serious physical harm or as stated in IEP/BIP.  
 Bans restraint that interferes with breathing. (Prone restraint permitted by trained staff).  
 Mechanical & chemical: permitted with parental consent and physician instructions.  
 Bans all locked seclusion if there is no access to staff. Permits it without regulation if child has “access” to staff. The term “access” is undefined.  
 Intervention must end when the emergency ends.  
 Less restrictive interventions must fail/be ineffective.  
 Requires same day notification of parents. School is only required to notify parents if the  
 Data is reported to the SEA only if the restraint exceeds 20 minutes or someone is

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

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**ME.**

Statute and regulation with meaningful protections. Revised April 2012.

S/R limited to emergencies: risk of physical harm.

Bans restraint that interferes with breathing, mechanical & chemical restraint.

Bans locked seclusion. Permits unlocked seclusion (e.g., door can be blocked by Staff must continuously and directly watch children in seclusion.

Less restrictive interventions must fail. Must end when emergency ends.

Parent notification: same day.

SEA collects data annually.

**MI.**

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

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

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

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

*Suggests staff continuously and directly watch children in seclusion.*

*Suggests less restrictive interventions must fail/be ineffective.*

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

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

**MN.**

Statute or regulation with meaningful protections.

Restraint used for "physical holding." Refer to main document to see limitations on definition of physical holding.

Bans restraint interfering with breathing; prone restraint allowed until Aug. 2013 with

No limit on mechanical or chemical restraints.

Lock on seclusion room door should automatically release.

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

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be deemed ineffective.

Notify parents same day; full written report later.

**MS.**

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

**MO.**

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

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

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

*Suggests that mechanical be permitted as stated in the IEP.*

*Suggests ban on chemical restraint.*

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

*Suggests permitting seclusion that is (a) unlocked or (b) locked but in which the child is*

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

*Suggests intervention must end when the emergency ends.*

*Suggest less restrictive interventions fail / be ineffective.*

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

**MT.**

Statute or regulation with meaningful protections.

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

Bans mechanical restraint.

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

Bans locked rooms.

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

Staff must continuously and directly watch children in seclusion.

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

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

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

**NC.**

Statute or regulation with meaningful protections.

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

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

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

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

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

**ND.**

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

**NE.**

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

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

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

*Suggests lock on door to seclusion room should automatically release.*

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

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

*Suggests intervention must end when the emergency ends.*

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

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

**NJ.**

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

**NH.**

Statute or regulation with meaningful protections.

Restraint is governed by a 2010 law.

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

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

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

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

Restraint should end when the emergency ends.

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

For restraint only: Must attempt notification of parents within 1 calendar day or 24 hours

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

**NM.**

*Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not suggest restraint be limited to emergencies: immediate threats of physical harm or suggests ban on restraint that interferes with breathing and/or prone restraint.*

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

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

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

*No parental notification recommendations.*

**NV.**

Statute or regulation with meaningful protections.

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

Permits mechanical restraints upon physician order.

No limit on mechanical or chemical restraints.

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

Intervention must end when the emergency ends.

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

SEA collects data at least annually regarding use of interventions.

**NY.**

Statute or regulation with meaningful protections.

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

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

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

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

Less restrictive interventions must fail/ be ineffective.

Staff must continuously and directly watch children in seclusion.

Parental notification required; no deadline.

**OH.**

Exec. Order with meaningful protections for RESTRAINT only.

Restraint only for emergencies: imminent threat of physical harm.

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

**OK.**

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

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

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

*Suggests ban on mechanical restraint.*

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

*Suggests intervention must end when the emergency ends.*

*Suggests less restrictive interventions must fail/be ineffective.*

*Suggests Staff must continuously and directly watch children in seclusion.*

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

**OR (effective July 2012).**

Statute or regulation with meaningful protections.

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

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

Seclusion only emergencies: immediate threats of serious physical harm.

Staff must continuously and directly watch children in seclusion.

S/R must end when the emergency ends.

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

Requires same day notification of parents.

SEA collects data at least annually regarding use of interventions.

**PA.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Bans mechanical restraint; no limits on chemical restraints.

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

Bans all rooms from which children cannot readily exit (locked, blocked by furniture, held shut by teachers, childproofing, etc.).

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

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

**RI.**

Statute or regulation with meaningful protections.

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

Bans restraint that interferes with breathing and chemical restraints

No limit on mechanical restraints.

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

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

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

Requires same day notification of parents and written report later.

SEA collects data at least annually regarding use of interventions.

**SC.**

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

*Does not suggest limits on restraint, except as noted.*

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

*Suggests ban on mechanical restraint.*

*Recommends lock on door to seclusion room should automatically release.*

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

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

*Recommends continuous visual monitoring of seclusion.*

*Recommends Intervention must end when the emergency ends.*

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

**SD.**

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

**TN.**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

**TX.**

Statute or regulation with meaningful protections.

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

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

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

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

SEA collects data at least annually regarding use of interventions.

**UT.**

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

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

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

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

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

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

**VA.**

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

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

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

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

*Suggests school district determine parental notification schedule.*

**VT.**

Statute or regulation with meaningful protections.

Both restraint and seclusion.

Restraint only for emergencies: imminent threat of physical harm.

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

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

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

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

**WA.**

Statute or regulation with meaningful protections.

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

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

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

No limit on chemical restraints.

Seclusion is permitted for any reason.

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

**WI.****Statute adopted March 2012.**

S/R only for emergencies: threats of physical harm.

Bans restraints interfering with breathing, mechanical, and chemical restraints.

Staff must continuously and directly visually monitor children in seclusion.

Imposes limits on seclusion room conditions; requires bathroom access.

S/R must end when the emergency ends. Cannot use when less restrictive measures would resolve.

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

Parent notification: 1 school day.

**WV. (new regulation effective July 2012)**

Statute or regulation with meaningful protections.

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

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

Bans mechanical restraints; does not ban chemical restraints.

Seclusion is prohibited; defined as removing child to unsupervised space.

Intervention must end when the emergency ends.

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

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

**WY.**

Statute or regulation with meaningful protections.

No limit on physical restraint.

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

Bans mechanical restraint.

No limit on chemical restraints.

Bans locked seclusion.

Seclusion only for emergencies: immediate threats of physical harm (for rooms that are not locked, but child cannot exit. Called “isolation” in Wyoming to distinguish it from locked seclusion.)

Staff must be able to see/hear child at all times in isolation, but does not require that staff

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

SEA collects data at least annually regarding use of interventions.