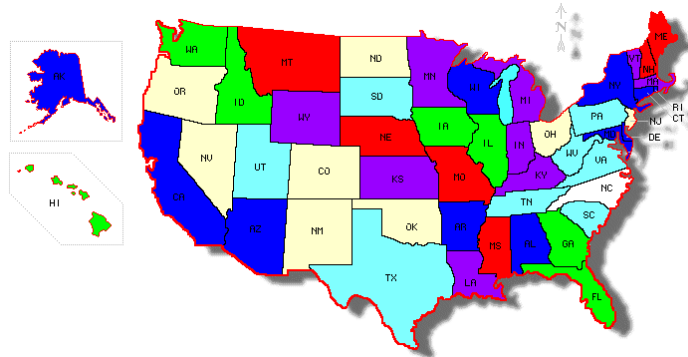

How Safe Is The Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



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Jan. 20, 2014 (Updated to include new laws that were effective as of Jan. 12, 2014)

The report has been updated to include changes made through Jan. 12, 2014 to state restraint and seclusion laws and policies. The brief executive summary provides a quick bullet point overview of the information. The bibliography shows the status of all state seclusion and restraint policies. The next update is planned for Summer 2014.

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



Important Introductory Information (Jan. 20, 2014)

About the Report. This report is intended to present research analyzing and comparing state approaches. It was revised in January 2014 to discuss new state restraint and seclusion statutes, regulations, rules, and policies. Earlier versions have been published in 2012 and 2013. This report compares and contrasts state restraint and seclusion rules and guidelines. It also provides information on the number of states with a particular requirement (e.g., parental notification), loopholes in the requirements, and discussion of the impact of various requirement. For parents who simply want to quickly look up their own state law or policy, *My State's Seclusion & Restraint Laws* (<http://www.autcom.org/pdf/MyStateRestraintSeclusionLaws.pdf>) briefly summarizes the major features of each state's laws. *My State's Seclusion and Restraint Laws* is not as in-depth as this report and does not include all features of each law. It is updated each summer. This more detailed report, *How Safe is the Schoolhouse*, is updated twice a year (winter and summer).

Important Technical Details (Read this!). (1) I use 51 "states" to include the District of Columbia. I did not have territorial materials. (2) For brevity, the term "laws" refers to statutes and regulations, which are legally binding. It distinguishes them from nonbinding state seclusion and restraint policies and guidelines. (3) **The 2013 and 2014 reports break out more completely whether a state's restraint and seclusion rules apply to all children or only those with disabilities.** States marked with a superscripted d (^d) have seclusion and restraint rules applicable to students with disabilities (students in special education). States marked with a superscripted m (^m) have a mix of disability-only and all-children laws. States without symbols have laws applicable to all children. (4) I wanted to avoid a blizzard of footnotes in the body. So, all of the state restraint and seclusion laws, policies, and materials I used are in the bibliography. (5) The information in the maps and charts is also in the text. The report seeks to maximize access by people of all abilities. Some need text, some need visuals. Technology was limited; there is no funding underwriting this work.

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About the Author. Jessica is the mother of a child with autism and an attorney. She has served as the Congressional Affairs Coordinator for the Autism National Committee (www.autcom.org). AutCom has worked for over 20 years to eradicate the use of abusive interventions upon people with autism and other disabilities. She served as Chair of the Board of Directors of the Council of Parent Attorneys and Advocates (COPAA) in 2007-08, and on the Board of Directors from 2004-2009. She was a principal coordinator of COPAA's Congressional Affairs program in 2004-2009. She is the author of [UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES](#) (COPAA 2009), which describes over 180 cases in which students were subjected to restraint and seclusion. This report, HOW SAFE IS THE SCHOOLHOUSE?, was authored entirely by Jessica Butler and represents only her views and work. It is not a statement on behalf of AutCom or any entity, organization, person, or anyone else. You can email Jessica at jessica@jnba.net. The current report is available free of charge on AutCom's webpage, www.autcom.org, and no one should charge you a fee for a copy. Information from HOW SAFE IS THE SCHOOLHOUSE? has been featured in various media reports, including by ABC News, <http://abcnews.go.com/WNT/video/death-school-child-restraints-spark-controversy-17842757>, NBC Connecticut, <http://www.nbcconnecticut.com/investigations/Uproars-Prompt-Many-States-to-Reconsider-Seclusion-232115511.html> ; the Minneapolis Star-Tribune, <http://www.startribune.com/local/205024611.html>; and the Indianapolis Star and USA Today, <http://www.indystar.com/article/20130206/NEWS/130206006>; <http://www.usatoday.com/story/news/nation/2013/02/05/duct-tape-special-needs-girl/1894777/> .

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AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS & POLICIES
January 20, 2014

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

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

EXECUTIVE SUMMARY (January 2014)

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

AN OVERVIEW OF STATE LAWS

- **This report uses 51 “states” to include the District of Columbia.** The term “law” includes statutes and regulations, as they have the binding force of law. Both must be obeyed. It does not include nonbinding policies which are not legally enforceable, and often consist of suggestions or factors for school districts to consider.
- **19 states have laws providing meaningful protections against restraint and seclusion for all children; 32, for children with disabilities.** This means that 32 states lack such laws for all children; 19, lack them for children with disabilities. Even these states offer varying protections, with important safeguards present in some states and missing in others. 3 states have laws protecting in some significant way against one procedure but not the other. Another 7 states have weak laws (*e.g.*, Nebraska’s regulation simply instructs school districts to adopt any policy they choose and imposes no requirements whatsoever). 10 have nonbinding, suggested guidelines that have no legal force and that are easily changed, requiring neither legislative vote nor state agency notice and comment process.
- **Only 14 states by law require that an emergency threatening physical danger exist before restraint can be used for all children; 18, for children with disabilities.** Many states have no laws or laws with loopholes that allow restraint to be used with little limitation. Because restraint is so dangerous, it should be used only when necessary to protect physical safety.
- There are 34 states that in their laws or guidance would define seclusion as a room a child cannot exit (door is locked, or blocked by furniture, equipment, child-proofing, staff, etc.). **There are 11 states that protect all children from non-emergency seclusion; 17 protect children with disabilities.** By law, only 1 state bans all seclusion for all children; 4, for children with disabilities. Another 10 have statutes and regulations applicable to all

children that limit seclusion to emergencies threatening physical harm. 13 apply this standard to children with disabilities. Many states have loopholes in their laws.

- **Restraints that impede breathing and threaten life are forbidden by law in only 21 states for all children; 28 states, for children with disabilities.** These laws may be phrased as prohibiting life-threatening restraints, restraints that impair breathing, or prone restraints. Prone restraint specifically is forbidden in 10 states for all children; 11, for children with disabilities.
- Mechanical restraints include chairs and other devices that children are locked into; duct tape, bungee cords, ties, and rope used to restrain children; and other devices. Only 15 states ban mechanical restraint for all children; 19 for students with disabilities. Only 15 states ban dangerous chemical restraints for all children. Children locked and tied into mechanical restraints and confined in seclusion rooms at particularly grave risk.
- Children confined in closets and other isolation rooms and spaces unobserved have been killed, injured, and traumatized. Yet, 38 states permit seclusion of all children without requiring staff to continuously watch them; 28 students with disabilities. At Atlanta teen died in seclusion while being checked on occasionally in 2007; an Indiana child attempted suicide while being monitored occasionally in 2011.
- Certain requirements ensure that seclusion and restraint are used only as last resorts and only as long as an emergency lasts. Far too often, staff skip over less restrictive measures and move directly to restraint and seclusion. Restraint and seclusion are used long after an emergency ends. Some students have been subjected to them for hours. Others must remain in seclusion or restraint until they can sit perfectly still or do other tasks unrelated to an emergency. Children with significant disabilities may be unable to respond to such commands and yet pose no threat of danger. Only 17 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used on all children; 23, children with disabilities. Only 15 states by law require restraint and/or seclusion to cease for all children when the emergency ends; 20, for children with disabilities.
- **In 20 states, schools must by law notify all parents of both restraint and seclusion; in 32, parents of students with disabilities.** This means that 31 states lack laws requiring that parents of all children be informed of both restraint and seclusion; 19, lack them for children with disabilities. It is important to notify parents promptly, so they can seek medical care for injuries (hidden or obvious) and trauma. But only 12 states by law require schools to take steps to notify parents of all children on the same day or by the next day of both procedures; 21, parents of children with disabilities. Still, the vast majority of states favor notification in 1 day or less, either in their laws or recommended policies. This indicates broad support for a same day/next day requirement. A “Parental Notification Laws at a Glance” chart is on p.38.

- Data collection is very important. In its 2009 report, the GAO found that state data collection varied significantly. Use of restraint and seclusion appears fairly significant; at least 33,000 students were restrained or secluded in Texas and California in 2007-08. Yet, only 12 states collect even minimal data for all students; 19 for students with disabilities. More states require data keeping at the state, local, or school level, indicating that keeping such records is not burdensome. Data gives schools benchmarks to measure themselves against and enables public oversight and sunshine. Both uses of data decrease restraint and seclusion use.

NUMEROUS STATES ADOPTED OR OVERHAULED LAWS IN WAKE OF CONGRESSIONAL BILLS

- In December 2009, Congressman George Miller introduced the first national restraint/seclusion bill. 21 states had laws providing meaningful protections from both seclusion and restraint for children with disabilities; and 9, for all children. Today, there are 32 states with meaningful protection for students with disabilities; 19 for all students. In 2011, Senator Harkin introduced a restraint and seclusion bill similar to Miller's. Together, the Congressional bills have had a substantial impact, causing states to adopt and strengthen laws. States have incorporated a number of their features to varying degrees. Still, in many states, critical protections are still missing. State action is not a substitute for national action, but weak national action can weaken state action.
- Senator Harkin's bill included an important new feature, prohibiting restraints that prevent children from communicating that they are in danger. The majority of states that adopted laws after the bill was introduced have included this requirement. The GAO identified 20 students who died in restraint or seclusion; at least 4 of whom verbally told staff that they could not breathe. Many children cannot speak and rely on sign language or augmentative devices to communicate; others do not speak English.

SOME IMPORTANT SAMPLE STATE PROVISIONS

- The report concludes with some examples of important state law protections for children. One provision ensures that children are able to communicate that they cannot breathe or are experiencing medical distress. Another ensures that no more force than necessary is used during restraint or seclusion, decreasing the danger to students and staff. 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

Jan. 20, 2014

Note: Before using the report, please read the paragraph “Important Technical Details” on page i. It explains the codes and abbreviations. The term “laws” includes both statutes and regulations as both have the full force of law and are mandatory and must be obeyed. See *infra* n. 12. I use 51 “states” to include the District of Columbia.

I. INTRODUCTION

A. Background

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. They included a 7-year-old girl who died after being restrained face down, 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 incidents involved children with disabilities.¹ In 2012-13, national, state, and local media continued reporting on the dangers of restraint and seclusion.²

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

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

² See, e.g., Clark Kauffman and Jason Clayworth, *Register Investigation: Isolation Cell Use on Rise Again at Juvenile Home*, DES MOINES REGISTER, Dec. 11, 2013, <http://bit.ly/IArestrain13>; John Schuppe, *Outcries Prompt Many States to Reconsider Seclusion of Students*, NBC CONNECTICUT, Nov. 19, 2013, <http://bit.ly/NBCStat13>; Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013, <http://www.startribune.com/local/205024611.html>; Brian Ross, Angela M. Hill and Matthew Mosk, *Death at School: Child Restraints Spark Controversy*, ABC WORLD NEWS TONIGHT, Broadcast Nov. 29, 2012, <http://abcn.ws/12snluu>.

³ See H.R. REP. NO. 111-417, PREVENTING HARMFUL RESTRAINT AND SECLUSION IN SCHOOLS ACT 14 (2009).

⁴ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009).

⁵ Examples include DISABILITY RIGHTS OREGON, KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON’S SCHOOLS (2011); ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009); DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007). Several other Protection and Advocacy agencies also wrote outstanding, highly useful reports.

⁶ JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Council of Parent Attorneys & Advocates 2009).

⁷ 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).

suicide, electrocution, and self injury due to cutting, pounding, and head banging”⁸ and the “widespread” use of restraint in educational and other environments.⁹ Staff have also been injured and traumatized by these practices.

In May 2009, House hearings focused on restraint and seclusion’s dangers, examining the experiences of two families: one child died in prone restraint and the other was repeatedly injured. The House also heard testimony from the GAO and state and academic experts.¹⁰ In 2012, Senate hearings documented important positive behavioral support programs that had greatly reduced the use of restraint and seclusion. A mother whose child had bloomed in a positive program away from restraint and seclusion testified. So did expert witnesses involved in efforts at the state, district, and individual school levels.¹¹ Bills have also been introduced in Congress. In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee) and Congresswoman Cathy McMorris Rodgers introduced the first national bill to protect children from restraint, seclusion, and other aversives. The bill passed the House but did not become law. Since then, the Keeping All Students Safe Act has been reintroduced each biennial session of Congress by Congressman George Miller and Senator Tom Harkin. None of the federal bills have yet become law.

This report has three purposes. First, it examines and describes the current state statutes and regulations (laws) about seclusion/restraint. **In this report, the term “laws” includes statutes and regulations, both of which are legally binding and have the full force and effect of law.**¹² The term does not include state guidance or voluntary policies, as they have no legal effect. This report discussed protections for all children and those only for children with disabilities—an expansion from the original 2012 focus on disability. Second, the report analyzes the impact of the national Congressional efforts on states that have enacted or strengthened their laws since 2009. Finally, the report explores particular state requirements which provide important protections.

At present, there is no federal statute protecting children nationwide; state laws govern the use of restraint and seclusion. These approaches vary widely. A patchwork quilt of laws, regulations, voluntary guidance, and complete silence covers the nation. The quilt has many holes, as this report demonstrates. In addition, parents, people with disabilities, school staff, and members of the public are often ignorant of their state laws. This report concentrates on the states because

⁸ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

⁹ Council for Children with Behavioral Disorders, *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009).

¹⁰ *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearings before the House Comm. on Education and Labor*, 111th Congress (2009) [hereinafter *House Hearings*].

¹¹ *Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students, Hearings before the Senate Comm. on Health, Education, Labor, and Pensions*, 112th Congress (2012) [hereinafter *Senate Hearings*].

¹² Validly promulgated regulations have the force of law and are binding and mandatory just as statutes are. See, e.g., *United States v. Mead Corp.*, 533 U.S. 218 (2001) (quoting *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)); *Thomas v. Metropolitan Life Ins. Co.*, 631 F. 3d 1153 (10th Cir. 2011); *Holk v. Snapple Beverage Co.*, 575 F.3d 329 (3rd Cir. 2009).

state law presently controls the issue. State activities, however, are no substitute for federal action. Moving across a river or 30 miles down a highway should not change a child's rights or eliminate them entirely.

B. State Changes in 2013

Prior editions of this report were published in 2012 and 2013. In 2013, several states adopted or revised significant statutes and/or regulations, including Delaware, Indiana, Kansas, Kentucky, Maine, Minnesota, Ohio, Oregon, and Washington. Delaware adopted a new statute, replacing regulations that permitted the broad use of restraint, seclusion, and aversives. It is expected that Delaware will also adopt new regulations to meet certain requirements of the new statute. Indiana adopted a statute specifying certain requirements and leaving others up to the school district. A new commission was empowered to draft a model plan (published in 2013) and regulations (not yet promulgated). Districts must have their own policies in place by July 2014. Kansas and Kentucky replaced nonbinding guidance with regulations. Maine clarified its law to allow the use of restraint and seclusion when a student's behavior presents a "risk" of physical harm such that a reasonably prudent person would take steps to protect a person. Minnesota clarified its statute to eliminate the ability to use seclusion for threats of property damage. Seclusion can only be used for emergencies threatening physical danger. It extended limited prone restraint through August 2015; and set a March 2014 deadline for recommendations to reduce restraint/seclusion use and end prone restraint. Ohio replaced an executive order with guidance and regulations.¹³ Oregon banned free-standing seclusion cells; created a state-level complaint process for parents to use; and eliminated the 2017 sunset provision in its earlier-adopted statute. Washington enacted a new statute requiring parental notice and related actions in July 2013, and revised its regulations in September 2013.

In addition, Arizona adopted a new statute providing some limited protections from seclusion, and Alaska finalized its prior draft nonbinding guidance. California made limited, nonsubstantive changes to its restraint and seclusion regulations. Louisiana drew its protections more narrowly around students with disabilities, exempting gifted children (also considered children with exceptionalities).

Proposed bills did not succeed in Florida, New Jersey, or Rhode Island; proposed regulations were not promulgated in Washington, D.C.

¹³ Ohio adopted policy guidance in January 2013 and regulations in April 2013. Since Ohio law limits the policies that can be imposed on charter schools, the January policy did not apply to charter schools. Ohio Rev. Code § 3314.04; see also Mark Sherman, *Ohio Board of Education to Vote on Restraint, Seclusion Proposal*, SPECIAL ED. CONNECTIONS (LRP), Jan. 12, 2013.

II. PATCHWORK OF STATE LAWS AGAINST SECLUSION & RESTRAINT

A. Meaningful Protections in Law

As of January 12, 2014, only 19 states by law protected all children equally from both restraint and seclusion: Alabama, Colorado, Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Massachusetts, Maryland, Maine, North Carolina, Ohio (2013), Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. These statutes and regulations have the force of law and must be obeyed. Thus, this report uses the term “laws” to refer to them.

Only 19 state laws meaningfully protect all children from both restraint and seclusion; only 32 provide similar protection for children with disabilities alone.

In addition, 3 states had statutes or regulations providing some safeguards for all children and others only for children with disabilities. New Hampshire protects all children from restraint by statute and children with disabilities from seclusion in its special education regulations. New York has one regulation for all children and another applicable only to children with disabilities. Washington has some minimal protections from restraint for all children and then more substantial protections from restraint and seclusion for children with disabilities.

America should protect all children from restraint/seclusion. These dangerous techniques can hurt any child, and all should be protected from their use except in absolute emergencies threatening significant physical harm. Many states take special care to protect children with disabilities because they have historically been subjected to these practices and disproportionately suffered death, injury, and trauma. The Civil Rights Data Collection, showed significantly disproportionate use upon children with disabilities and children of color in 2009-10.¹⁴ Children with disabilities may not be able to talk, cognitively process, or effectively communicate what happened to them, making the harms even greater.¹⁵

¹⁴ Students with disabilities comprised 12% of the students in the 2009-10 collection, but almost 70% of the students in the nearly 40,000 incidents of physical restraint reported. Hispanic students comprised 24% of students without disabilities, but 42% of the students without disabilities who were secluded. African-American students made up 21% of students with IDEA disabilities in the collection, but 44% of those subjected to mechanical restraint. Dept. of Educ., Office for Civil Rights, *THE TRANSFORMED CIVIL RIGHTS DATA COLL.* 5 (March 2012). Because not all districts tracked the information in 2009, they may be represented by zeroes in the collection. The reported collection was likely the tip of the iceberg. In 2013, in response to a new state law, Connecticut undertook an analysis of its restraint/seclusion usage in 2011-12, reporting almost 19,000 incidents of restraint and 18,000 incidents of seclusion. Conn. State Dept. of Educ., *ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND Seclusion, SCHOOL YEAR 2011-12*. Maine's 2013 data analysis for 2012-13 showed 3,752 incidents of restraint, and 1,400 incidents of seclusion, even though 1/3 of the districts failed to report. Christopher Cousins, *Data from Schools Show Widespread Use of Restraint and Seclusion*, but Validity of Numbers Debated, *BANGOR DAILY NEWS*, Sept. 26, 2013. Connecticut has approximately 549,000 students, and Maine, 185,000 students, ranking 32nd and 43d among states. NATIONAL CTR. FOR EDUC. STATS., *DIGEST OF EDUC. STATS.*, Table 36: Enrollment in Public Elementary and Secondary Schools (2012).

¹⁵ The disproportionate impact upon children with disabilities is readily apparent from the many articles and reports documenting harm to students with disabilities, including reports almost every month in the news media. The GAO reported that almost all of the hundreds of reports it received had involved students with disabilities. GAO REPORT at 5. As one commentator has observed, “[There is a] special danger and injustice inherent in the use of

There are 32 states with laws requiring schools to provide some meaningful protections against both restraint and seclusion for children with disabilities.¹⁶ They are Alabama, California^d, Colorado, Connecticut^d, Florida^d, Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Montana^d, Nevada^d, New Hampshire^m, New York^m, North Carolina, Ohio (2013), Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Texas^d, Vermont, Washington^m, West Virginia, Wisconsin, and Wyoming. Of these, 12 adopted their laws after Congressman Miller's bill was introduced in December 2009: Alabama, Florida^d, Georgia, Indiana (2013), Kansas, Kentucky, Louisiana^d, Ohio (2013), Vermont, West Virginia, Wisconsin, and Wyoming), and 6 substantially strengthened them, New Hampshire, Maine, Minnesota^d, Oregon, Tennessee^d, and Washington^d (2013).¹⁷ Even the states with safeguards offer varying protections. Some states have certain safeguards, but not others. Some protect more against restraint than seclusion or vice versa, allowing the staff's choice of procedure to determine the degree of protection.¹⁸

The form of these protections varies. Some states have statutes; others have regulations; and some have both.¹⁹ In many states, regulations are more easily changed than statutes, requiring only a State Department of Education comment and approval process. Statutes require a majority vote in two legislative houses and a governor's approval. (In some states, legislative committees do review regulations.) Accordingly, weaker national seclusion/restraint proposals have the potential to weaken state seclusion and restraint rules, and stronger national proposals, to strengthen them.

Florida came close to being included in the "weak" group, and ranks at the bottom of states with meaningful protection. Florida was classified as having meaningful protections because it has one of the strongest data collection provisions in the country, monitors schools for compliance

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.

¹⁶ Prior editions of the report counted states with safeguards only against either restraint or seclusion as providing meaningful protections. Because these states do not have laws protecting children from the other dangerous practice at issue, it is inaccurate to count them as having meaningful protections in general. It has the potential to give a misleading impression about the state's laws. For this reason, the two states have been moved to a new category for states with meaningful protection against one practice but not the other.

¹⁷ Some states have more protections than others. To provide meaningful protection, a state has to fall in one of two categories. One, it provides multiple protections against restraint and/or seclusion for students. Two, it has few protections but strictly limits the technique to emergency threats of physical harm. This designation does not necessarily mean that a state's laws provide sufficient protection, as the report explains.

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

¹⁹ These 5 states have statutes alone: Florida^d, Louisiana^d, North Carolina, Nevada^d, and Wisconsin. These 11 states have both statutes and regulations: California^d, Connecticut^d, Illinois, Maine, Maryland, Minnesota^d, New Hampshire^m (statute for restraint; regulations^d for seclusion), Oregon, Tennessee^d, Texas^d, and Wyoming. Indiana (2013) has a statute, which requires the writing of regulations. Finally, these 15 states have only regulations: Alabama, Colorado, Georgia, Iowa, Kansas (2013), Kentucky (2013), Massachusetts, Montana^d, New York^m, Ohio (2013), Pennsylvania^d, Rhode Island, Vermont, Washington^m, and West Virginia. New Hampshire's Special Education regulations cover restraint and seclusion. In September 2010, a new restraint statute was adopted. As statutes override any conflicting regulations, the regulations control seclusion but not restraint.

with the law and publishes its monitoring reports, requires parental notification, bans restraint that interferes with breathing, and has other features in its law. Florida's law requires schools to report why each restraint incident involved a threat of serious bodily injury. Yet, the statute does not explicitly limit restraint and seclusion to emergencies threatening serious bodily injury or any physical harm—which is a significant problem. Efforts to amend Florida's law to impose such a restriction have failed.²⁰

B. Legal Protection from One but Not the Other

There are 3 states that provide meaningful protections in law from one practice but not the other, Arkansas, Arizona, and Delaware. Arkansas' comprehensive regulations protect children with disabilities from seclusion. There is no state law limiting restraint. In 2013, Arkansas passed a law directing the State Education Agency to report about resources school districts need to reduce restraint through positive behavioral interventions and other activities. But the new statute goes no further and imposes no requirements limiting restraint. It does, however, show concern about the use of restraint. Arizona in 2013 adopted a statute permitting seclusion for threats of physical harm or in other situations with parental consent. Arizona does not regulate restraint. In 2013, Delaware adopted comprehensive protections for all students from physical restraint. The new law bans seclusion and mechanical restraint, but permits the State Department of Education to waive these bans on a student-by-student basis with compelling justification. There are no limits on what constitutes a compelling justification and no restrictions on the circumstances under mechanical restraint and seclusion could be used (e.g., punishment, behavioral compliance, behaviors addressable through less restrictive measures, etc.). Too often, these kinds of exceptions can become doors more open than intended.

C. Weak Protections in Law

As of January 12, 2014, there were 7 states with laws providing such limited, weak protections that they are not even remotely akin to those providing meaningful protection. Some do not even protect children, but simply authorize conduct.

They include Alaska ("reasonable and necessary physical restraint" to protect from physical injury, obtain a weapon, maintain order, or protect property); Hawaii^d (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); Nebraska (2012 regulation requires LEAs to adopt restraint and seclusion policies, without imposing any requirements whatsoever); Utah^d (regulation requires parental notice; minimal statute requires IEP teams to consider—but not necessarily use—extensive nonbinding guidance); and Washington, D.C. (prohibits "unreasonable" restraint). Five of these

²⁰ Florida H. 291 and S. 1370 were 2013 bills that would have limited seclusion/restraint to such emergencies; they died in committee.

states, Washington, D.C., Michigan, Missouri, Nebraska, and Utah, also have much more extensive nonbinding guidelines, likely because their laws are so weak.

D. Non-Binding Guidance (No Legal Effect)

As of January 12, 2014, 10 states had voluntary guidelines or policies that impose no mandatory legal obligation. They are merely suggestive. They include guidance approved by the State Board of Education; memoranda authored by/for the State Department of Education or Director of Special Education; and model principles and factors schools might consider. In most of these states, students lack separate mandatory legal protection, other than the handful of weak protections described above. Nonetheless, these guidelines represent a State's opinion that seclusion and restraint are dangerous techniques and that their use should be sharply restricted. They are useful as advocacy documents but do not represent actual protections for children.

Of these, 3 policies apply to students with disabilities, Alaska^d(2013), Oklahoma^d, and Utah.^d New Mexico's^m seclusion principles applies to all children; its restraint principles, to children with disabilities. Another 6 apply to all children: Michigan, Missouri, Nebraska, South Carolina, Virginia, and Washington, D.C.²¹ In 2013, Alaska finalized its draft nonbinding guidance, and Kentucky, Kansas, Indiana, and Ohio replaced theirs with mandatory protective statutes or regulations. Indiana also replaced its old guidance with a statute that provides some mandatory meaningful protections and refers other issues to a commission which will write regulations and a model plan.

Guidelines, model principles, and memoranda are not statutes or regulations.²² Not mandatory, they lack the force of law and provide scant protection if any. They are very easily changed, requiring only approval by the state Department of Education, rather than a formal legislative or rulemaking process. Virtually all of these documents are phrased in voluntary terms, *e.g.*, Alaska ("These guidelines do not require a district to develop a policy"); Missouri (a "model policy"); Nebraska ("provide[s] information and guidance for Nebraska School districts"); and Virginia ("These guidelines are informational and are not mandated"). They are plainly insufficient, as is apparent from the replacement of guidelines with statutes and regulations in Indiana, Kansas, Kentucky, Louisiana, Ohio, Vermont, and Wisconsin, and the seeking of legally binding statutes and regulations in Michigan and Washington, D.C.

²¹ Washington, D.C. uses seemingly mandatory rather than "permissive" language in its documents (*e.g.* mechanical restraints "are not authorized" in Washington, D.C.) Nevertheless, the policy is not a binding statute or regulation with the force of law. Indeed, a proposed regulation is pending in Washington, D.C. Like any other guidance, this policy may be more easily changed, and need not go through a regulatory or legislative process. State practice determines whether the State will ensure that its policy is followed and whether there are any repercussions for employees or districts that fail to adhere to it.

²² At times, some seem to have viewed such guidelines as the equivalent of statute and regulation. This is likely due to confusion about one proposed Congressional bill, which would have required states to adopt "policies" incorporating the statutory requirements. But States could not eliminate or change the federal requirements; it would be mandatory for schools to follow them. Thus, these mandatory "policies" would differ markedly from the kind of nonbinding guidance currently in place. Such nonbinding guidance documents should not be recognized or treated as statute, regulations, or the mandatory state policies under the proposed bill.

Experiences with guidelines are illuminating. In 2006, following the death of two children in restraint, Michigan adopted a nonbinding state policy recommending that school boards adopt guidelines. After a 2009 statewide survey, Michigan Protection and Advocacy Service (MPAS) concluded that “children remain at risk” and recommended legislation instead. MPAS found that “while some intermediate school districts (ISDs) have tried to apply the voluntary Board policy, most have not.” It further determined that “the Michigan Department of Education has not taken steps necessary to make the voluntary Board policy binding upon school districts or even to learn whether or not the policy is being used anywhere.” Indeed, MPAS had received seclusion/restraint stories in 32 of the state’s counties, indicating that the nonbinding guidelines did not provide the protection children needed.²³

A few states’ experience with guidelines are noteworthy. Michigan, Wisconsin, and Kentucky documented substantial numbers of restraint/seclusion incidents while they were in place. All 3 now have substantive regulations or statutes.

Similarly, Wisconsin’s protection and advocacy agency and two other organizations found in 2009 that the state’s then-existing restraint/seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. Restraint and seclusion continued to hurt and traumatize Wisconsin students. The directives were without the “the force of law” and were not sufficiently enforced. Wisconsin enacted a new statute in March 2012, replacing the nonbinding directives with mandatory law.²⁴

Most recently, Kentucky adopted a regulation in 2013. Between 2000 and 2013, Kentucky had only voluntary seclusion guidelines. Kentucky Protection & Advocacy investigated over 80 allegations of restraint or seclusion misuse in Kentucky between 2007 and 2012, with many more incidents reported but not investigated.²⁵

E. States with Neither Laws nor Voluntary Policies

There are 5 states which lack both laws and voluntary principles, despite efforts in 3 to take action. They are Idaho, Mississippi, North Dakota, New Jersey, and South Dakota.²⁶ Arizona was one of these states; it adopted some degree of seclusion protection in 2013.²⁷

²³ MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5 (2009).

²⁴ 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).

²⁵ KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS (2012).

²⁶ 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.

²⁷ Prior to adopting the 2013 statute, Arizona had not taken action. An Arizona task force had drafted recommendations in 2009 but the State did not act upon them or put them forward as suggested state guidelines.

III. RESTRAINT & SECLUSION AS EMERGENCY INTERVENTIONS

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

A. Restricting Restraint to Emergencies

Of the 51 states, 14 by law limit restraint of all children to threats of physical harm; 18 restrict restraint of children with disabilities in this way. Accordingly, 37 states permit restraint of all children when absolutely no one is in danger (32 states, for children with disabilities). Restraint has been used for failing to do schoolwork, being unable to pay attention due to disability issues, pushing items off desks, throwing a tantrum while doing a puzzle, taking off shoes, staff convenience, punishment, and the like.²⁸

Restraint should only be used in rare emergencies where it is necessary to protect people from serious physical danger because it is very harmful. The GAO documented at least 20 cases of children who died from restraint.²⁹ In 2012, a New York teenager with disabilities died in physical restraint.³⁰ Other incidents in the GAO report included very young elementary school children being placed in strangleholds, tethered to ropes, and restrained for long periods of time. One young girl was strapped into a miniature electric chair replica. Bungee cords and duct tape were used to fasten children to furniture. Children endured broken limbs, bloody noses, bruises, and post-traumatic stress syndrome as a result of the restraints.³¹

The GAO found at least 20 incidents where children died in restraint. Restraint should be limited to emergencies threatening serious physical harm.

A National Disability Rights Network report likewise found that students were strapped into chairs, restrained on the floor by multiple adults, held in arm locks and handcuffs, and restrained in other unsafe ways, with some incidents resulting in death, broken bones, and other injuries. More recently, a 2013 Minnesota newspaper reported about the restraint of a boy with autism that interfered with his breathing and of a 10 year old who was restrained face down for nearly

Districts were not required to adopt the guidelines or take any actions on restraint/seclusion.

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

²⁹ GAO REPORT at 8.

³⁰ Brian Ross, Angela M. Hill and Matthew Mosk, *Parents Protest Dangerous Discipline for Autistic, Disabled Kids*, ABC NEWS, Nov. 29, 2012 (web article accompanying television broadcast).

³¹ GAO REPORT at 1, 8, 10-12.

an hour for having a tantrum over a puzzle.³²

At 2009 House Education and Workforce Committee hearings, a witness testified that her 14 year old foster son died in restraint. Despite the fact that food was a trigger for him due to years of abuse, the school often withheld food from him as a punishment without his parents' knowledge. One day, when his teacher denied him food for hours, he tried to leave class. The 230 pound teacher put him in a prone restraint, suffocating him until he died. His mother never knew that the school was restraining him and withholding food, an aversive practice. The same hearings also revealed that a 7 year old with Asperger Syndrome was restrained face down for playing with a loose tooth, and later suffered head, arm, and nose injuries from restraints.³³

1. Restraint Only For Emergencies Threatening Physical Danger

Only 14 states by law limit restraint to imminent threats of physical danger for all children.³⁴

They are Alabama, Colorado, Delaware (2013), Georgia, Illinois, Indiana (2013), Kansas (2013), Maine, New Hampshire (serious physical harm), Ohio (2013), Oregon (serious physical harm), Rhode Island (serious physical harm), Vermont, and Wisconsin. The remaining 37 do not provide all children with this protection: Alaska, Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wyoming, and Washington, D.C.

Only 14 states limit restraint to emergencies threatening physical harm for all children (18 states for children with disabilities). Other states allow it when absolutely no one's safety is at risk.

Only 18 states by law limit restraint of children with disabilities to emergencies involving an immediate risk of physical harm or serious physical harm. These include the 14 with a physical harm standard: Alabama, Colorado, Connecticut^d, Delaware (2013), Georgia, Illinois, Indiana (2013), Kansas (2013), Maine, Ohio (2013), Pennsylvania^d, Tennessee^d, Vermont, and Wisconsin. They also include 4 that explicitly require serious or substantial physical harm, Louisiana^d, New Hampshire, Oregon, and Rhode Island. Out of an abundance of caution, Florida was removed from this category in this current January 2014 report edition. At best, it has an implicit requirement that physical harm occur because it requires a report after each incident identifying the threat of serious physical harm. But the law does not explicitly require such a threat to exist

³² Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013.

³³ *House Hearings* 16-17 (testimony of Toni Price), 11-13 (testimony of Ann Gaydos).

³⁴ For purposes of this report, physical harm and bodily harm/injury/danger/safety are treated synonymously.

before restraint or seclusion are used, and is silent about the grounds for using the procedures. More information is set out in the footnote below explaining this decision.³⁵

On February 13, 2013, Kansas approved a regulation limiting restraint/seclusion to threats of physical danger. “Violent action that is destructive of property” is included within this definition. The term “violent” makes clear that property damage must entail an imminent threat of physical danger to qualify. Hence, the Kansas regulation is far different from other regulations that allow restraint for property destruction without regard to physical danger. For this reason, Kansas is counted among the emergency/danger states.

2. Loopholes Allow Restraint in Non-Emergencies

Many states with statutes and regulations allow restraint even when no one is in danger of physical harm. Their laws may be explicit or may contain loopholes allowing the law to be circumvented. There are 9 such laws applicable to all children; 16 to children with disabilities.

Nevada^d, Texas^d, and West Virginia authorize restraint of for threats of physical harm or serious destruction of property. In addition, 6 states explicitly allow restraint for threats of physical harm, destruction of property, or educational disruption: Alaska, Iowa, Michigan, Montana^d, New York (this provision applicable to all children), and Washington^d. North Carolina by statute allows restraint of all children for threats of physical harm, property destruction, educational disruption, or as stated in the IEP/BIP (which is allowed for any reason). Tearing a book, throwing a toy, having a tantrum, not standing still in line, not following instructions, or other

³⁵ Florida’s 2011 statute, FLA. STAT. 1003.573, requires schools to explain in their incident reports why there was an imminent risk of serious harm if restraint/seclusion are used. But the statute itself does not actually limit the reasons for which restraint and seclusion can be used and does not restrict their use to emergencies threatening bodily harm. Earlier versions of this report analyzed the incident reporting requirement as a potential implicit physical harm requirement. The earlier versions also observed that school staff could conclude that there was not a risk of harm standard because the statute was silent. After reviewing more materials, the author has concluded that the incident reporting requirement is not enough to conclusively state that Florida restricts restraint and seclusion to emergencies threatening physical harm. Florida itself appears to view the statute in this manner. For example, the State’s overview of the new law did not discuss at all the circumstances under which restraint or seclusion could be used or prohibited (other than describing the ban on restraints compromising breathing), FLA. DEPT. OF EDUC., WHAT A DIFFERENCE A DAY MAKES! RESTRAINT AND SECLUSION DOCUMENTING, REPORTING, AND MONITORING (Sept. 14, 2011), www.fldoe.org/ese/ppt/amm/11rsdrm.ppt. Florida monitors school districts for statutory compliance. Its monitoring reports do not describe a standard for using restraint/seclusion. While the monitoring teams point out other deficiencies at the schools, they do not discuss whether restraint and seclusion are used only for threats of physical danger. Moreover, when asked about the standard, the State’s Chief of the Bureau of Exceptional Education and Student Services declined to add clarification, only pointing the author to the wording in the statute itself. On the other hand, Florida’s October 2011 Technical Assistance Paper limits restraint and seclusion to emergencies threatening serious physical harm, ostensibly based on the incident report requirement. Florida Dept. of Educ., TECHNICAL ASSISTANCE PAPER: GUIDELINES FOR THE USE, DOCUMENTATION, REPORTING, AND MONITORING OF RESTRAINT AND SECLUSION WITH STUDENTS WITH DISABILITIES, DPS 2011-165 (Oct. 14, 2011). This is the only indication that the state has considered using such a standard. Hence, out of an abundance of caution, Florida has been removed from this category, and is no longer treated as a state requiring physical injury to use restraint/seclusion in this report. The report discussion makes clear the need for states to be explicit about the danger standards they use.

manifestations of a child's disability may result in restraint--a dangerous proposition. Instead, property destruction, educational disruption, and the like are appropriately handled through positive behavioral supports, de-escalation, conflict resolution, and other adjustments.³⁶

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).³⁷ Maine recently eliminated a similar regulatory provision. These rules appear superficially strong, but the loophole lets schools use restraint for almost any reason, as long as it is included in the child's IEP.

Likewise, California's^d statute and regulations contain a significant loophole. It gives permission for the use of "emergency interventions" in the event of a spontaneous, unpredictable event posing an imminent threat of serious physical harm. But it does not define the term "emergency intervention" or limit restraint and seclusion to emergency situations. Thus, when a child is restrained because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and the law's protections do not apply.³⁸

Minnesota^d may have a similar problem with the 2012 rewrite of its statute, depending on how the courts and the state Department of Education interpret the law. Minnesota redefined "physical holding" as a physical restraint used "in order to protect" someone from physical injury. The statute itself then regulates physical holding. Accordingly, one could argue that the use of physical restraint for other purposes is not a physical holding and thus may be outside the statute's reach.³⁹ It appears, however, that the drafters likely meant to limit all physical restraint to threats of physical injury. It remains to be seen whether the State Department of Education, the courts, or other state practice will or can clarify the matter. In 2013, Minnesota further clarified its statute to provide that both physical holding and seclusion can occur only in an emergency threatening physical harm. It appears from these revisions that the legislature did intend to limit the use of restraint to imminent threats of physical danger, but the problem noted above still exists. The rewrite stated that emergencies do not include failing to stay on task, hiding under a table, not responding to staff requests (when there is no threat of physical harm), or situations in which an emergency occurred in the past and there is no ongoing threat of physical danger.

Kentucky, adopted its regulation in February 2013. Restraint is seemingly restricted to threats of

³⁶ As a state law limiting restraint to emergencies threatening physical harm would include property destruction posing such a threat, it should not be necessary to separately allow restraint for this purpose. The latter is a very wide category that could encompass all kinds of non-threatening things. See REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS 20 (Nebraska Dept. of Educ. 2010). More information on positive supports and how they reduce restraint and seclusion can be found under "Less Restrictive Measures Must Fail" *infra*.

³⁷ For children with disabilities, the BIP is often part of the IEP.

³⁸ 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).

³⁹ Compare MINN. STAT. § 125A.0941-42 (revised by Senate Bill S.F. 1917, signed Apr. 3, 2012) with 2009 c 96 art 3 s 11 (statute as originally enacted in 2009).

physical harm but is also allowed “as permitted under KRS . . . 503.110.” This statutory provision establishes a defense to a crime for a teacher or other person entrusted with care of a minor or “mentally disabled person” under two circumstances. First, he/she believed force was “necessary to promote the welfare” of a minor or “mentally disabled person” or to maintain reasonable discipline in school or class. Second, the force used was not known or intended to cause risk of death, serious physical injury, extreme pain, extreme mental distress, or disfigurement. This loophole appears to eliminate the physical harm restriction, permitting restraint for non-dangerous activities in the guise of “discipline” and child “welfare” if staff is charged with a crime, such as assaulting a child.⁴⁰ This is dangerous. The GAO documented stories of children who were died after being restrained for being “uncooperative,” “disruptive,” and refusing to remain seated.⁴¹ Criminal defenses exist because crimes can result in imprisonment, fines, and other penalties. But such defenses should not be repurposed as general exceptions to limiting the use of restraint and/or seclusion in schools.

Finally, Washington State has very limited protections on this issue. Washington also forbids certain kinds of restraints, such as shaking a young child, throwing a child, impeding a child’s breathing, or another act likely to cause bodily harm to a child. Washington also permits the use of restraint because of an unpredictable event presenting a serious danger of physical harm; serious property destruction; or serious educational disruption. Washington regulates “aversive interventions,” meaning restraint used to modify “undesirable” behaviors. This can encompass manifestations of a child’s disability (hand flapping, a tic, inability to sit still and pay attention; inability to quickly assimilate and follow directions, etc.) or other actions that threaten no one. It does not forbid restraint for these purposes, but merely regulates it.

3. States Without Legal Limits on Restraint

There are 28 states that lack laws limiting the use of restraint on all children; 17, with none for children with disabilities. Of these, 5 have voluntary guidance urging that restraint be limited to physical danger: Nebraska, Oklahoma^d (serious physical harm), South Carolina, Virginia, and Washington, D.C. (Indiana was in this category but has since adopted a statute.) In addition to physical harm, Utah’s^d guidance suggests permitting restraint for serious property damage; New Mexico’s^d, destruction of property; and Missouri’s, destruction of property or as stated in the IEP, 504 plan, or behavioral plan. All of these seclusion and restraint policies lack the force of law and simply indicate what a state urges. Those going beyond physical harm urge the use of restraint under circumstances that can clearly harm children. In addition, there are 10 states that do not attempt to limit by law or even nonbinding guidance the reasons for which restraint can be used: Arkansas, Arizona, Florida,⁴² Hawaii, Idaho, Mississippi, North Dakota, New Jersey, South Dakota,

⁴⁰ KY. REV. STAT. §§ 503.020, 503.110, 503.120; see also §§ 532.060 and 534.030 (prison terms and fines); 500.070 (burden of proof). The regulation also states that restraint is permitted under two laws creating a criminal defense when force is used in self-defense or defense of others. This appears implicit in Kentucky’s limiting restraint to threats of physical danger. For this reason, the inclusion of these criminal provisions, 503.050 and 503.070, is of less concern.

⁴¹ GAO REPORT at 10-11.

⁴² Florida’s law is explained in footnote 35 and the accompanying text.

and Wyoming. Their laws are largely or entirely silent.

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

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. In 2004, a young Atlanta teen hung himself in a seclusion room, dying as school staff were outside the room.⁴³ In 2011, the National Disability Rights Network alleged that an Indiana child was repeatedly secluded and denied access to the restroom. He was secluded again--not because he was a danger--but because he was forced to urinate on the floor when in seclusion the prior day. Unobserved in the room, he allegedly attempted suicide by hanging.⁴⁴ A Minnesota child who "acted out" in her class was put in seclusion alone, where she severed a finger, according to a 2013 Minneapolis Star Tribune report.⁴⁵

Seclusion is highly dangerous. Children have died, been injured, and suffered trauma. They have been secluded for slouching, hand-waving, not cleaning up, and disliking class activities.

Children have been secluded in locked closets and unlocked rooms they cannot exit because furniture, equipment, or staff block the doors. Frequently, seclusion is used for non-emergencies and continues long after any emergency has ended. A New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.⁴⁶ In Kentucky, one child was secluded in a closet because he did not put things away fast enough; another, because staff believed she would not do well with the classroom activity of baking cookies.⁴⁷ In Ohio, an investigation found that only 4 of 42 incidents of isolation at a Youngstown school involved any threats of physical danger. One Ohio child was secluded for turning off music; another, for pouting.⁴⁸

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

⁴³ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

⁴⁴ NATIONAL DISABILITY RIGHTS NETWORK, *SCHOOL IS NOT SUPPOSED TO HURT* (2012) at 11.

⁴⁵ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013.

⁴⁶ GAO REPORT at 13.

⁴⁷ KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

⁴⁸ Molly Bloom and Jennifer Smith Richards, *Education: Isolation Chambers*, STATE IMPACT OHIO & COLUMBUS DISPATCH, August 5, 2012.

all day, rendering the rooms effectively locked. Rooms lacked interior door knobs.⁴⁹

There are numerous reports of children confined in closets and seclusion rooms being denied food, water, and the restroom.⁵⁰ Students have been forcibly restrained and dragged into seclusion rooms.⁵¹ A 2013 investigation by Alaska Disability Rights found that 60 students at a single elementary school were secluded for almost 42 cumulative school days.⁵²

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

1. Seclusion Defined

Different states define seclusion differently, leading to differences in the degree of protection students receive. As of January 12, 2014, 34 states

would define seclusion (or isolation) as a room or space a child is prevented from exiting, meaning that the door is locked or blocked in some manner (e.g., furniture or equipment blocking the door, staff keeping it shut, or even inexpensive or improvised child proofing). Such a definition is included in the statute/regulations of 26 states: Colorado, Connecticut^d, Delaware (2013), Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Louisiana^d, Maine (2012 update to rule), Maryland, Massachusetts, Minnesota^d, Montana^d, North Carolina (and also including a room a child cannot leave due to physical or mental incapacity), New Hampshire^d, Nevada^d, Ohio (2013), Oregon, Rhode Island (if without access to staff), Tennessee^d, Vermont, Wisconsin, Washington (2013),

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

⁴⁹ The Iowa information resulted from DES MOINES REGISTER and Disability Rights Iowa investigations, both reported in a REGISTER investigative series. Clark Kauffman, DES MOINES REGISTER, *Youths Isolated and 'Forgotten' at the Iowa Juvenile Home*, July 21, 2013; *Branstad, Union Clash Over Blame for Use of Isolation at Juvenile Home*, Aug. 6, 2013; *In a Year, Youths Spent Over 47,000 Hours in Seclusion Units*, Sept. 21, 2013; *Isolation Cell Use on Rise Again at Juvenile Home*, Dec. 11, 2013. The students were denied educational services in violation of the Individuals with Disabilities Education Act. *Juvenile Home Broke Federal Education Law, State Agency Rules*, Dec. 21, 2013.

⁵⁰ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012 (child allegedly spent hours in seclusion room where he had contact with his own urine and developed an infection); *CN v. Willmar Pub. School*, 591 F.3d 624 (8th Cir.2010) (child denied access to restroom); *SCHOOL IS NOT SUPPOSED TO HURT* (2009) at 15-20; CCBd, *Position Summary on the Use of Seclusion in School Settings* at 236.

⁵¹ *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); Boy Tells Lawmakers He Was Forced into 'Seclusion Room', KATU (Oregon), Oct. 30, 2013; Disability Law Center of Alaska, *NO TIME FOR LEARNING* 4 (Aug. 2013).

⁵² Disability Law Center of Alaska, *NO TIME FOR LEARNING* 4 (Aug. 2013).

and Wyoming (definition of “isolation”). Another 8 states have a similar definition in nonbinding guidance: Alaska^d, Michigan, Missouri, Nebraska, Oklahoma^d, South Carolina (if child alone), Virginia, and Washington, D.C. Two states by statute/regulation define seclusion only as locking a child in a room: Alabama and Florida. Arizona’s new statute defines it as confinement alone in an enclosed space.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting—whether by lock or other blocking or obstruction—as this is the majority view in America by far. From a child’s point of view, a room she is locked into and a room she cannot leave because equipment blocks the door are the same.⁵³

2. States Banning or Restricting Seclusion Generally

There are 13 states with laws banning or restricting seclusion as a general matter--rather than based on the purpose for which it is used. First, there are 4 states that ban all seclusion for children with disabilities, Georgia, Nevada^d, Pennsylvania^d, and Texas^d, and Georgia bans it for all children. Thus, these states forbid rooms or spaces that children cannot exit, such as those with blocked or obstructed doors. Given the perils that seclusion poses, a ban is an important protection for children.

Second, 5 states by law prohibit all/most forms of locked seclusion for all children, and 9 do so for children with disabilities: Alabama, Arkansas^d, Maine, Montana^d (except in certain residential treatment facilities), New Mexico (fire code violation), New York^d, Ohio (2013), Wisconsin, and Wyoming. In addition, 2 states, Washington, D.C., and Michigan, urge eliminating locks in their voluntary guidance. All of these states unfortunately would still allow seclusion by blocking or obstructing the doors. Such rooms are as hazardous as those with formal locks.⁵⁴

Only 1 state law bans all seclusion for all children; only 4 ban it for children with disabilities. Some states ban locked doors, but not doors blocked closed by furniture, equipment, staff, or cheap childproofing.

⁵³ Rooms from which children are prevented from exiting are termed “seclusion” in this report even if called something else by the state (e.g., “confinement,” “isolation,” or “quiet room”). Some schools even use the term “time out” to mean forced isolation in a seclusion room from which a child cannot exit, see Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007. These differ from legitimate “time out” spaces which can involve placing a child in a room to calm down that he/she is capable of leaving, usually with staff present and supervising. The report focuses on the room’s function, rather than its label. Wyoming bans “locked seclusion,” while permitting limited use of “isolation,” an unlocked space from which a child cannot exit. As Wyoming’s isolation is defined as most states and this report define seclusion, it is treated as seclusion, unless otherwise stated. If it would make a difference, the report treats Wyoming’s locked seclusion and isolation differently.

⁵⁴ California was excluded from this group. California’s law forbids locked seclusion in emergencies unless the state has otherwise licensed a facility to use locked rooms. But, due to a wording loophole, California’s law is silent about locked seclusion for non-emergencies (i.e., predictable events threatening serious physical harm or events that do not threaten serious physical harm). See note 38 and accompanying text. In the 2012 edition of this report, this current footnote (54) excluding California was included. Due to a typographic error, California was also counted

Perhaps their own categories are Kentucky and Oregon, which have hybrid laws. Last year, Oregon banned free-standing seclusion cells or booths, while permitting students to be secluded in rooms that are part of a school building if there is an imminent threat of serious physical harm. Kentucky adopted a regulation banning seclusion when doors are locked or obstructed. The regulation ostensibly allows other forms of seclusion. Seclusion is defined as some type of involuntary confinement of a child alone in a room he/she cannot exit. Together, these provisions permit only a small subset of seclusion, such as a placing a child with a disability impeding mobility in room with an open door. But doing so likely violates the child's other rights.

In 2013, Delaware banned seclusion except when the state Department of Education granted a child-specific waiver. Delaware is to be commended for its intent in trying to ban much seclusion, but the waiver is particularly dangerous. Such doors often open much wider than intended. The law imposes no limits on the department's granting of waivers, other than requiring a "compelling justification." It does not, for example, limit seclusion under waivers to threats of serious physical harm where less restrictive measures would fail to resolve the issue or require it to end when the emergency ends. Delaware has approximately 131,000 public school students.⁵⁵ If only 1 percent of them are subjected to waivers, it means that 1,310 children could be secluded for potentially any reason under any circumstances. The author uses 1 percent as only an example; there is no limit in Delaware law.

A final group of 6 states allow locked seclusion only if the lock can automatically open, either through an emergency alarm system or when a person stops holding it: Connecticut^d, Illinois, Iowa, Florida^d (fire code referenced), Minnesota^d, and South Carolina (fire code referenced). Most seclusion laws and guidelines are silent about fire, safety, and building codes--although these codes likely forbid locked and blocked doors and impose other construction and fire safety requirements (*e.g.*, banning interference with sprinklers and requirements for internal wall construction). Locked and blocked doors are very dangerous in fires, tornados, earthquakes, and similar events. When seclusion policies omit these code requirements, parents and staff unaware of the laws may believe that students can be locked in closets and rooms.⁵⁶ Of course, a door that automatically opens in an emergency does not eliminate the grave physical or psychological dangers of seclusion. Moreover, fire and building codes must be enforced to be effective. Often, enforcement is through municipal fire or building inspection officials and not through the school district or through related legal or complaint systems that parents can readily use.

among the states forbidding locked seclusion. This error has been corrected in the 2013-14 reports, so that only 8 states, not 9, are in this category.

⁵⁵ State of Delaware, School Profiles, <http://profiles.doe.k12.de.us/SchoolProfiles/State/Account.aspx> . The number of children who could be affected by the waivers is likely somewhat larger, since this count does not include those children placed in private school at public expense under IDEA.

⁵⁶ 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. In addition to the states with laws on this issue, Nebraska and Indiana also suggest that doors automatically unlock in their voluntary models, but do not require it. Kansas had included this provision in its old guidance but not in the regulation that replaced it.

The remaining states do not by law limit seclusion use as a general matter, either by banning it, banning locked seclusion (but not “blocked” seclusion), or by requiring locks to conform to fire codes. As discussed below, some of these states restrict seclusion to emergencies threatening physical danger.

3. Preventing Use of Seclusion in Non-Emergencies

Some states respond to the hazards of seclusion by banning it except when necessary to prevent an imminent significant threat to physical safety. Only 11 states protect all children from non-emergency use of seclusion, whether by ban or limitation. Georgia is the only state to forbid all seclusion for all children for any reason. Another 10 states by law allow seclusion of any student only for threats of physical danger: Colorado, Indiana (2013), Kansas (2013), Kentucky (2013), Maine, Ohio (2013), Oregon, Vermont, Wisconsin, and Wyoming. Delaware (2013) is not included here because its new law bans seclusion but permits the state department of education to grant child-specific waivers. The only requirement is that compelling justification exist. There are no other limits on the basis for granting the waivers and no limits on what they could permit (*e.g.*, allowing seclusion even when no one is in danger).

Only 11 states protect all children from non-emergency seclusion. 17 states protect children with disabilities. The rest allow seclusion even when nobody is in any danger at all.

The numbers are slightly higher for children with disabilities, for whom 17 states by law prohibit non-emergency use of seclusion. Of these, 4 ban all forms of seclusion (Georgia, Nevada^d, Pennsylvania^d, and Texas^d) and 13 have laws limiting seclusion to emergencies where it is necessary to prevent immediate physical harm to a person: Colorado, Indiana (2013), Kansas (2013), Kentucky (2013), Louisiana^d (“substantial” physical harm), Maine, Minnesota^d(2013), Ohio (2013), Oregon (“serious” physical harm), Tennessee^d, Vermont, Wisconsin, and Wyoming. Delaware is excluded from this list for the reason stated above. Minnesota was the most recent state to join this group, prohibiting seclusion for property destruction. Kansas is included because it permits seclusion only if there is a threat of imminent physical danger, including “violent action that is destructive of property.” The regulation makes clear that property damage must entail a threat of bodily harm (violence), which is quite different from allowing seclusion for property destruction that threatens no one.⁵⁷

Out of an abundance of caution, Florida was removed from this category in January 2014, as it was for restraint. At most, Florida^d may have implicitly intended to include a physical harm standard as its law mandates that incident reports identify a threat of physical harm. But the law

⁵⁷ Kansas’ prior voluntary guidance would have supported using seclusion as stated in a child’s BIP/IEP and considered it a behavior modification technique. The new regulations recognize seclusion’s danger and restrict it to threats of physical harm in all situations.

does not explicitly require such a threat to exist before seclusion is employed. This is discussed in more detail in footnote 35 and the accompanying text.

Accordingly, 40 states allow non-emergency seclusion of all children, and 34 states allow it of children with disabilities. In these states, children may be exposed to perilous seclusion even when no one's safety is at risk. The next two sections examine these states.

4. Seclusion Allowed for Non-Emergencies

Time-out in a space a child can physically leave may be appropriate for disruptive behavior, property destruction, calming down, and similar reasons. Dangerous seclusion is not appropriate. Unfortunately, many states permit seclusion for these reasons either in their state laws or in the absence of laws.

In 18 states, there are statutes/regulations allowing non-emergency seclusion either explicitly or through a loophole. They are Alabama, Arizona (2013), Arkansas^d, California^d, Connecticut^d, Delaware (2013), Illinois, Iowa, Maryland, Massachusetts, Missouri, Montana^d, New Hampshire^d, New Mexico, New York^d, North Carolina, Rhode Island, and West Virginia. Of these, 12 apply to all children. The other 6 apply only to children with disabilities, meaning that those states do not regulate seclusion for children without disabilities.

Five states by law permit seclusion for threats of physical harm, destruction of property, or educational disruption, Arkansas^d (but limiting seclusion to severe occurrences), Iowa, Montana^d, New York^d, and Illinois.⁵⁸ In addition, North Carolina endorses seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP (for any reason). Arizona (2013) lets schools use allows seclusion for any reason with parental consent. Numerous parents nationwide have given consent who did not fully understand what they were agreeing to. They later found their child injured or traumatized by seclusion.⁵⁹

Other states have statutes or regulations with loopholes that implicitly allow seclusion under broad circumstances.

California^d has such a loophole. Its law explicitly bans seclusion in "emergency" situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. But California does not limit the use of seclusion in non-emergencies. Hence, seclusion used because behavior is predictable or because it does not threaten serious physical harm is non-emergency use, and outside the state's strong legal protections.⁶⁰

⁵⁸ Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

⁵⁹ Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE at 4 and Appendix.

⁶⁰ 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).

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

Other states ban some forms of seclusion and leave others unregulated. West Virginia forbids seclusion only when children are “unsupervised” and otherwise does not restrict “supervised” seclusion. As supervised is undefined, it could mean intermittently checking the room or simply being within hearing distance—procedures that appear to have been factors in injuries and deaths of children, as explained in the section on monitoring below. New Hampshire^d 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. One, a child can be confined alone in a room for any reason--unobserved and unable to exit--as long as this is written into the IEP. There are no limits or regulation of such seclusion. Two, as long as a child is observed, there are no regulations on the seclusion. This allows children to languish in rooms for hours or to be secluded for any reason.

Massachusetts bans seclusion rooms if students lack “access” to staff, an undefined term that potentially allows children to be confined into rooms for any reason without regulation as long as they can yell or signal for staff. Rhode Island’s regulation contains at least two conflicting provisions, both of which allow unregulated seclusion. One section prohibits seclusion unless the child is observed and the seclusion is documented as part of the child’s BIP. This leaves seclusion unregulated if the child is observed and the seclusion has been written into the child’s plan, again permitted for any reason. Another section prohibits confining a child alone in a room unless a child has “access” to school staff, which has the same loopholes as Massachusetts’ law does. Finally, Washington does not appear to regulate isolation when it is used because an unpredictable event presents a danger of serious physical harm; of serious property destruction; or of serious educational disruption. Rather, the only regulation applies mainly to seclusion used to modify “undesirable” behaviors. This broad term can encompass manifestations of a child’s disability (hand flapping, a tic, inability to sit still and pay attention; inability to quickly understand and follow directions, etc.) or other actions that threaten no one. As with restraint, the Washington regulation does not prohibit seclusion for this purpose, but merely regulates it.

Delaware (2013) bans seclusion for most students but permits it under child-specific waivers, without restricting the waivers to threats of physical danger. Washington’s^d (2013) regulations are not the model of clarity, in part because they define “aversive intervention,” but then regulate other practices. Washington appears to forbid seclusion except when it is included in the child’s aversive intervention plan written by the IEP team. There are few limits on their ability to impose seclusion. Another portion of Washington’s regulations appears to allow seclusion for serious threats of significant physical harm, destruction to property, and educational disruption without limitation, while regulating only its use for behavior modification.

Two states, Connecticut^d and Maryland, by law permit seclusion for threats of physical harm or

as stated in the IEP/BIP. The IEP/BIP loophole grants schools freedom to use seclusion for non-emergencies, and may encourage them to include seclusion in IEPs to avoid answering questions about whether there was an emergency. These loopholes can have dramatic consequences, as was apparent in Connecticut^d in January 2012. One school district superintendent appeared to suggest that seclusion rooms were regular requirements in IEPs for children with disabilities: “‘There are no provisions for the use of seclusion time out for students that do not have an IEP,’ according to a statement issued Wednesday. . . . ‘Unless you have an IEP this is not part of your daily [plan],’ he {the Superintendent} said. ‘The rooms have been used very infrequently for students without an IEP, but generally they try to find another location for the students.’”

The district did not seek to reduce use of the seclusion rooms (in which children were screaming) or to eliminate the IEP loophole. Rather, it was proposed that the rooms “be moved to out-of-the-way locations so their use in the future is not disruptive to other students.”⁶¹ If seclusion was banned, or permitted only as an emergency procedure to prevent physical danger, staff would be extremely unlikely to view seclusion as a regular or appropriate intervention for students with disabilities--or to seemingly view the children confined in the rooms only as disruptions to be moved or hidden. Contrast this with the testimony Cyndi Pitonyak, of Montgomery County Virginia, who explained that in a district that includes children with disabilities in regular education just like other children, and makes them part of the fabric of the school, restraint and seclusion are seen by teachers as “shocking” in classroom daily life.⁶²

Connecticut has a large loophole, allowing seclusion as stated in a child’s IEP. In 2012, Connecticut children were confined to “scream rooms.” A superintendent suggested that seclusion was regularly added to the IEPs of children with disabilities. One proposed solution was not to eliminate this loophole or prevent seclusion, but to move the rooms to decrease the noise.

5. States Lacking Any Legal Protections from Seclusion

There are states with no meaningful protections from any kind of seclusion for all children.

Some states have voluntary policies that are not legally mandatory. There are 7 states that urge limiting seclusion to threats of physical danger for students with disabilities; 5, all children: Michigan, Nebraska, South Carolina, Virginia, Washington, D.C., Alaska^d, and Oklahoma^d. Nonbinding guidelines in Utah^d suggest a physical harm or serious destruction of property standard. Missouri forbids solitary locked confinement unless awaiting law enforcement personnel, but its law is silent on other forms of seclusion (e.g., seclusion in a room where the door is blocked or obstructed). In these situations, Missouri has nonbinding, voluntary guidelines

⁶¹ 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.)

⁶² *Senate Hearings*, available at <http://v.gd/1SDyOX> (testimony of Cyndi Pitonyak).

recommending that seclusion be allowed for threats of physical harm, destruction of property, or as stated in the IEP (for any reason). Finally, New Mexico's non-binding guidelines endorse use of seclusion as a behavior modification technique. (New Mexico appears here and in the "loopholes" section above because its fire code bans seclusion in locked rooms, but not those children cannot exit due to blockages.

Another 6 states have nothing: Hawaii, Idaho, Mississippi, New Jersey, North Dakota, and South Dakota. In addition, the 11 states that protect students with disabilities offer no protections for those without disabilities in the same schoolhouse: California^d, Connecticut^d, Florida^d, Louisiana^d, Minnesota^d, New Hampshire^d, Nevada^d, New York^d, Pennsylvania^d, Tennessee^d, and Texas^d.

C. Practices Should Be Used Only During Emergencies

Several states permit restraint or seclusion only during emergencies, either requiring them to be used as a last resort and/or requiring them to end when the emergency ends. Both of these approaches have been incorporated in the 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 using restraint/seclusion for discipline or punishment, a position mirrored in the federal bills.

1. Less Restrictive Measures Must Fail

Less Restrictive Measures Reduce Difficult Behaviors. Less restrictive methods must be implemented instead of restraint and seclusion if they would prevent harm. Restraint and seclusion expose children to danger, escalate behaviors, and create a cycle of violence. By contrast, research demonstrates that positive interventions, conflict resolution, and de-escalation resolve difficult situations and help prevent and reduce the seclusion/restraint use.⁶³

At July 2012 Senate Hearings, Cyndi Pitonyak, Coordinator of Positive Behavior Interventions and Supports for Montgomery County, Virginia Public Schools testified the district has kept its schools safe for 20 years by limiting restraint/seclusion to rare emergencies. Instead, the district uses much less restrictive, nonharmful procedures. It uses "easily accessible, evidence-based practices that prevent disruption and crises as much as possible." These are easily used by busy school professionals. Children with the most significant behavioral needs are not segregated in special education schools but included fully in regular classes, with peer models. Students have

⁶³ KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005). See also H.R. REP. NO. 111-417 at 20-21. There is also anecdotal evidence. In one Utah case, a child was restrained repeatedly for smearing fecal matter on the wall and banging his head. A functional behavioral assessment found he did it 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.

comprehensive positive behavioral support plans based on functional behavioral assessments. Teams meet weekly to ensure that behavioral supports are effective. In this inclusive district, adults see the use of restraint and seclusion as “shocking” in the day to day life of the classroom. The less restrictive measures work. In 2012, 86 percent of the district's students with individual positive behavioral support plans made “very significant” behavioral advances. On average, their targeted problem behaviors declined by 81 percent, and their crisis level behaviors fell by 78 percent. “Aside from the typical scrapes that occur between children in any public school setting, students with PBS plans injured no adults or children.”⁶⁴

Similarly, the Centennial School in Lehigh, Pennsylvania implemented a school-wide positive behavioral support program in 1998, according to Director Michael George. In 1997-98, there were 1,064 incidents of restraint (often intensive, dangerous basket holds and prone restraint). The two seclusion rooms were continually occupied. Suspension, police involvement, and emergency hospitalization levels were high, as were staff expenses. After 6 months of the positive behavioral support program, the number of physical restraints fell by 69 percent to 327. There were no restraints in the final 20 days of the year. Time in seclusion fell by 77 percent, and the two time-out rooms became a school store and supply closet. In 2012, there were only 3 very brief uses of physical restraints. The school employed 29 percent fewer personnel, no longer needing extra staff to manage restraint and seclusion—thus cutting costs. Compared to 1998, suspension was down by 88 percent and truancy, by 50 percent.⁶⁵

Through positive supports and less-restrictive methods, the Centennial school eliminated the use of seclusion and cut restraint use from 1,064 incidents to 3. Costs decreased as 29% fewer staff were needed without restraint/seclusion.

Daniel Crimmins, Director, Center for Leadership in Disability at Georgia State University, testified that through positive supports and interventions, de-escalation, conflict management, and other positive strategies, “the use of dangerous and dehumanizing seclusion and restraint techniques can be virtually eliminated.” Behaviors that could result in restraint are “quite predictable,” and can be avoided when staff performs functional assessments and understands what triggers them. This knowledge enables properly trained staff to use de-escalation techniques to prevent most incidents from becoming dangerous, thus eliminating the need for restrictive procedures.⁶⁶

As this testimony makes clear, it is vitally important to implement less restrictive positive intervention methods in a crisis situation, and to use restraint and seclusion only if they would be ineffective and a person’s physical safety would remain at risk.

⁶⁴ *Senate Hearings*, available at <http://v.gd/1SDyOX> (testimony of Cyndi Pitonyak). The 2012 Senate Hearings have not yet been published. Prepared statements and live testimony video are available at this URL.

⁶⁵ *Senate Hearings* (testimony of Michael George).

⁶⁶ *Senate Hearings* (testimony of Daniel Crimmins).

State Laws. There are 17 states with laws that allow restraint/seclusion only as last resorts when less restrictive measures fail or would be ineffective for all children; 23, for children with disabilities: Alabama, California^d, Colorado, Delaware (2013), Georgia, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Louisiana^d, Maine, Massachusetts, Maryland, Minnesota^d, New York^d, Ohio (2013), Oregon, Pennsylvania^d, Rhode Island, Vermont, Wisconsin, New Hampshire (restraint only), and Connecticut^d (restraint only; less restrictive methods need not fail to use seclusion when permitted in the IEP). For seclusion, the last 2 are omitted. This leave 16 states with a last-resort rule for all children; 21, for children with disabilities.⁶⁷ Washington requires less restrictive measures to be tried first when seclusion or restraint are used as behavioral interventions, but not when they are used for a risk of physical harm, property destruction, or educational disruption.⁶⁸

17 states by law require staff to first try less dangerous methods before restraint/seclusion are used on any child. (23 states for children with disabilities.)

Of the remaining states without mandatory last resort requirements, 5 recommend it in their voluntary guidance for all children, and 8, for children with disabilities: Michigan, Missouri, New Mexico (restraint only)^d, Oklahoma^d, South Carolina, Utah^d, Virginia, and Washington, D.C.

2. Procedure Must End When the Emergency Ends

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These risky, harmful procedures must end when the emergency ends. Instead, children have allegedly been ordered to sit totally still for several minutes, show a happy face, stand in a corner, or do other tasks to end them.⁶⁹ Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks under pressure or when upset. Such requirements have no relation to safety.

⁶⁷ Washington and Montana are excluded from these totals. In Washington,^d restraint and seclusion employed as “aversive interventions” to deter “undesirable behaviors,” should be used only as last resorts. But when they are used to prevent serious physical harm, property destruction, and disruption, they are not considered aversive interventions and the requirement does not apply. Consequently, Washington State is not counted among the states with a less-restrictive measures requirement. Montana requires less restrictive methods to have been tried, but not necessarily to have been ineffective.

⁶⁸ Washington’s regulations permit restraint and seclusion broadly when there is a serious risk of significant physical harm, property destruction, or educational disruption. The regulations also permit restraint as a behavioral intervention, and seclusion as a behavioral intervention when written into the child’s plan by the IEP team. WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135. Another regulatory section permits such behavior-related aversive interventions to be added to IEPs only as a last resort. § 392-172A-03110.

⁶⁹ Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son “In a Box,”* Fox6Now (Milwaukee), May 15, 2012; Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

There are multiple reports of hours-long and extended episodes of seclusion⁷⁰ and restraint.⁷¹

Only 15 states by law require restraint and/or seclusion to end when the emergency ends for all children, and 20, for children with disabilities: Alabama, California^d, Colorado, Georgia, Illinois (restraint only), Kansas (2013), Kentucky (2013), Louisiana^d, Maine, Massachusetts, Minnesota^d, New Hampshire (restraint only), Nevada^d, Ohio (2013- seclusion only), Oregon, Rhode Island, Texas^d,⁷² Vermont, Wisconsin, and West Virginia.⁷³ Indiana (2013) requires that the procedure end when the emergency ends or after a “short time period,” which is undefined.

Only 15 states by law require the practices to end when the emergency ends for all children, and 20, for children with disabilities. Children have been secluded and restrained for hours and even the majority of the day.

There are 6 states that allow seclusion to continue without regard to whether there is an emergency: Connecticut^d (seclusion must end when child is “compose[d]” or 1 hour, or as stated in IEP); Maryland (seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm); Iowa (restraint for “reasonable and necessary” period; seclusion for “reasonable” period); Illinois (seclusion ends 30 minutes after behavior resulting in seclusion has ended);

⁷⁰ *House Hearings* 11-14 (testimony of Ann Gaydos) (child secluded for hours, and later restrained for playing with tooth in seclusion room; another child isolated all day for 19 successive school days); Clark Kauffman, *Register Investigation: Isolation Cell Use on Rise Again at Juvenile Home*, DES MOINES REGISTER, Dec. 11, 2013 (documenting incidents of seclusion, including one that lasted for 111 hours, according to Disability Rights Iowa); *Boy Tells Lawmakers He Was Forced into 'Seclusion Room'*, KATU (Oregon), Oct. 30, 2013 (child testified about multiple incidents of restraint, including one in 1st grade for hours); Elizabeth Ulrich, *When Special-Ed Teachers Seclude and Restrain Students, the State Says No One Needs to Know*, NASHVILLE SCENE, Jan. 24, 2008 (Tennessee child secluded for up to 3 hours); Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009 (child who later killed himself in a seclusion room was secluded for 15 hours over 2 school days, and made suicidal statements the next day; and on other occasions for over 6 hours for being argumentative or not accepting feedback); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT III* (2012) (passim) (incidents include child who attempted suicide after 4 hours in seclusion); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); J. BUTLER, *UNSAFE IN THE SCHOOLHOUSE* (2009) (passim).

⁷¹ GAO Report at 1, 2, 6, 7; Disability Rights Oregon, *KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON'S SCHOOLS* (2011) at 5 (documenting restraints over 2 hours); ALABAMA DISABILITIES ADVOCACY PROGRAM, *SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS* (June 2009) at 2 (child tied to chair for 2.5 hours); Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOXVILLE NEWS SENTINEL, Sept. 12, 2008 (9 year old, 51 pound child with autism physically restrained by two adults in seclusion room for 3-4 hours); Pamela Brown, *Montgomery County Schools Restraint Policy Examined*, WJLA (D.C.), Aug. 30, 2012 (40 lb child with Down Syndrome restrained for 45 minutes by 4 adults for throwing bowl of pasta and attempting to hit his head; State ultimately found the restraint too lengthy and unnecessary).

⁷² Although Texas requires only that restraint end when the emergency ends, it effectively imposes this requirement on seclusion. Texas permits seclusion only while awaiting the arrival of law enforcement and only for emergencies involving students who have weapons and threaten bodily harm to someone a person. Once law enforcement personnel arrive, the emergency has ended.

⁷³ Kansas's February 2013 regulation adds this requirement by implication, stating that seclusion and restraint “shall be used only when student conduct meets the definition of necessitating” use of seclusion and restraint, which requires “immediate danger” to self or others.

Montana^d (duration set in IEP/BIP); and New Hampshire^d (IEP team decides when seclusion should end). These types of limits are inappropriate, given the risks posed by seclusion and restraint. Maryland's durational limit differs from the others in that it sets a hard deadline of 30 minutes under all circumstances. Maryland is to be lauded for this, but the standard may raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint or seclusion because he/she is not yet calm. Nonetheless, its rule appears designed to protect the child, by ensuring that staff members promptly end restraint or seclusion.

The majority of states, however, have no legal requirements relating to ending seclusion or restraint. There are 6 states with nonbinding policies suggesting that the practices end when the emergency ends: Alaska^d, Missouri, Nebraska, Oklahoma^d, South Carolina, and Washington, D.C. Such guidance lacks the force of law. There are 19 states that are wholly silent: Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wyoming. These states offer no protections by law nor recommend any through voluntary guidelines.

3. Forbidding Use for Punishment or Discipline

At least 22 states have statutes/regulations stating affirmatively that seclusion/restraint cannot be used to discipline or punish children. They include Alabama, California^d, Colorado, Connecticut^d, Georgia, Illinois, Iowa, Kentucky (2013), Louisiana^d, Maine, Massachusetts, Minnesota^d (2013), New Hampshire, New York^d, Ohio (2013), Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, West Virginia, and Wyoming. Some also explicitly state that the practices are not a substitute for educational programming. Other states essentially rule out using seclusion and restraint for discipline or punishment by limiting them to threats of physical harm or banning seclusion entirely.

IV. OTHER LIMITS ON RESTRAINT AND SECLUSION

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

A. Banning Certain Restraints

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

1. Restraints that Restrict Breathing and Threaten Life

Restraints that impede breathing and threaten life are plainly extraordinarily dangerous and have absolutely no redeeming value. According to the GAO and House Hearings, after a small 14-year old African-American boy with a disability would not stay in his seat, a 230-pound teacher put

him into prone restraint and lay on top of him, killing him. When he said that he could not breathe, his teacher replied that if he could talk, he could breathe. Similarly, a teenage Jonathan Carey was killed by suffocation after a school aide sat on top of him in a van for being disruptive. The aide and driver of the van stopped at a game store and an employee's houses while he lay unconscious in the back seat.⁷⁴

Nonetheless, only 21 states have laws prohibiting using these extremely hazardous restraints on all children; 28, on children with disabilities. They may be phrased as bans on life-threatening restraints, restraints that impair breathing, or prone restraints. 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.⁷⁵

Only 21 states have laws forbidding restraints that threaten breathing or prone restraint for all children; 28 for children with disabilities.

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

Another group of 18 states ban all restraints that obstruct breathing or that threaten life for all children; 24, for children with disabilities. The states with explicit bans are: Alabama, Colorado, Connecticut^d, Delaware (2013), Florida^d, Iowa, Kansas (2013), Kentucky (2013), Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, New Hampshire, Rhode Island, Tennessee^d, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Texas^d, Indiana (2013), and Ohio (2013) have implicit bans, forbidding either restraints that harm children or restraints that deprive the child of basic needs—which breathing is. Of these, 8 have language specifically banning both restraints that impair breathing and prone restraint: Iowa, Kansas (2013), Kentucky (2013), Maryland, New Hampshire, Ohio (2013), West Virginia, and Wyoming. (Maryland and New Hampshire do not ban prone restraint by name, but ban the actions that make up prone restraint.)

In addition, 3 states do not ban—but regulate—prone restraint, Massachusetts, Vermont, and Minnesota^d. Such regulations likely undercut the states' 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. Massachusetts permits staff trained in prone restraint to use the perilous procedure. Vermont allows it under certain circumstances if less restrictive restraints would not be effective.

⁷⁴ GAO REPORT at 10-11; House Hearings 16-17 (testimony of Toni Price); see also Greg Toppo, *Restraint Can Dispirit and Hurt Special-Ed Students*, USA TODAY, May 18, 2009.

⁷⁵ 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.")

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

Voluntary guidance urges forbidding these highly dangerous restraints in 7 states for students with disabilities, 5 states for all children: Alaska^d, Missouri, Nebraska, New Mexico^d, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These voluntary principles are not equivalent to mandatory statutes or regulations, but they do reflect the state's views that such restraints should be banned.

2. Mechanical & Chemical Restraint

New stories that schools have bound children with duct tape occur frequently. In 2013, the shoes of an 8-year old Indiana girl with Down Syndrome were duct-taped so tightly that she could not walk and her ankles were bruised, according to news reports.⁷⁶ Mechanical restraints include duct tape, straps, bungee cords, and ropes used to tie children to furniture or to tie body parts together; chairs and furniture that children are locked into; devices that restrain arms, legs, torsos and other body parts; weighted materials; and similar mechanisms. They are hazardous, as the GAO and numerous organizations have found. Special therapy chairs intended to help children with certain physical disabilities sit have been misused as restraints because children can effectively be locked in with belts and trays. A California child was strapped into a wheelchair and it was inverted. He was helpless to free himself.⁷⁷

Children have been left in mechanical restraints for long periods of time, exacerbating the harm. In Georgia, a middle-schooler with multiple disabilities was strapped into a potty chair and a therapy chair locked in a darkened room by his teacher, only to be discovered by another teacher. He suffered physical and psychological harm and regressed in his education. Another child was repeatedly strapped to a therapy chair and confined alone in a room for several hours a day.⁷⁸ In Pennsylvania, a teacher strapped children with bungee cords into therapy chairs,

⁷⁶ Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl's Feet Duct-Taped*, INDIANAPOLIS STAR, Feb. 6, 2013 (citing HOW SAFE IS THE SCHOOLHOUSE). The media routinely reports that children have been duct-taped. See, e.g., Warren Kulo, *Ocean Springs Teacher Disciplined for Duct-Taping Student's Mouth Shut*, MISSISSIPPI PRESS NEWS, Oct. 23, 2013; Lindsay Kastner, *Teacher Duct-Taped Judson ISD Student to Chair*, MY SAN ANTONIO (San Antonio Express website), June 5, 2013 (duct tape allegedly used to bind student's ankles and hands and attach child to chair for being rambunctious); Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011 (teacher charged with duct-taping child to chair and other acts pled guilty to false imprisonment).

⁷⁷ See SCHOOL IS NOT SUPPOSED TO HURT (2009) at 21-26; GAO Report (passim); see also *D.K. v. Solano Off. of Educ.*, 667 F. Supp. 2d 1184 (E.D. Cal. 2009) (student strapped into inverted wheelchair).

⁷⁸ *A.W. v. Fulton Co. Sch. Dist.*, Docket No. OSAH-DOE-SE-1135718-60 (Georgia State Administrative Hearing Feb.

punishing and abusing them.⁷⁹

Statutes and regulations ban mechanical restraint use on any child in 15 states; 19 states, for children with disabilities. The states with bans are:

Alabama, Colorado (but allowing use by armed security guards), Georgia, Illinois, Iowa, Kansas (2013), Kentucky (2013), Louisiana^d, Maine, Montana^d, New Hampshire, Ohio (2013), Oregon, Pennsylvania^d, Tennessee^d, Vermont, Wyoming, West Virginia, and Wisconsin. Generally, these states have exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility, as the Congressional bills do.

Only 15 states by law ban mechanical restraints for all children. These include locking children into chairs and other devices; and duct-taping and tying them up or to furniture. Only 15 ban dangerous chemical restraints for all children.

Thus, 36 states do not by law ban mechanical restraints for all children; 32, for children with disabilities. Of these, 5 have some specific provisions regarding mechanical restraint. Maryland is fairly strict, forbidding mechanical restraint except in very few schools with hospital accreditation. Delaware (2013) forbids mechanical restraint unless authorized by waiver from the state department of education. As with seclusion, the only limit on the waiver is that it be for “compelling justification.” There are no restrictions otherwise on how or why mechanical restraints can be used, or on the number of students for whom waivers can be granted.

The other 3 states frame their laws as restrictions, but they broadly permit mechanical restraint. Massachusetts allows mechanical restraint with parental consent and physician instructions. Nevada^d permits mechanical restraint with a physician’s order, as long as staff loosen the restraints every 15 minutes to determine whether the child will stop injuring himself. (This implies that Nevada only allows the restraints to prevent self-injury.) Washington^d bans schools from binding limbs to each other or an object, but permits even this with parental consent if stated in a child’s IEP.

Among the states without mandatory laws, 6 have voluntary guidelines suggesting that mechanical restraints not be used: Indiana (model plan 2013), Nebraska, New Mexico^d, Oklahoma^d, South Carolina, and Washington, D.C.

Chemical restraints can kill and injure.⁸⁰ There are 15 states prohibiting chemical restraints in their statutes and regulations, all applicable to all children: Alabama, Colorado, Delaware (2013), Georgia, Illinois, Iowa, Kansas (2013), Kentucky (2013), Maine, New Hampshire, Ohio (2013),

1, 2012).

⁷⁹ *Vicky M. v. Northeastern Educational Intermed. Unit 19*, No. 06-01898 (M.D. Pa. May 15, 2007).

⁸⁰ Chemical restraints include drugs that restrict the child’s ability to move or control his behavior which were not prescribed by a physical as a standard treatment for the child’s condition and or that are not administered as prescribed (e.g., a much larger dose is given).

Oregon, Rhode Island, and Vermont, and Wisconsin (2012, change from nonbinding guidance that advised allowing them with medical oversight). These laws apply to all children. Another 3 seemingly restrict them: Connecticut^d (bans chemical restraints unless otherwise stated in IEP, but permitting it in IEP for any reason), Massachusetts (permitted with parental consent and physician instructions), and Tennessee^d (permitted with parental consent and physician instructions). These pose the same risks of danger as similar laws on mechanical restraint. With permission or if written into an IEP (Connecticut), chemical restraints can be employed freely.

The remaining 34 states have no laws restricting their use. There are 4 that advise in guidance that they not be used: Indiana (model plan 2013), Missouri, Nebraska, and Washington, D.C.

For comparison, the Congressional bills ban mechanical and chemical restraints. They include exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility.

3. Mechanical Restraints Magnify Seclusion Harm

The risks from seclusion are magnified if the state permits mechanical restraint. Children may be locked or strapped into chairs or other devices, and left for hours in rooms and closets, hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom because she was screaming. She flipped the chair over on herself and was hanging by the restraints. She also urinated on herself.⁸¹ In Massachusetts, a preschooler was allegedly strapped into a therapy chair for being rambunctious, and left alone in a closed, darkened closet as he cried--until another teacher rescued him.⁸² CNN has documented the story of another child who was strapped into a chair and confined in seclusion. Another special education teacher found him and reported the situation to her superiors.⁸³

B. Seclusion Requirements

1. Observation and Other Conditions of Seclusion

Several states with laws restricting seclusion require that children be monitored. Monitoring can range from continuously watching the child to simply being capable of seeing inside the room or checking the unobserved room occasionally. In 2004, 13-year-old Jonathan King killed himself in a seclusion room, a teacher sitting outside listening to him.⁸⁴ In January 2011, an Indiana student attempted suicide in a seclusion room where he was not observed, the National Disability Rights Network alleged. He previously had been placed in the room and forbidden to use the

⁸¹ ALABAMA DISABILITIES ADVOC. PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

⁸² James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

⁸³ Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 and accompanying blog story.

⁸⁴ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

bathroom, causing him to urinate on himself, and then secluded for another day for having relieved himself.⁸⁵ Other children confined unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized.

Protection from unobserved seclusion exists in 13 states for all children; 23 for children with disabilities—either because they ban seclusion or require continuous visual monitoring. Seclusion (whether the door is locked or blocked closed) is banned in 4 states for children with disabilities, and 1 state for all children: Georgia, Nevada^d, Pennsylvania^d, and Texas^d). Of those permitting seclusion, only 12 by law require continuous direct observation of all children in seclusion rooms; 19 states, of children with disabilities: Alabama, Arkansas^d, Delaware (2013) (if seclusion allowed under waiver from state department of education, monitoring required), Illinois, Iowa, Kentucky (2013), Louisiana^d, Maryland, Maine, Minnesota^d, Montana^d, New York^d, Oregon, Rhode Island, Tennessee^d, Vermont, Wisconsin, Wyoming (“isolation” rooms), and Washington^d.

Children in seclusion who were not continually observed have died or been harmed between staff checks. 38 states lack laws requiring staff to continually watch children in seclusion (28 lack them for children with disabilities).

Thus, 38 states lack laws requiring continuous observation of all students in seclusion; 28 states lack them for children with disabilities. They fall into two categories. Some implement limited forms of monitoring that often contain loopholes. Others have no laws about monitoring or observation.

A number of states require some monitoring, but loopholes in their laws allow students to go unobserved. Laws in 4 states let staff monitor the room occasionally but do not require continuous visual observation of all children: Colorado (“reasonably monitored”); Massachusetts (“access” to staff required, no limit on what the access can be, including shouting for or signaling for staff); Ohio (“constant supervision by staff” and the ability to observe the student) and North Carolina (require staff to be “able to see and hear the student at all times”). Another 2 states permit occasional monitoring of children with disabilities and nothing for children without disabilities: California^d (“adequate” supervision for unlocked seclusion) and Connecticut^d (IEP team determines frequency of monitoring). Requiring staff to be capable of seeing the child at all times is not the same as requiring that staff actually do so.

Other states lack laws that require monitoring at all. There are 5 that encourage continuous visual monitoring in recommended policies: Alaska^d (2012); Michigan, Oklahoma^d, South Carolina, and Washington, D.C.. Another 2 advocate for the *ability* to see the student at all times: Missouri, and Nebraska; 1 state advocates for undefined “supervision” (Indiana model plan 2013). These guidelines do not have the force of law and are subject to change. In addition, 12 states say nothing about monitoring children in seclusion: Arizona, Florida, Hawaii, Idaho,

⁸⁵ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT 11 (2012).

Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Utah, Virginia, and West Virginia. Moreover, children without disabilities may be secluded without monitoring in those states with disability-only laws.

2. Minimum Room Condition Requirements.

There have been complaints that students have been secluded in small, darkened closets or boxes, or injured by furniture they can overturn or other dangerous items. There are also reports of denial of food, water, and bathroom access. In some cases, children have removed their clothing to be able to urinate in the room or urinated on themselves.⁸⁶ In 2012, there were several news reports of students secluded in locked boxes or free-standing cells.⁸⁷ Such boxes likely do not comply with state fire and building codes.⁸⁸

Some states have eliminated this problem by banning all seclusion. Oregon has banned free-standing seclusion cells. Some states regulate seclusion room conditions by statute and regulation. States are more likely to impose requirements for lighting (17 states) and ventilation (15 states) than access to essential bathroom facilities (7 states). Some state law room requirements are below:

Room must be lit (17 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kentucky (2013), Louisiana^d, Maine, Maryland, Minnesota^d, New York^d, North Carolina, Ohio (2013), Tennessee^d, Vermont, Washington^d, West Virginia, and Wyoming.

Only 7 states require bathroom access for children in seclusion rooms; 17 require rooms to be lit; 15 require adequate heating/cooling.

Heating/cooling/ adequate ventilation (15 states by law):

Arkansas^d, Colorado, Iowa, Kentucky (2013), Louisiana^d, Maine, Maryland, Minnesota^d, New York^d, North Carolina, Ohio (2013), Tennessee^d, Vermont, Washington, and Wyoming.

Free of dangerous furniture, objects, and conditions (15 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kentucky (2013), Louisiana^d, Maine, Maryland, Minnesota^d, New York^d, North Carolina, Tennessee^d, Vermont, Wisconsin, and Wyoming.

⁸⁶ See generally Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012; NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009); JESSICA BUTLER, *UNSAFE IN THE SCHOOLHOUSE* (2009); DISABILITY RIGHTS WISCONSIN, *WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN* (2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., *SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS* (2009). See also footnotes 81 and 85 above and accompanying text.

⁸⁷ *Boy Tells Lawmakers He Was Forced into "Seclusion Room"*, KATU (Oregon), Oct. 30, 2013; *Parents Angry Over School District's Use of "Isolation Booth"*, KOMO NEWS (WASHINGTON), Nov. 29, 2012; Stephen Davis and Bryan Polcy, *Mom Says School Put Her Autistic Son "In a Box"*, Fox6Now (Wisconsin), May 15, 2012; Carey Pena, *Elementary School Faces Lawsuit Over Padded Seclusion Room*, AZFAMILY.COM (KTVK-3TV, Arizona), Sept. 19, 2012.

⁸⁸ See SOUTH CAROLINA DEPT. OF EDUC., *GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT* (2011).

Room size requirements (11 states by law): Arkansas^d, Colorado, Iowa, Louisiana^d, Maryland, Minnesota^d, Ohio (2013), New York^d, Tennessee^d, and Wyoming impose overall requirements. Oregon forbids the use of free-standing seclusion cells, which are often very tiny.

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

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

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

Explicit compliance with fire codes: Arkansas, Florida, Kentucky (2013), Minnesota, New York, Tennessee, and Vermont are among the states explicitly requiring compliance with fire, safety, and building codes in their restraint/seclusion laws. Minnesota requires obtaining a written statement that a room is in compliance from local authorities. South Carolina explains the application of its state fire and building codes in its voluntary guidance document; these parts of the document are not voluntary. The South Carolina codes require a certain amount of space; the use of sprinklers and safe construction in all rooms; and specify other limits on rooms that lock. No one should ever assume that a school or other building is exempt from a state fire, building, or safety code—or that those codes permit rooms with locked or obstructed doors.⁸⁹ Educators and parents should always refer to those codes, in addition to their state restraint/seclusion laws and policies.

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

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

⁸⁹ See *supra* note 56 and accompanying text for a discussion of fire and other codes.

V. AWARENESS OF SECLUSION/RESTRAINT & OTHER ISSUES

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

A. Informing Parents of Restraint/Seclusion

Parents must be promptly informed when their children are restrained or secluded, so they can watch for injuries and trauma, and seek appropriate medical care. Notification also enables them to work with staff to prevent further incidents and to ensure appropriate positive behavioral supports and de-escalation methods are in place, as they can share information about the child at home and school.⁹⁰

But too often parents are kept unaware of the incidents. Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door shut. He missed 8 full days of school over a 2-week period. He was also repeatedly restrained and subjected to aversive interventions, including denial of 40 percent of his meals. His parents knew none of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.⁹¹ An Oregon first grader spent hours in seclusion and endured repeated restraint of which his parents were unaware. He became so upset that he broke his glasses, banged his head against the wall, and bit his hand until it bled.⁹² Phyllis Musumeci discovered that her son, Christian, was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his removal from school. His parents found out a year later, when they requested school logs (those for one year were reported missing).⁹³ While the school kept some logs that his parents could access, many states do not require logs, leaving parents unable to determine whether their child was restrained or secluded.

Other parents have reported learning of restraint and abuse only after finding bruises and other injuries to their children's bodies.⁹⁴ At least two families felt they needed to hide tape recorders on their children to find out the full extent of abuse of nonverbal children.⁹⁵ Even when notices

⁹⁰ See *supra* text accompanying notes 64-66 for a discussion of highly successful positive supports in schools and the value of identifying and managing triggers in preventing use of restraint and seclusion.

⁹¹ *House Hearings*, 60-61.

⁹² DISABILITY RIGHTS OREGON, KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON'S SCHOOLS 4 (2011).

⁹³ *Gradebook: A Weekend Interview with Phyllis Musumeci*, TAMPA BAY TIMES, Jan. 24, 2009.

⁹⁴ See, e.g., KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS (2012); Alan Judd, *An Expensive Fight over a Boy with Autism*, ATLANTA J. CONSTITUTION, Sept. 26, 2011.

⁹⁵ Alan Judd, *An Expensive Fight over a Boy with Autism*, ATLANTA J. CONSTITUTION, Sept. 26, 2011 (S.F. case); *H.H. v. Moffett*, 335 Fed. Appx. 306 (4th Cir. 2009) (unpublished).

are sent to parents, they may not be able to read them if they cannot read the language, as happened with one Oregon family.⁹⁶

This section of the report examines state parental notification requirements.

Parental Notification Laws At a Glance (Jan. 12, 2014)

	All Children	Children with Disabilities
Must notify parents of both seclusion and restraint by law (statute/regulation)	20 states	32 states
Must act to notify on the same day event occurs	8	13
Must act to notify within 1 calendar day/24 hours	4	8
Same day and 1 calendar day/24 hour notice combined together (subtotal of above two rows)	12	21
Must act to notify within 1 school or business day (allows school holidays and weekends to delay notice)	3	4
Must act to notify within 2 school days	2	2
Longer notification period	1	3
Unspecified (“as soon as possible”)	1	1
Requires “timely” notification, period to be set by regulation	1	1
Only require parental notification for either restraint or seclusion, but not both. Not included in total at top of chart, since parents receive no notice at all of the other practice.	2	2

As of January 12, 2014, only 20 states required that parents of all children be notified of the use of both restraint and seclusion: Alabama, Colorado, Delaware (2013) (new statute requires regulations to be written providing “timely” notification), Georgia, Illinois, Indiana (2013) (new statute requiring notification “as soon as possible” with Commission to write further regulations), Iowa, Kansas (2013), Kentucky (2013), Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts (unless parents waive right in response to school request or incident lasts for less than 5 minutes), North Carolina (but not requiring notification under many circumstances, as noted below), Ohio (2013), Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. This leaves 31 states that do not.

For students with disabilities, 32 states have laws requiring schools to apprise parents when their child was restrained or secluded: Alabama, California, Colorado, Connecticut, Delaware (2013), Florida, Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, Ohio (2013), Oregon,

⁹⁶ DISABILITY RIGHTS OREGON, *supra* note 5, at 4.

Pennsylvania , Rhode Island, Tennessee, Texas, Utah, Vermont, Washington (2013), West Virginia, Wisconsin, and Wyoming.

Two additional states require notice of one practice but not the other, for all children: Arizona (2013, seclusion; law does not address restraint) and New Hampshire (2012, statute addresses restraint notification only). This means that no notice whatsoever is required when the other practice is used, and parents may never learn of its use.

Moreover, Delaware's (2013) new statute directs the state department of education to write parental notification rules for physical restraint. The regulations have not been promulgated, but the statute does not take effect until July 2014. There are no statutory requirements for parental notification if a child is subjected to mechanical restraint or seclusion under a waiver.

The vast majority of state laws adopted after Congress and the media began in 2009 to focus intensively on restraint and seclusion require parental notification on the same day, within 24 hours, or within 1 school day. The 3 exceptions are Kansas (2 school days), Delaware (not yet set), and Indiana ("as soon as possible"). Indeed, when state voluntary guidelines are included as indicating what states would advocate for, 40 states favor notifying parents within 1 calendar day or less, and 44, within 1 school day or less. This is more than $\frac{3}{4}$ of states.

In the lists that follow, laws applicable to all children come before those applicable only to children with disabilities. This makes it easier for readers to sort of the information. Some states appear twice, and are designated with a dagger([†]). They mandate both a quick same day/next day notification, followed by a more extensive written report to parents. New Hampshire appears twice as its restraint and seclusion rules differ.

1. Parental Notification Same Day/Next Day

The need to seek prompt medical attention makes 24 hour notification important. Concussions, hidden internal injuries or bleeding, other medical issues, and psychological trauma need to be identified immediately. Children may not be able to adequately communicate what occurred, because of limited verbal or cognitive skills, their youth, or the trauma they endured. Calendar day notice is important. A "business day" or "school day" standard can delay notification over weekends and lengthy school holidays—a potentially unsafe delay if a child was subjected to these physically hazardous practices.

States with same-day or 24 hour/next day notification are as follows. The daggers ([†]) indicate states that require fuller written notice afterwards. Some states require actual notice by the deadline; others require good faith, reasonable efforts.

Same day notification of both restraint and seclusion: This is the rule in 8 states for all children, and 13 states for children of disabilities: Colorado[†], Iowa[†] (attempted), Maine, Massachusetts[†] (unless parents waive requirement or restraint lasts less than 5 minutes), Ohio (2013)[†], Oregon[†], Vermont[†] (documented attempt), West Virginia[†] ("good faith"), Connecticut^{†d} (attempted; longer

deadline applicable if seclusion in IEP), Florida^{†d}, Minnesota^{†d}, Tennessee^d (“reasonable efforts”), Texas^{†d} (“good faith effort”).

24 hour or 1 calendar day notification of both restraint and seclusion: This is the rule in 4 states for all children and 8 states for children with disabilities: Illinois, Kentucky (2013), Maryland (unless otherwise stated in IEP/BIP), Wyoming (written notice unless parent agrees otherwise), Louisiana^{†d}, Montana^d (“as soon as possible,” but within 24 hours”), Utah^d, and Washington (2013)^d.

2. States with Longer or Ambiguous Notice Periods

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

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

2 School or Business Days: This is the rule in 2 states for all children. Rhode Island requires notices as soon as possible, but no later than 2 days. Kansas (2013) allots 2 school days.

Longer: There are 3 states with substantially longer deadlines. North Carolina has a 2-4 business day notification period, but only for those situations in which notification is required in the statute. If notification is required, staff must notify administrators by the end of the work day, or if not, the next workday. The administrator must then notify the parent by the end of the work day, or if not, the next workday. Written follow up must occur within the next 30 days. There are many situations for which notification is not required, as discussed below. Pennsylvania^d sets no deadline, but requires an IEP meeting within 10 days which effectively is the outer deadline. New York^d sets no specific deadline.

Ambiguous: Indiana’s statute currently requires notification “as soon as possible.” A commission will write regulations, most likely this year (2014), further clarifying the notification requirements. The statute also requires each district to submit a restraint/seclusion plan. The commission has drafted a model plan, which recommends same day verbal notification.

Undetermined: Delaware statute (2013) requires the state Department of Education to write regulations providing for timely notification of parents when physical restraint occurs. Delaware will allow the department to waive the prohibitions on mechanical restraint and seclusion on a student-by-student basis. The statute does not impose any parental notification requirement for seclusion or mechanical restraint under these waivers. It is possible that the future regulations may address this issue.

3. Notification of One Practice But Not the Other

Arizona and New Hampshire require notification of one procedure, but not the other—leaving parents entirely in the dark if the other procedure is used upon their children. In prior reports, Arizona and New Hampshire were put in the same day and 1 calendar day categories, respectively. These states are more properly in their own category. While they have corrected determined to notify parents of one practice, their failure to notify parents of the other is deeply concerning because lack of notice is so hazardous.

Arizona requires reasonable efforts for same day notification for seclusion only. It has no requirement to notify parents of restraint. New Hampshire's statute requires "reasonable efforts" to notify parents within 24 hours of restraint alone. Seclusion is governed by older special education regulations containing no notification requirements.

4. Detailed Written Follow-Up after Quick Notice

There are 9 states that require more detailed written follow-up for all children; 14, for children with disabilities: Colorado, Illinois, Iowa, Maine, Massachusetts, Ohio (2013), Oregon, Vermont, West Virginia, Connecticut^d, Florida^d, Louisiana^d, Texas^d, and Washington (2013)^d. Other states mandate written communication only if verbal or electronic communication on the first day fails, including Kentucky (2013) and Minnesota^d.

Some state laws require that supplemental written notification be sent within 24 hours of the use of restraint/seclusion. This is a good practice, given mail delays. They include Florida^d, Illinois, Kentucky, Louisiana^d, Oregon, Texas^d, and Vermont. Other state laws allow the written report to be sent a few days later. These include Colorado (written report within 5 days), Connecticut^d (2 school/business days), Iowa (3 days); Maine (7 days); Massachusetts (3 school days); New Hampshire (several days allowed); West Virginia (1 school day). In each of these states, the written notification must contain details not required in the immediate notification, a possible reason for the delay. For example, in Colorado, the written supplement must include a detailed description of the incident and the type and duration of the restraint or seclusion; the behavioral antecedents leading up to the event; efforts made to de-escalate and use other alternatives; any injuries; and the names of the staff involved.

5. States Without Notification Requirements

Thus, there are 31 states without laws requiring notification of both restraint and seclusion use for parents of all children, and 19, for parents of children with disabilities. The states with no laws requiring schools to tell all parents of both restraint and seclusion are: Alaska, Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington.

The states that do not mandate parental notification of both restraint and seclusion for children with disabilities are: Alaska, Arizona, Arkansas, District of Columbia, Hawaii, Idaho, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, and Virginia. The vast majority of these states have no restraint/seclusion law at all, or in the case of 2 states, mandate notification of one procedure but not the other.

Some states without statutes or regulations have suggested guidelines. These indicate what a state supports and advocates for. Of the states without statutes and regulations, 10 recommend notification policies. Of these, 7 suggest notice on the same school day: Michigan⁺, Missouri⁺, Indiana⁺, Nebraska⁺, Oklahoma^d, South Carolina⁺, and Washington, D.C.⁺ (The states with the daggers also suggest a fuller written notice afterwards.) In addition, Nevada urges notification within one calendar day. Indiana has a 2013 statute that requires notification “as soon as possible,” and required a commission to write both regulations and a model plan elaborating on the statute. Although Indiana’s new regulations have not been promulgated, its model plan urges that notification occur on the same day. Alaska^d recommends notices “as soon as reasonably possible.” Virginia advises the school/school district to set a time period.

6. Loopholes that Undermine Notification

Of the states that ostensibly require notice in 24 hours or less, 5 have sizeable loopholes, as does a sixth with even longer deadlines. Maryland allows the IEP team to set another deadline. Connecticut^d leaves all decisions about notification entirely up to the IEP team when seclusion is included in the IEP. Wyoming allows parents to agree to a different deadline. Massachusetts lets schools ask parents to waive the right to notice. It forbids waiving the right to notice if restraint or seclusion 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’s law does not apply to non-emergency use of restraint and seclusion.

North Carolina has a limited parental notification statute, which can result in several situations where parents will not be informed. Notification is required if forbidden aversives are used or a mechanical restraint is used other than under the circumstances stated in the statute. No notification is required for physical restraint unless there is an observable injury. Thus, parents will not be notified of nonobservable concussions or internal injuries, or situations that could cause trauma. Not all restraint results in observable injury. In Tennessee, there were allegations of use of an

Some states have loopholes in their notice rules, including allow the IEP team to decide if the parents are told their child was restrained/secluded or allowing schools to ask parents to forego being notified. Many uneducated parents may not understand.

undetectable form of restraint through pressure points, pinching under the armpit.⁹⁷ Parents whose children were subjected to such techniques would have no way of knowing about them.

North Carolina requires parents to be informed if seclusion is used for a prohibited purpose, but allows it for so many purposes that it can be used freely for many reasons. For seclusion that is permitted, North Carolina does not require parental notification if the incident lasts less than 10 minutes or less than the time period in the child's behavioral intervention plan. Hence, parents whose children have seclusion in their behavioral plan (and it can be added for any reason at all) may never find out about seclusion if the plan has long enough notification periods.

Alternatively, they may find out about some incidents but not others. Parental discussion and consent may be required to add seclusion to an IEP, but it is not required at all to add seclusion to the behavior plan of a student without an IEP. This increases the risk that parents will not be informed.

These types of loopholes are highly risky and unsafe. For example, Connecticut^d requires that schools take steps to notify parents on the same day if the child is restrained or placed in seclusion, followed by a detailed written incident report within 2 days. But if seclusion is in the child's IEP, the IEP team decides when and how notification will occur. This distinction is important. In 2011-12, 78% of Connecticut seclusion incidents involved students with seclusion in their IEPs.⁹⁸ If the IEP team agrees that the parent will not receive notice or notice of only certain incidents, the parents may not learn at all of the use of seclusion.

B. Debriefing

A debriefing is a meeting that occurs after an incident of restraint or seclusion to determine what caused the event, how it could be avoided, and by analyzing, planning for, and implementing positive interventions. Debriefings help reduce and eliminate restraint and seclusion.⁹⁹ Parents, students, and staff may attend. They have been described as "critical."¹⁰⁰ 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).¹⁰¹

There are 10 states with statutes/regulations mandating debriefings for all children; 17, for children with disabilities. These states are: Alabama, Colorado, Maine, Massachusetts,

⁹⁷ Brian Wilson and Adam Tamburin, *Nashville Principal Resigns after Spanking Two 6-year Olds*, THE TENNESSEAN, Nov. 7, 2013 (In Tennessee, such restraints are improper.)

⁹⁸ Conn. State Dept. of Educ., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND Seclusion, SCHOOL YEAR 2011-12.

⁹⁹ *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).

¹⁰⁰ Psychiatric Facilities Interim Final Rule, 66 FED. REG. at 7152.

¹⁰¹ 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).

Maryland, Oregon, Rhode Island, Vermont, Wisconsin, Wyoming, California^d, Connecticut^d, Louisiana^d, Minnesota^d, Nevada^d, Pennsylvania^d, and Washington (2013)^d. Kentucky's 2013 regulations permit a debriefing if requested by parent or student, and Indiana's commission is to write regulations about debriefings, but its statute does not require them.

This means that 41 states do not require debriefings for all children and 34 do not require them for children with disabilities. There are 8 states that suggest a debriefing in nonbinding guidelines: Indiana (2013 model plan), Michigan, Missouri, Nebraska, Ohio (2013), Oklahoma^d, South Carolina (seclusion only), and Washington, D.C. While Ohio's January 2013 nonbinding guidance included the debriefing, its mandatory April 2013 regulation does not.

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

C. Data Collection and Sunshine

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

In its 2009 report, the GAO described six states that collected data: California^d, Connecticut^d, Kansas^d, Pennsylvania^d, Texas^d, and Rhode Island. The need for data collection nationwide is clear. Texas and California reported 33,000 instances alone in 2007-08.¹⁰² In 2013, in response to a new law intended to correct data collection issues, Connecticut recorded almost 19,000 incidents of restraint and 18,000 incidents of seclusion in 2011-12; Connecticut is only the 32nd largest state in student enrollment.¹⁰³ In a previous GAO report, investigators found that even when seclusion/restraint data was collected, it was likely to be underreported due to inconsistent reporting rules.¹⁰⁴

As of January 12, 2014, 12 states require an annual data collection for all children; 19, for children with disabilities: Alabama, California^d (but only for emergency interventions, not those used in non-emergencies), Connecticut^d (2012 amendment), Delaware (2013), Florida^d (monthly and annually), Indiana (2013), Kansas (2013), Kentucky (2013), Louisiana^d, Maine (2012), North Carolina, New Hampshire (restraint only), Nevada^d,¹⁰⁵ Ohio (2013), Oregon, Rhode Island, Tennessee^d, Texas^d, and Wyoming. Of these, 14 states added this requirement after 2009, when Congressman Miller first proposed the requirement. Both Congressman Miller's and Senator Harkin's bills include state data reporting requirements.¹⁰⁶

¹⁰² GAO REPORT at 5, 7. The list was not intended to be complete.

¹⁰³ See note 14, *supra*.

¹⁰⁴ H.R. REP. NO. 111-417 at 13.

¹⁰⁵ Nevada collects restraint data. It bans seclusion of students with disabilities. As it requires data about violations of the law, it encompasses seclusion.

¹⁰⁶ In addition, data has been collected through the Department of Education's Civil Rights Data Collection procedure since the 2009-10 school year. The Department determines the elements of the collection and they can change.

There are limited data requirements in other states. Pennsylvania requires that the data be made available to the SEA when it monitors an LEA. In Massachusetts, data is shared with 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.

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

Even the mandatory state data requirements are not as robust as the data requirements in the bills introduced by Congressman Miller or Senator Harkin. The two bills contained data requirements designed to break information down by subgroup (disability, race, etc.) and also to report information for each LEA. Such data collection would better inform decision-making, and make public practices that have long been hidden from public view. Still, the sharp increase in state data collection requirements since the first Congressional bill was introduced in 2009 indicates that states favor reporting.

Data collection and sunshine make a real difference and show the extent of what has long been hidden. In 2010, Florida passed a law requiring data collection; the state recorded 9,751 restraint and 4,245 seclusion episodes in 2011-12.¹⁰⁷ The data provided vital sunshine that seemed to cause at least one district to change its ways. "[S]ince a state law requiring incident reporting began to bring such practices into the open two years ago, things have begun to change. Orange County [Orlando] eliminated the use of seclusion And the number of restraints dropped nearly two-thirds since the 2010-11 school year, when 2,394 cases were reported," reported the *Orlando Sentinel*. In 2011-12, Orange County Public Schools (185,000 students) used restraint 952 times. This was still more than any other district and much more than the 207 restraint incidents in the Miami-Dade Schools (345,000 students).¹⁰⁸

In 2010, Florida passed a data collection and sunshine law. The data reporting and publication appeared to cause one of Florida's larger Florida school district to eliminate seclusion and to cut its restraint use by 2/3, according to news articles.

¹⁰⁷ Sarah Gonzalez and John O'Connor, *Florida Keeps Two Sets of Seclusion Data -- and Why Neither May Tell the Full Story*, STATE IMPACT/NPR, Aug. 14, 2012.

¹⁰⁸ Lauren Roth, *Orange County Schools Still Restrain the Most Students*, ORLANDO SENTINEL, Aug. 26, 2012. Student population figures are from the school districts' websites, www.dadeschools.net; <https://www.ocps.net/Community/Pages/default.aspx>

Logs obtained from 39 Ohio school districts that used seclusion showed that many children were confined in seclusion rooms for minor infractions, such as pouting, throwing pencils, complaining, rudeness, and refusing to do school work, according to a joint Columbus Dispatch-State Impact (NPR) investigation. A number of students were secluded several times a day for several days a week.¹⁰⁹ In April 2013, Ohio adopted a regulation requiring reporting of data annually to the state.

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

The Iowa experience also illustrates the importance of data collection and monitoring. Soon after a Disability Rights Iowa investigation of the juvenile facility began, the number of hours spent in seclusion fell precipitously, from 5,202 hours in October 2012 to 549 hours in July 2013. The total number of seclusion hours fell 89 percent from September 2012 to September 2013. The home removed the doors from 4 of its 6 isolation rooms, and changed its policies. Since it is not possible to investigate every school or facility for misuse of restraint and seclusion, data collection and public reporting are vital forms of oversight.¹¹⁰

2. Data Reporting to the School or LEA

Some states mandate data collection at lower levels, indicating that data could readily be sent to the state level. By law, data is reported to the LEA or school board in 12 states, 7 of which apply the rules to all children: Alabama, Florida^d, Kansas (2013), Maine, North Carolina, Nevada^d, Oregon, Tennessee^d, Texas^d, Vermont (certain circumstances), Wisconsin, and Washington^d.

Other states keep data at the school level, including Arkansas (seclusion only), California^d, Colorado, Connecticut^d, Florida^d, Iowa, Kansas (2013), Massachusetts (if the restraint lasts for more than 5 minutes or there is an injury, unless the parent waives the requirement), Ohio (2013), Nevada^d, Rhode Island, and Tennessee^d.

There are 14 states that require an incident report to be put in the child's school file after each use of restraint/seclusion for all children, and 23 that require it for children with disabilities:

¹⁰⁹ Molly Bloom and Jennifer Smith Richards, *Special Report: Education: Isolation Chambers*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Aug. 5, 2012.

¹¹⁰ Clark Kauffman, *Register Investigation: In a Year, Youths Spent Over 47,000 Hours in Seclusion Units*, DES MOINES REGISTER, Sept. 21, 2013.

California^d, Colorado, Connecticut^d, Florida^d, Georgia (but not seclusion as it is banned), Illinois, Iowa, Kentucky (2013), Louisiana^d, Massachusetts (if the incident lasted more than 5 minutes or led to an injury), Maryland, Maine, Minnesota^d, New York^d (for restraint or aversives only), North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada^d, Rhode Island, Texas^d, Vermont, Washington^d, Wisconsin, and Wyoming.

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

The fact that states complete these kinds of reports indicates that they could readily provide information through a computerized system to the state. There are indications that not all school districts properly report data, however. There are also indications that not all states or districts collect it appropriately, likely resulting in under-reporting.¹¹¹

D. Training and Other Matters

A number of the deaths and injuries described in the GAO report involved poorly trained or untrained staff.¹¹² Disability Rights California documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year-old child down the hall by his wrists.¹¹³ In Ohio, untrained school staff used life-threatening prone restraint—which was banned by Executive Order years ago—and employed seclusion rooms to punish students for being noncompliant or disrespectful, according to a 2012 Ohio Legal Rights Service investigation. Some parents thought their children were getting therapy when they were being put in seclusion, according to the report.¹¹⁴

There are 25 states with seclusion/restraint laws that require some kind of staff training, although many are fairly minimal. Training requirements vary widely. Therefore, this report does not attempt to catalogue all of them, but only to highlight some of the more significant elements. It is likely that certain training provisions are included in other laws, such as positive behavioral support laws. It would be very difficult to obtain and include all such laws here. Therefore, this report focuses only on the training requirements within seclusion/restraint laws.

¹¹¹ Jordan Fenster, *Connecticut Education Department Data Shows 18,000 Instances of Restraint or Seclusion in 2009-10*, NEW HAVEN REGISTER, Jan. 26, 2012.

¹¹² See H.R. REP. NO. 111-417 at 18.

¹¹³ DISABILITY RIGHTS CALIFORNIA, *RESTRAINT & SECLUSION IN CALIF. SCHOOLS: A FAILING GRADE* (June 2007).

¹¹⁴ Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

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

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.

In the section below, some state training programs are designated “(restraint only).” Georgia bans seclusion; Alabama bans locked seclusion and doesn’t limit seclusion in rooms where the door is blocked shut by furniture; etc. New Hampshire regulates restraint through a newer statute and seclusion through its old special education regulations.

Training in conflict de-escalation and prevention of seclusion/restraint (18 state laws, all children; 23, children with disabilities): Alabama, Colorado, Connecticut^d, Georgia, Illinois, Indiana (2013), Kansas (2013), Kentucky (2013), Massachusetts, Maryland, Maine, Minnesota^d, North Carolina, Nevada^d, Ohio (2013), Oregon, Rhode Island, Tennessee^d, Texas^d, Vermont, Wisconsin, West Virginia, and Wyoming.

Training in positive behavioral support training as part of seclusion/restraint laws (10 state laws, all children; 16, children with disabilities): Alabama, California^d, Georgia, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Minnesota^d, Montana^d (requiring person trained in positive interventions on IEP team), North Carolina, Nevada^d, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, and Wyoming.

Training in safe and appropriate use of seclusion/restraint (15 state laws, all children; 21, children with disabilities): Alabama (restraint only), Colorado, Connecticut^d, Georgia (restraint only), Illinois, Indiana (2013), Iowa, Kentucky (2013), Massachusetts, Maine, Maryland, Minnesota^d, New Hampshire (restraint only), New York^d, North Carolina, Oregon, Rhode Island, Tennessee^d, Texas^d, Vermont, and West Virginia.

Explicit mandate for training related to first aid, signs of medical distress, cardiopulmonary resuscitation or similar issues (6 state laws, all children; 8, children with disabilities): Connecticut^d, Illinois, Maine, Massachusetts, Maryland, Minnesota^d, Rhode Island (part of in-depth training for certain key staff), and Vermont. Some states may implicitly address this through training in “safe use” of the techniques. Nevertheless, when procedures as dangerous as restraint and seclusion are sanctioned, laws should explicitly require basic medical and health training.

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

Training in state, LEA, and school policies and procedures (6 state laws, all children; 8, children with disabilities): Iowa (school only), Kentucky (2013), Massachusetts (school only), Maryland, New York^d, Rhode Island (school only), Tennessee^d (if funding is available for training), and Wyoming (school only).

Certification, proof of proficiency, or periodic re-training required (7 states, all children): 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 (certification).

Some training required but not yet specified: Indiana's (2013) statute requires the state Department of Education to write regulations specifying training requirements. Delaware's statute does not require training, but it orders the state Department of Education to determine which training should be required or recommended.

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

VI. CHANGES IN RESTRAINT/SECLUSION LAW

A. Impact of Congressional Bills on State Action

In December 2009, when Congressman George Miller introduced the first national restraint and seclusion bill, there were 21 states with laws providing some meaningful degree of protection from restraint and seclusion for children with disabilities. There were 9 states that provided meaningful protections against both restraint and seclusion for all children, and 3 that provided mixed protections (some for all children; more for children with disabilities). In late 2011, Senator Harkin introduced the Senate restraint and seclusion bill.

The Congressional bills appear to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws. Today, there are 19 states with some meaningful protections against both seclusion and restraint for all children, and 32 that protect children with disabilities. Many of the states that took action after 2009 incorporated aspects of the

Congressional bills. Unique aspects of the 2011 Harkin bill quickly appeared in statutes and regulations adopted in 2012 and 2013. State laws are not substitutes for a federal law. Many state laws are limited and do not adequately protect children from restraint and seclusion. Other states are still unable or unwilling to adopt or strengthen state laws or regulations.

This section of the report examines state law adoption of some features of the two Congressional bills. These states are referred to below as “post-Congress states” because they took action after Congressman Miller introduced the first national bill in 2009. There are 19 states that have taken significant action incorporating features of the Miller and Harkin bills. There are 13 that adopted new statutes or regulations: Alabama, Delaware (2013), Florida^d, Indiana (2013), Georgia, Kansas (2013), Kentucky (2013), Louisiana^d, Ohio (2013), Vermont, Wisconsin, West Virginia, and Wyoming; and 6 that substantially strengthened theirs: Maine (2013), Minnesota (2013 substantial changes), New Hampshire, Oregon, Tennessee^d, and Washington (2013) Minnesota and Connecticut also revised certain statutory provisions in 2012, but did not overhaul their laws at that time. Still, Connecticut is of note because it adopted a mandatory data collection requirement, a feature of the Congressional bills. Connecticut’s requirement has been highly productive.

19 states have adopted new laws or overhauled old ones to adopt important safeguards in the Miller and Harkin Congressional bills, although many are limited in various ways.

In many of the categories below, the states that took action after the Miller bill was introduced comprise the majority of states in that category. It tends to show that stronger national proposals do impact states; and weaker national proposals could induce states to do far less. Since many states have acted by regulation, they can more easily change their rules than if they had to pass a bill through the legislature and governor. Of the 19 state laws adopted or overhauled since December 2009, 13 apply to all children, an important innovation contained in the Harkin and Miller bills.

Of the post-Congress states, 13 ban the use of physical restraint on children with disabilities except in emergencies threatening physical danger, 11, all children. Both Congressional bills prohibit restraint except in the event of certain physical safety emergencies. Similarly, 12 of the post-Congress states prohibit non-emergency seclusion for children with disabilities; 10, for all children. (One of these bans seclusion for all children.) These new states comprise the majority of states that ban non-emergency seclusion.

Moreover, 15 of the post-Congress states ban mechanical and chemical restraints for all children.¹¹⁵ These make up the majority of states banning either restraint, again demonstrating

¹¹⁵ As noted above, Delaware bans seclusion and mechanical restraints except for those children for whom the provision is waived on a child-by-child basis by the state Department of Education. There are no limits on the waiver, other than the requirement that there be compelling justifications. Each 1% of public school children in Delaware who receive waivers amount to 1,310 children who could be subjected to the procedures.

the Congressional bills' effect. In addition, all 15 states that adopted or substantially revised laws since 2009 have banned restraints that restrict breathing or prone restraint, with 12 applying their laws to all children. (Minnesota and Washington previously had this provision.) The Miller and Harkin bills ban restraints that impede breathing, which by definition includes prone restraint. They also banned mechanical and chemical restraints.

Furthermore, 13 of the post-Congress states permit restraint/seclusion only as a last resort when less restrictive measures would fail for students with disabilities; 11, for all children. In addition, 11 require the intervention to end when the emergency ends for children with disabilities; 10, for all children. The Miller and Harkin bills included both features. The post-Congress states make up nearly half of the states with each provision.

The post-Congress states also largely mimicked the Miller and Harkin provisions on parental notification, with 13 requiring same day or 24 hour parental notification for children with disabilities (9 of these apply to all children). Three more post-Congress states require 1 school day notice. Only Kansas has adopted a 2-school day standard, with Indiana adopting "as soon as possible" and Delaware planning to set the deadline in regulations.

Finally, the Miller and Harkin bills required a robust and effective data collection. Of the recent actors, 14 require some data collection, making up the majority of states that require data to be reported to the state. Of these, 10 apply their rules to all children. In addition, Connecticut^d adopted a mandatory data requirement in 2012. The Miller and Harkin bills required a fuller, more effective data collection to better enable informed decision-making and put sunshine on practices long hidden from view, so as to further prevent use of these dangerous procedures.

The Harkin bill introduced a debriefing, an element quickly adopted in Wisconsin and Maine in 2012, and Kansas, Kentucky, and Washington in 2013. The Harkin bill also proposed forbidding restraints that prevent children from communicating (e.g., communicating physical distress or a medical emergency), a feature adopted by Minnesota^d (2012), Kansas (2013), Kentucky (2013), Ohio (2013) and Delaware (2013). Thus, the majority of states that began the process after the first Harkin bill was introduced mirrored this provision.

The Miller bill requires personnel to provide in-person monitoring of children in seclusion, and allows other continuous visual monitoring of the student only if this is unsafe. But only Vermont copied both elements of this provision. By contrast, 10 require continuous visual monitoring (the most common monitoring requirement in states that have them). In addition, 2 require staff to be "able" to see and hear the student at all times (but not actually to do so at all times); 1 requires continuous supervision; 2 leave it up to the school district; and 1 is silent.

Nevertheless, states have not adopted all elements of the bills that were introduced by Senator Harkin or Representative Miller. No state scheme exactly duplicates the Miller or Harkin bill and some vary significantly in certain respects. Florida's and Arizona's statutes are among the weakest of those adopted in the last four years. They included the fewest features of either bill.

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

This analysis should not be read as suggesting that state laws are effective substitutes for a national bill that would protect all American children. Even the states that took action after the Congressional bills were introduced did not adopt all features of the Congressional bills, and some weakened those features before adopting them. Moreover, only 19 states by law give all children the same level of protection from both restraint and seclusion and less than half require parental notification for all families--clearly showing that the state laws are not effective substitutes for a federal law. Likewise, State nonbinding guidance is no substitute for binding legal protections when the safety of children is at stake. The same is true of any laws that are largely aspirational in nature, requiring states or districts to simply write policies of their own choosing. There is a vast difference between mandating notice to parents within 24 hours, so they can watch for harmful medical consequences, and allowing states or districts to pick any deadline or requirements for parental notice that they like.¹¹⁶

Until there is a federal law, the protection a child receives is still randomly decided by where he/she lives, just as it was in December 2009. A child can move a few miles from Augusta, Georgia to North Augusta, South Carolina, or from Philadelphia to its New Jersey suburbs, and lose his protections entirely.

The danger in leaving choices up to the states is apparent from the recent situation in Connecticut^d. In January 2012, the media reported the existence of "scream rooms" (seclusion rooms) in one district, where parents alleged children were left alone for long periods of time so that they screamed and cried. One news article referred to blood in a room. School officials responded that the rooms were employed regularly only with children with disabilities who had seclusion in their IEPs. When other parents complained of the noise, they simply offered to move the rooms so the noise would be less distracting.¹¹⁷ They said nothing about eliminating the rooms or moving the schools to positive interventions. Nor did they seem to question what they appeared to describe as routine use of the rooms for children with disabilities.

Connecticut implemented stronger data collection in 2012, and found that in the 2011-12 school year, restraint was used in 13,755 incidents state-wide; seclusion, 23,308 incidents, nearly 1.7 times as many. Of these seclusion incidents, 18,147 occurred because seclusion was in an IEP. Connecticut's overly lenient law may have resulted in these higher numbers, because it allows seclusion to be used for any reason as long as it is in an IEP. This creates incentives to add it. Connecticut also leaves many decisions about seclusion up to the IEP team--including whether and why seclusion can be used; monitoring children in the room; room safety issues (heating,

¹¹⁶ See DISABILITY RIGHTS OREGON, KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON'S SCHOOLS (2011) (restraint/seclusion for stapler play and running around room).

¹¹⁷ See, e.g., Julie Stagis, *Middletown: "Scream Rooms" Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 12, 2012; Kathleen Magen, *Experts Call 'Scream Rooms' Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 12, 2012; Lauren Petty, *Parents Protest "Scream Rooms" In Schools*, NBC CONNECTICUT, Jan. 11, 2012.

cooling, unsafe conditions, etc.), and how (or whether) to notify parents.¹¹⁸ By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail, and has a 24 hour notification provision. Restraint cannot simply be added to an IEP for any reason.

B. Provisions That Advance Greater Protections For Children

In Sections I-IV above, this report compared the ways in which different states treat certain elements of seclusion and restraint laws. It was not intended as a comprehensive analysis of all potential elements of a law. A number of other important protections are included in state laws, as described below.

1. Ensuring Children in Restraint/Seclusion Can Communicate

Children must be able to communicate that they are having trouble breathing or are in other medical distress. The GAO documented at least four cases in which verbal children who died in restraint told staff that they could not breathe.¹¹⁹ 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.¹²⁰ Many children with autism and intellectual disabilities also have communications impairments; a number may be unable to speak. Some popular estimates report that up to 25 percent of children with autism cannot speak. These, and other children, may use augmentative communication devices (such as dynamic computerized devices) or use sign language. Children who speak languages other than English need staff who can understand their language if they experience medical distress.

It is dangerous to restrain children who cannot talk in ways that prevent them from communicating danger. The GAO documented 4 verbal children who told staff they could not breathe and later died.

To ensure that students who cannot speak can communicate medical distress, a number of states forbid restraint and seclusion from impairing communication in the child's primary language. Some examples include:

- Colorado: "No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating." (Colorado defines restraint to include seclusion.)
- Iowa: "If an employee physically restrains a student who uses sign language or an

¹¹⁸ See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

¹¹⁹ GAO REPORT at 14, 16-17, 26, 29.

¹²⁰ 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).

augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others."

- Maryland: "In applying physical restraint, school personnel may not . . . '(ii) Place a student in any other position that will...restrict a student's ability to communicate distress.'"
- Minnesota (2012): Forbids "physical holding that...restricts or impairs a child's ability to communicate distress . . ."
- Kansas (2013): LEAs shall adopt "policies and procedures [that] shall prohibit the following. . . or any physical restraint that impacts a student's primary mode of communication."
- Delaware (2013): Physical restraints shall "not interfere with the student's ability to communicate in the student's primary language or mode of communication."

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

2. 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 applied 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.¹²¹

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, the school should not use a more forceful, hazardous 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

¹²¹ Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

reasonable force as necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.”

- Texas: “Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.”
- Nevada: “The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.”
- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”
- Kentucky (2013): “When implementing a physical restraint, school personnel shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.”

For comparison, the bill introduced by Senator Harkin provided that staff should use only the amount of force necessary to protect the student or others from the threatened injury.

3. Medical and Psychological Contraindications

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

- Georgia (2010): “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 (2011): 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 (2011): “A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.”
- Kentucky (2013): School personnel shall not impose the following on any student. . .

Physical restraint if they know that physical restraint is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition.

Similarly, Senator Harkin's bill would bar restraints that are contraindicated due to the student's disability, health care needs, or medical or psychiatric condition.

4. Anti-Retaliation Clause

Many incidents of restraint and seclusion are reported by teachers and staff. In doing so, some may risk their jobs. Other incidents are reported by parents, children, and advocates. All could have faced retaliation. Several of these situations are described in the footnote.¹²²

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

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

VII. CONCLUSION

It has been more than 4 years since the first national restraint/seclusion bill was introduced. But only 19 states have meaningful protections for all children from both restraint and seclusion by law. Even among the states with meaningful laws, state requirements vary widely. Only 14 states by law limit restraint to emergencies threatening physical harm for all children; 18, for children with disabilities. Only 11 states protect all children from non-emergency seclusion; 17, children with disabilities. The majority of states do not ban restraints that impede breathing or harmful chemical or mechanical restraints. Only 19 states require parents of all children to even be told that their child was restrained or secluded. Even with the federal and state action, each week brings additional media reports of restraint and seclusion. Abusive interventions are

¹²² Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 (teacher informed administrators of another teacher's abuse); James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009 (second teacher freed child from restraint in locked, darkened room); Katie Mulvaney, *Block Island Officials Defend Room in School Basement*, RHODE ISLAND PROVIDENCE J., June 14, 2008 (individual who disclosed existence of locked seclusion room by DVD feared retribution and requested anonymity); Jessica Butler, UNSAFE IN THE SCHOOLHOUSE (Appendix). In one case, staff members reported a Mississippi special education teacher and paraprofessional who duct-taped a teen with autism to a chair and restrained a blind teen under a desk. The teacher who committed the offenses pled guilty to false imprisonment. The paraprofessional involved in the events was not prosecuted in exchange for offering testimony against the teacher that led to the guilty plea. The prosecutor explained, "[P]eople without a voice have been heard from. They've been protected." Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011.

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 JAN. 12, 2014

This report has focused on state restraint and seclusion laws and policies in force and applicable to children in elementary and secondary schools. Statutes and regulations were given priority since they are legally binding and have the force of law. The following were excluded from consideration: proposed bills, regulations, and guidance that were never enacted; nonbinding guidance applicable only to limited groups of children (*e.g.* children with certain disabilities or in certain kinds of classrooms); and laws applicable only to private schools and institutions but not to public elementary and secondary schools. If a state previously had a nonbinding policy and later adopted a statute or regulation, priority was given to the statutes and regulations because they are legally binding and create mandatory protections.¹²³

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

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

ALASKA. Alaska has regulations providing minimal (very weak) protections against restraint. Alaska law is silent on seclusion. ALASKA ADMIN. CODE tit. 4, §§ 07.010 to 07.900. In addition, in 2013, Alaska included some voluntary guidelines as part of its Special Education Handbook. These had been released in draft form in 2012 and were finalized in 2013. State of Alaska Dept. of Educ. & Early Devel., SPECIAL EDUCATION HANDBOOK, 145-146 (2013).

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

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

¹²³ In addition, searches were performed of the statutes, administrative regulations, and state Department of Education websites for Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. No materials in force were found.

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

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

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

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

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

GEORGIA. In 2010, Georgia adopted meaningful protections against seclusion and restraint by regulation. GA. COMP. R. & REGS. r. 160-5-1-.35. More information about the binding regulation is contained in GEORGIA DEPT. OF EDUC., GUIDANCE FOR STATE BOARD OF EDUCATION RULE 160-5-1-.35 SECLUSION AND RESTRAINT FOR ALL STUDENTS, Apr. 20, 2012.

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

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

Education's 2012 Restraint and Seclusion Resource Document. IDAHO STATE DEPT. OF EDUC., IDAHO PART B ANNUAL PERFORMANCE REPORT, FFY 2011 (May 15, 2013).

ILLINOIS. Illinois has meaningful protections against seclusion and restraint in statute and regulation. 105 ILL. COMP. STAT. § 5/10-20.33; ILL. ADMIN. CODE tit. 23, § 1.285.

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

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

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

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

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

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

annual information to be provided to staff. Maine also has nonbinding guidance explaining its regulations, MAINE DEPT. OF EDUC., RULE CHAPTER 33 RULE GOVERNING PHYSICAL RESTRAINT AND SECLUSION, NON-REGULATORY GUIDANCE (Aug. 2013).

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

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

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

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

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

MONTANA. Montana has meaningful protections against seclusion and restraint in regulation. MONT. ADMIN. R. 10.16.3346 (amended 2010). Montana published guidance, *Aversive Treatment Procedures*, in 2001. This guidance 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. In 2012, Nebraska adopted very weak regulations requiring each school system to adopt some kind of policy regarding restraint and seclusion (without specifying any requirements). NEBRASKA ADMIN. CODE, tit. 92, Rule 10, § 011.01E (adopted 2012). Nebraska also has nonbinding guidelines written in 2010. REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS, A TECHNICAL ASSISTANCE DOCUMENT (Nebraska Dept. of Educ. 2010).

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

NEW HAMPSHIRE. New Hampshire has meaningful protections against restraint in statute for all children, and against seclusion for children with disabilities in regulation. N.H. REV. STAT. ANN. §§ 126-U:1- 126-U:13; 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 for all children. 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 lacks a statute, regulation, or guidance specific to schools and restraint/seclusion. A bill, Matthews Law, has failed in each legislative session.

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

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

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

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

OHIO. Ohio has a regulation, nonbinding policy, and administrative order. OHIO ADMIN CODE § 3301-35-15 (comprehensive restraint/seclusion regulation adopted April 9, 2013); OHIO ADMIN CODE 3301-35-06; OHIO DEPT. OF EDUC., STATE BD. OF EDUC., POLICY ON POSITIVE BEHAVIOR INTERVENTIONS AND SUPPORT, AND RESTRAINT AND SECLUSION (2013); OHIO EXEC. ORDER No. 2009-13S (AUG. 3, 2009). The regulations and policy update the Executive Order.

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

OREGON. Oregon has meaningful protections against seclusion and restraint in statute. OR. REV. STAT. § 339.250 (Aug. 2011; 2011 OREGON LAWS CHAP. 665). New regulations were promulgated in 2012, OR. ADMIN. R. 581-021-0019 (2012). The 2011 statute superceded Oregon's previous regulations from 2007. In 2013, Oregon made three statutory changes to its law, banning free-standing seclusion cells; created a state-level complaint process; and eliminating a 2017 sunset provision in its earlier-adopted statute. 2013 OREGON LAWS CHAPS. 30, 130, 650. Oregon has

drafted proposed regulations under the new statutes but has not finally promulgated them. See State Bd. of Ed, Admin. Rule Summary (Oct. 7, 2013).

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

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

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

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

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

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

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

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

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

WASHINGTON. Washington has meaningful protections against seclusion and restraint in regulations. WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135. It also has a "last resort" requirement for "aversives" (including seclusion and restraint) in WASH. ADMIN. CODE

§ 392-172A-03110. Washington enacted a parental notification statute in 2013, 2013 WASH. LAWS CHAP. 202. It also amended its regulations effective Oct. 25, 2013, WSR 13-20-034.

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 (January 2014)

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. The charts are listed below under the Report Section to which they correspond.

II. PATCHWORK OF STATE PROTECTIONS AGAINST SECLUSION/RESTRAINT

- Chart: Does State Have Law Providing Meaningful Protection Against Restraint/Seclusion for All Children/Children with Disabilities?
- Map: 17 States Have Meaningful Protections By Law for All Children
- Map: 30 States Have Meaningful Protections By Law for Children with Disabilities

III. SECLUSION/ RESTRAINT AS EMERGENCY INTERVENTIONS

- Chart: Is Restraint Limited to Immediate Emergency Threats to Physical Safety or Allowed for Non-Emergencies?
- Map: States Limiting Restraint to Emergency Threats of Physical Danger
- Map: Only 12 States Limit Restraint of All Children to Emergency Threats of Physical Danger. (All Children)
- Chart: How Is Seclusion Defined, and Is It Banned?
- Chart: Is Seclusion Banned or Limited to Emergencies Involving Immediate Threats to Physical Safety?
- Map: Most States Would Define Seclusion as Rooms/Spaces Child Cannot Exit
- Map: States that Ban Seclusion or Limit it to Physical Danger Emergencies (All Children)
- Map: States that Ban Seclusion or Limit it to Physical Danger Emergencies (Children with Disabilities)
- Map: State Bans Seclusion or Requires Continuous Visual Monitoring (All Children)
- Map: State Bans Seclusion or Requires Continuous Visual Monitoring (Children with Disabilities)
- Map: By Law, Less Restrictive Measures Must Fail/Be Deemed Ineffective
- Map: By Law, Must End when the Emergency Ends

IV. OTHER LIMITS ON RESTRAINT AND SECLUSION

- Chart: State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint
- Map: State Law Bans Either Restraints that Impair Breathing or Prone Restraint for All Children (for color printers only)
- Map: State Law Bans Either Restraints that Impair Breathing or Prone Restraint for All Children (for black/white printers)
- Map: State Law Bans Either Restraints that Impair Breathing or Prone Restraint for Children with Disabilities (for color printers only)
- Map: State Law Bans Either Restraints that Impair Breathing or Prone Restraint for Children with Disabilities (for black/white printers only)

- Map: States that Ban or Limit Mechanical Restraint By Law
- Map: Chemical Restraint is Prohibited or Restricted By Law

V. 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 (All Children)
- Map: State Laws Requiring Steps to Notify Parent on Same Day, Within 24 Hours, or Within One School Day (Children with Disabilities)
- Map: Most States with Laws/Policies Support Notifying Parents Within 1 Day or Less
- Map: State Laws Require Collection and Reporting of Data to State
- Map: By Law, Data Collection & Reporting Required at Some Level, Demonstrating Ease of Reporting Data

VI. CHANGES IN RESTRAINT/SECLUSION LAW

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

In prior editions, a summary of each state's seclusion and restraint laws followed the maps and charts. It was designed to let readers look up a brief summary of the state's laws and policies. This information is now provided in a more easily-readable format in *My State's Seclusion & Restraint Laws* (<http://www.autcom.org/pdf/MyStateRestraintSeclusionLaws.pdf>)

The *My State* report, published each summer, provides the brief highlights of the major features of each state's law or policy. It is primarily designed for parents and advocates who simply want to quickly look up their state's rules. It does not address all features of a state's law, as this report does.

Important Notes About the Maps

1. Some maps that seem similar are marked Color Printer or Black/White Printer. The Black/White maps use inexpertly-added slashes for very light colors so as to reproduce properly when photocopied in black/white. The Color Printer documents are better for color printers or for using in presentations, publications, etc. where color is easily shown.
2. If you wish to use and credit the maps in another way because of your publication's needs, please contact me to discuss. I am happy to discuss with you.
3. I recognize that individuals or organizations may want to use a few of the maps. Please feel free to copy and distribute 1-4 maps without asking further. If you want to use more than 4, or you want to extract information from this report to make your own maps, please read page i, which contains the copyright information. Please contact me and we can discuss permission for doing this. This report took a great deal of work and research on my part.
4. If a state is shown as white on a map, it does not have a relevant law or regulation.
5. Again, all information in the maps and charts is in the text. Some people need visual aids to better understand information. Some people need text. This report provides both.

**Does State Have A Law Providing Meaningful Protections and Who Does It Cover?
(Effective Jan. 12, 2014)**

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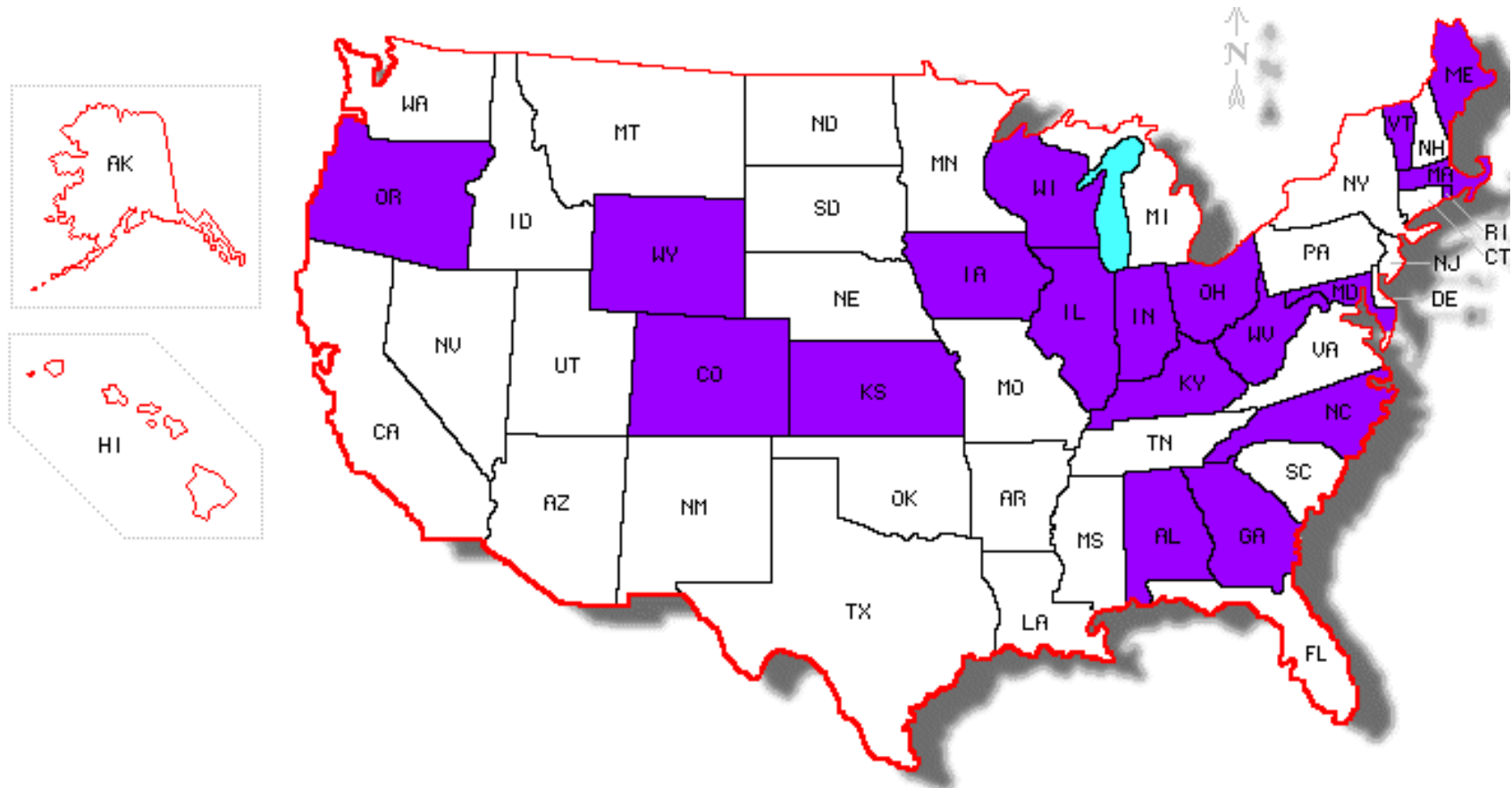
For information on copying and sharing, please see page i for more instructions. Please do not remove my name and email address from the charts.

	All Students	Students w/Disabilities	Other
AK			Weak Law-All Children. Permits restraint for physical harm, property destruction, educational disruption. No safeguards. Nonbinding suggested guidelines for childrens with disabilities. Guidelines not law; can be easily changed.
AL	Meaningful Law	<i>Included in All Children's Law</i>	
AR			Meaningful Law Applicable to Only One Procedure (Seclusion)
AZ			Weak Law, requiring parental notice; permitting seclusion for any reason with parent consent or in physical danger emergency; no limitations on restraint.
CA		Meaningful Law	
CO	Meaningful Law	<i>Included in All Children's Law</i>	
CT		Meaningful Law	
DC			Weak Reg (bans "unreasonable restraint"). <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
DE	Meaningful Law (2013)		
FL		Meaningful Law	
GA	Meaningful Law	<i>Included in All Children's Law</i>	
HI			Weak Law; Authorizes conduct rather than protects students.
IA	Meaningful Law	<i>Included in All Children's Law</i>	
ID			Nothing

	All Students	Students w/Disabilities	Other
IL	Meaningful Law	<i>Included in All Children's Law</i>	
IN	Meaningful Law (2013)		
KS	Meaningful Law (2013)	<i>Included in All Children's Law</i>	
KY	Meaningful Law (2013)	<i>Included in All Children's Law</i>	
LA		Meaningful Law	
MA	Meaningful Law	<i>Included in All Children's Law</i>	
MD	Meaningful Law	<i>Included in All Children's Law</i>	
ME	Meaningful Law	<i>Included in All Children's Law</i>	
MI			Weak Law (restraint only; force purpose) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MN		Meaningful Law	
MO			Weak Law (unlocked, unattended seclusion while awaiting law enforcement) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MS			Nothing
MT		Meaningful Law	
NC	Meaningful Law	<i>Included in All Children's Law</i>	
ND			Nothing
NE			<i>Weak regulation requires LEAs to adopt a policy, but does not require anything in it. Nonbinding Guidance (Not Law; easily changed by state)</i>
NH	Meaningful Statute (Restraint Only)	Meaningful Regulation (Seclusion Only)	
NJ			Nothing
NV		Meaningful Law	

	All Students	Students w/Disabilities	Other
NY	some protections for all children, but not as full as those for children with disabilities	Meaningful Law	
OH	Meaningful Law (2013)	<i>Included in All Children's Law</i>	Also meaningful Exec. Order applicable to physical restraint.
OK			<i>Nonbinding Guidance (Not Law; easily changed by state)</i>
OR	Meaningful Law	<i>Included in All Children's Law</i>	
PA		Meaningful Law	
RI	Meaningful Law	<i>Included in All Children's Law</i>	
SC			<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
SD			Nothing
TN		Meaningful Law	
TX		Meaningful Law	
UT			<i>Nonbinding Guidance (Not Law; easily changed by state). Weak law requires reference to guidelines. Another law requires parental notice.</i>
VA			<i>Nonbinding Guidance (Not Law; easily changed by state)</i>
VT	Meaningful Law	<i>Included in All Children's Law</i>	
WA	Some protections for all children, but not as full as those for children with disabilities. Law amended in 2013.	Meaningful Law	
WI	Meaningful Law	<i>Included in All Children's Law</i>	
WV	Meaningful Law	<i>Included in All Children's Law</i>	
WY	Meaningful Law	<i>Included in All Children's Law</i>	
	[*] New Hampshire is counted in each column, as it has a restraint statute for all children and a seclusion provision in its special education regulations for children with disabilities		

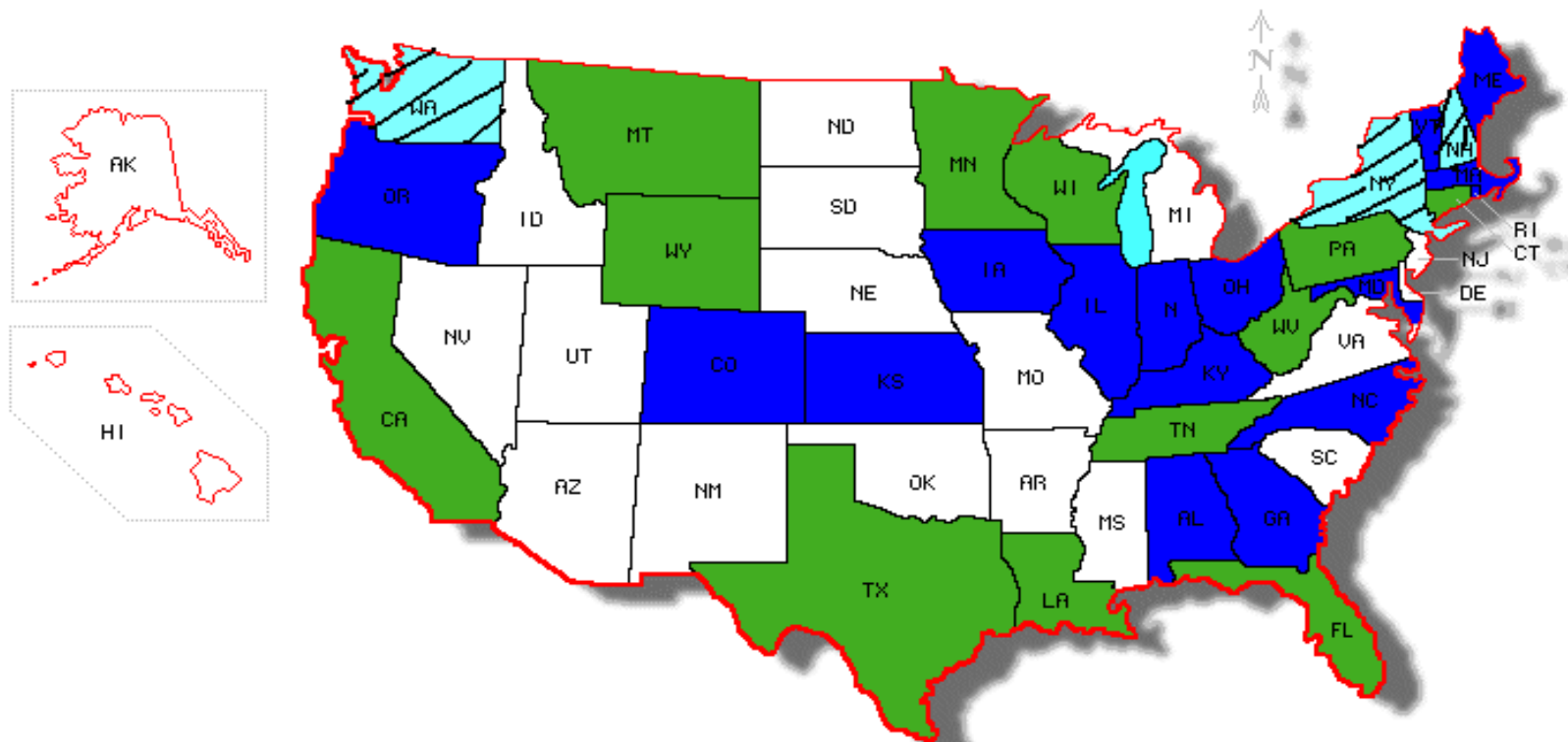
States with Meaningful Protections by Law for All Children (Jan. 12, 2014)



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

White: State does not have meaningful protections in law against restraint/seclusion for all children.

**States with Meaningful Protections by Law from
Both Restraint and Seclusion for Children with Disabilities (Jan. 12, 2014)**



Is Restraint Limited to Immediate Emergency Threats to Physical Safety By Law? (Effective Jan. 12, 2014)

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	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
AK					ALL	
AL	ALL					
AR						
AZ						
CA						D- (CA permits use of restraint in non-emergencies with little limitation due to law's wording)
CO	ALL					
CT	D					
DE	ALL					
DC	<i>Voluntary Guidance - Not law - Can Change</i>					
FL						statute silent, incident reports refer to physical harm
GA	ALL					
HI						
IA					ALL	
ID						
IL	ALL					
IN	ALL					

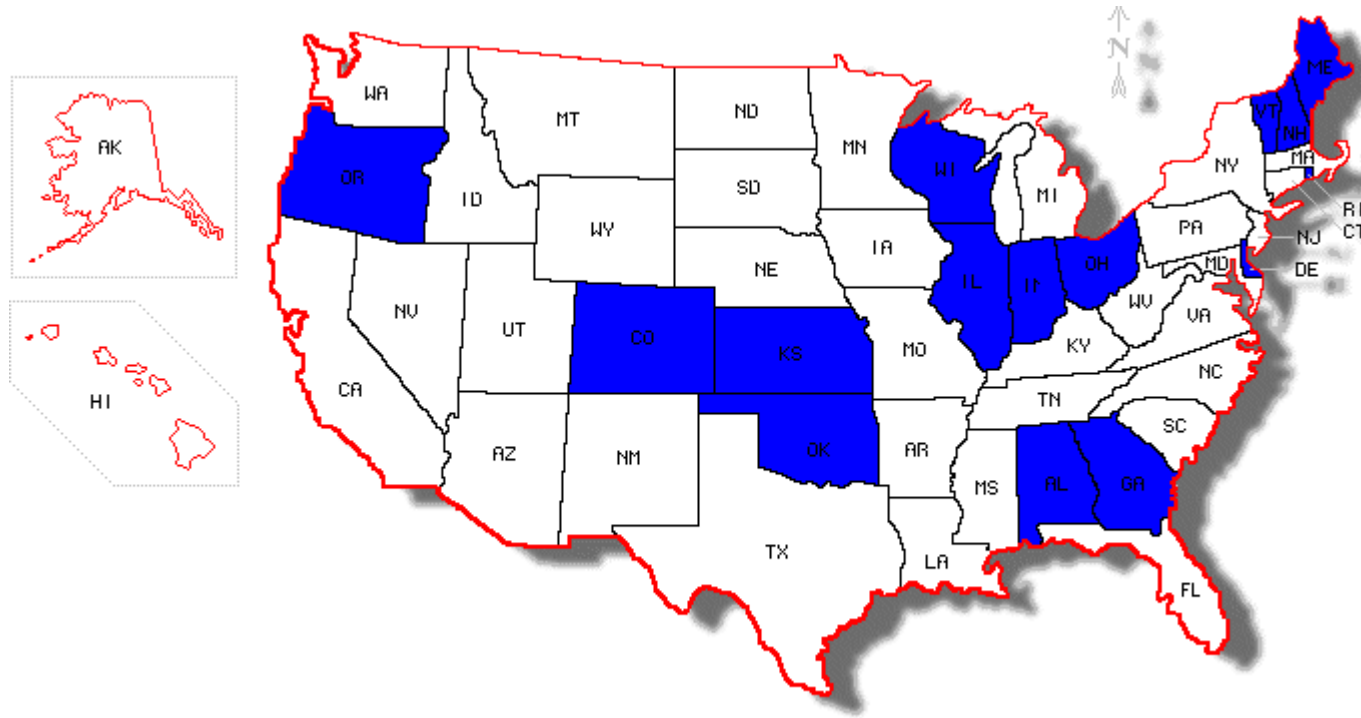
Is Restraint Limited to Physical Danger Emergencies?

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
KS	ALL					
KY						ALL (2013) - see report; certain defenses apply in criminal context
LA	D					
MA		ALL				
MD		ALL				
ME	ALL					
MI					ALL	
MN						D (2012) - see report; possible unintended loophole
MO						<i>Voluntary Guidance - Not law - Can Change</i>
MS						
MT					D	
NC						ALL; permits for any reason if in IEP/BIP, even if no danger, as well as phys. harm, prop. destruc., and educ. disrupt.
ND						
NE	<i>Voluntary Guidance - Not law - Can Change</i>					
NH	ALL					

Is Restraint Limited to Physical Danger Emergencies?

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
NJ						
NM				<i>D only - Voluntary Guidance - Not law - Can Change</i>		
NV			D			
NY					ALL	
OH	ALL					
OK	<i>Voluntary Guidance - Not law - Can Change</i>					
OR	ALL					
PA	D					
RI	ALL					
SC	<i>Voluntary Guidance - Not law - Can Change</i>					
SD						
TN	D					
TX			D			
UT			<i>Voluntary Guidance - Not law - Can Change</i>			
VA	<i>Voluntary Guidance - Not law - Can Change</i>					
VT	ALL					
WA					D	
WI	ALL					
WV			ALL			
WY						

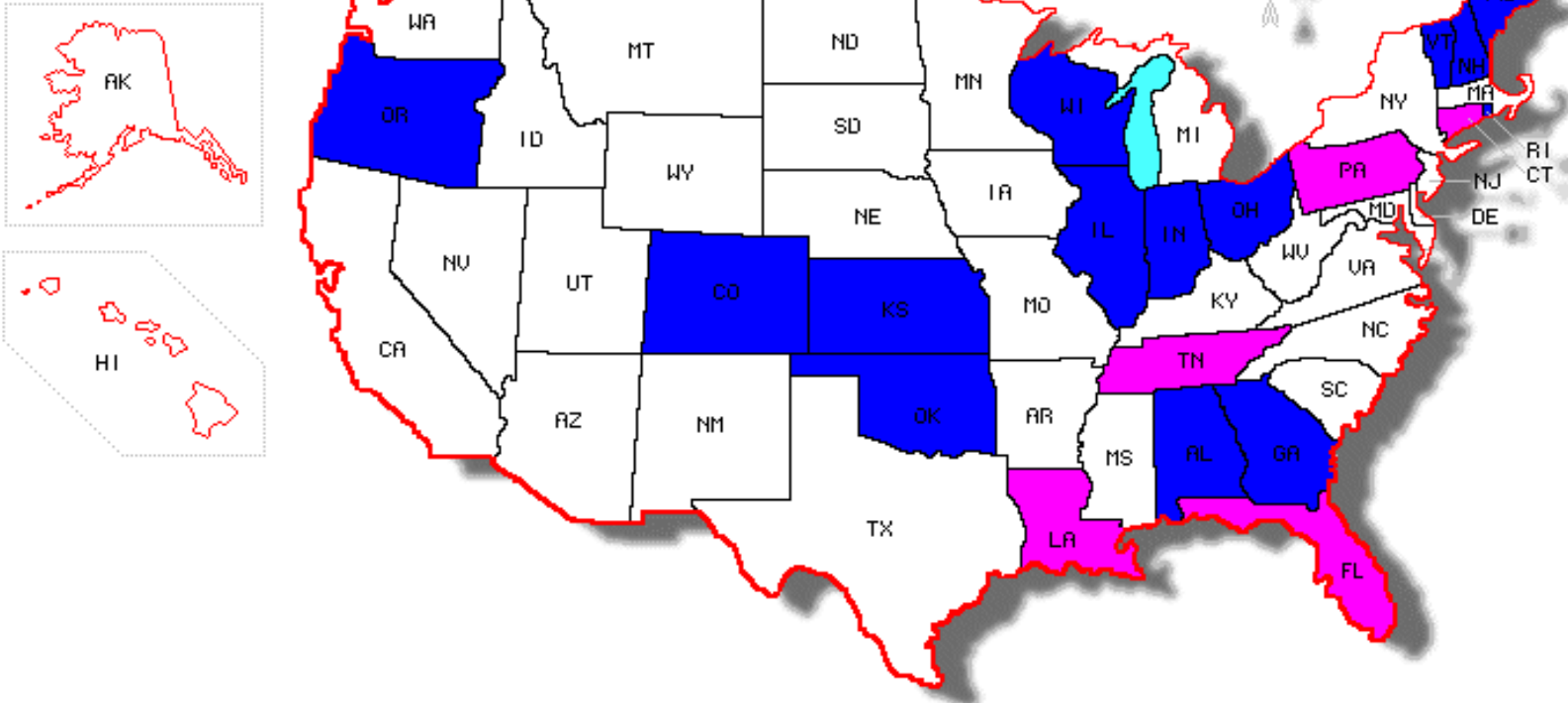
**States Limiting Restraint of All Children to
Emergencies Threatening Physical Danger (Jan. 12, 2014)**



Of these states, New Hampshire, Oregon, and Rhode Island apply a serious physical danger standard; the others apply a physical danger/harm standard.

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States Limiting Restraint to Emergency Threats of Physical Harm:
Only 13 States (All Children) and 18 states (Children with Disabilities) (Jan. 12, 2014)



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

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

Of these states, Louisiana [d], New Hampshire, Oregon, Rhode Island, and Florida (implicitly) apply a serious physical danger standard; the others apply a physical danger/harm standard.

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How is Seclusion Defined, and Is It Banned? (Effective Jan. 12, 2014)

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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 Rooms from which egress is prevented (e.g. locked, blocked by furniture, etc.)	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion in Seclusion Law or Policy (This chart does not discuss fire codes)
AK	<i>D- Voluntary Guidance - Not law - Can Change</i>			
AL			ALL	ALL
AR				D
AZ	AZ defines seclusion as confinement alone in an enclosed space			
CA			D	D (except certain licensed facilities)
CO	ALL			
CT	D			
DE	ALL			
DC	<i>Voluntary Guidance - Not law - Can Change</i>			
FL			D	
GA	ALL	Total Ban		
HI				
IA	ALL			
ID				
IL	ALL			
IN	ALL			
KS	ALL			
KY	ALL	ALL		
LA	D			
MA	ALL (if child lacks staff "access")			
MD	ALL (if alone)			
ME	ALL			ALL
MI	<i>Voluntary Guidance - Not law - Can Change</i>			
MN	D			
MO	<i>Voluntary Guidance - Not law - Can Change</i>			
MS				

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

Is Seclusion Banned or Limited to Emergencies Involving Immediate Threats to Physical Safety? (Effective Jan. 12, 2014)

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

	Bans Seclusion	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP for any reason (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing it as per IEP or BIP
AK		<i>Voluntary Guidance - Not law - Can Change</i>				
AL						ALL (bans locked seclusion; no limits on seclusion where door is blocked by furniture, equipment, staff, childproofing, etc.)
AR					D (but only "severe" educ. disrupt.)	
AZ						
CA						D (CA permits use of seclusion in non-emergencies with little limitation due to law's wording)
CO		ALL				
CT			D			
DE		2013 statute bans but allows State Dept. of Ed to waive with little limitation				

	Bans Seclusion	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP for any reason (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing it as per IEP or BIP
DC		<i>Voluntary Guidance - Not law - Can Change</i>				
FL						statute silent, incident reports refer to physical harm
GA	ALL					
HI						
IA					ALL	
ID						
IL					ALL	
IN		ALL				
KS		ALL				
KY		ALL				
LA						
MA						ALL [1]
MD			ALL			
ME		ALL				
MI		<i>Voluntary Guidance - Not law - Can Change</i>				
MN		D				
MO						Ban on seclusion alone in a locked room unless awaiting law enforcement. <i>Other forms of seclusion handled in voluntary guidance.</i>
MS						

	Bans Seclusion	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP for any reason (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing it as per IEP or BIP
MT					D	
NC						ALL
ND						
NE		<i>Voluntary Guidance - Not law - Can Change</i>				
NH						D [2]
NJ						
NM						<i>ALL - Voluntary Guidance - Not law - Can Change. Considers seclusion legit. behavior modif. technique.</i>
NV	D					
NY					D	
OH		ALL				
OK		<i>Voluntary Guidance - Not law - Can Change</i>				
OR						
PA	D					
RI						ALL [3]
SC		<i>Voluntary Guidance - Not law - Can Change</i>				
SD						
TN		D				
TX	D					

	Bans Seclusion	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP for any reason (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing it as per IEP or BIP
UT				<i>Voluntary Guidance - Not law - Can Change</i>		
VA		<i>Voluntary Guidance - Not law - Can Change</i>				
VT		ALL				
WA						Seclusion for danger to physical harm, property, or disruption not regulated by state
WI		ALL				
WV						ALL [4]
WY		ALL				

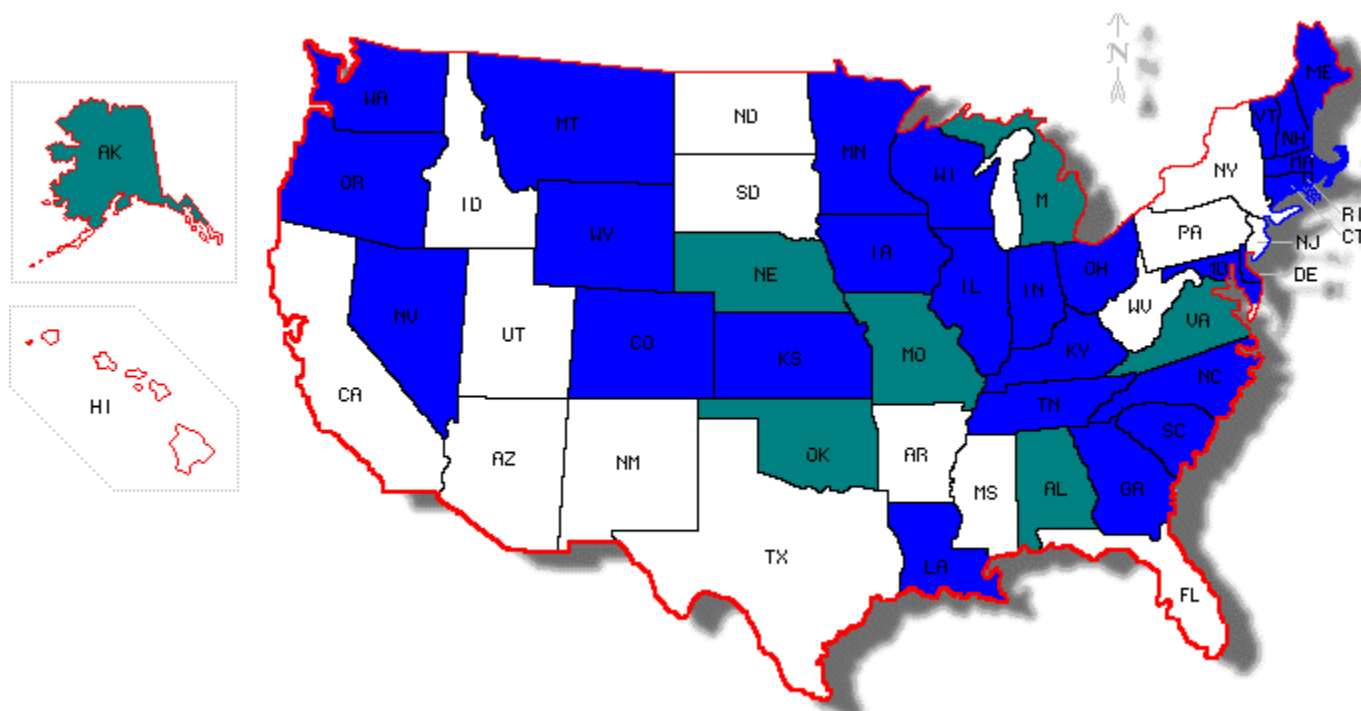
Notes: [1] MA forbids locking children in rooms without access to "staff." If staff is accessible (perhaps by call or signal), MA does not regulate the rooms or limit the reasons they can be used.

[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.

32 States Would Define Seclusion as Rooms/Spaces Child Cannot Exit (Jan. 12, 2014)

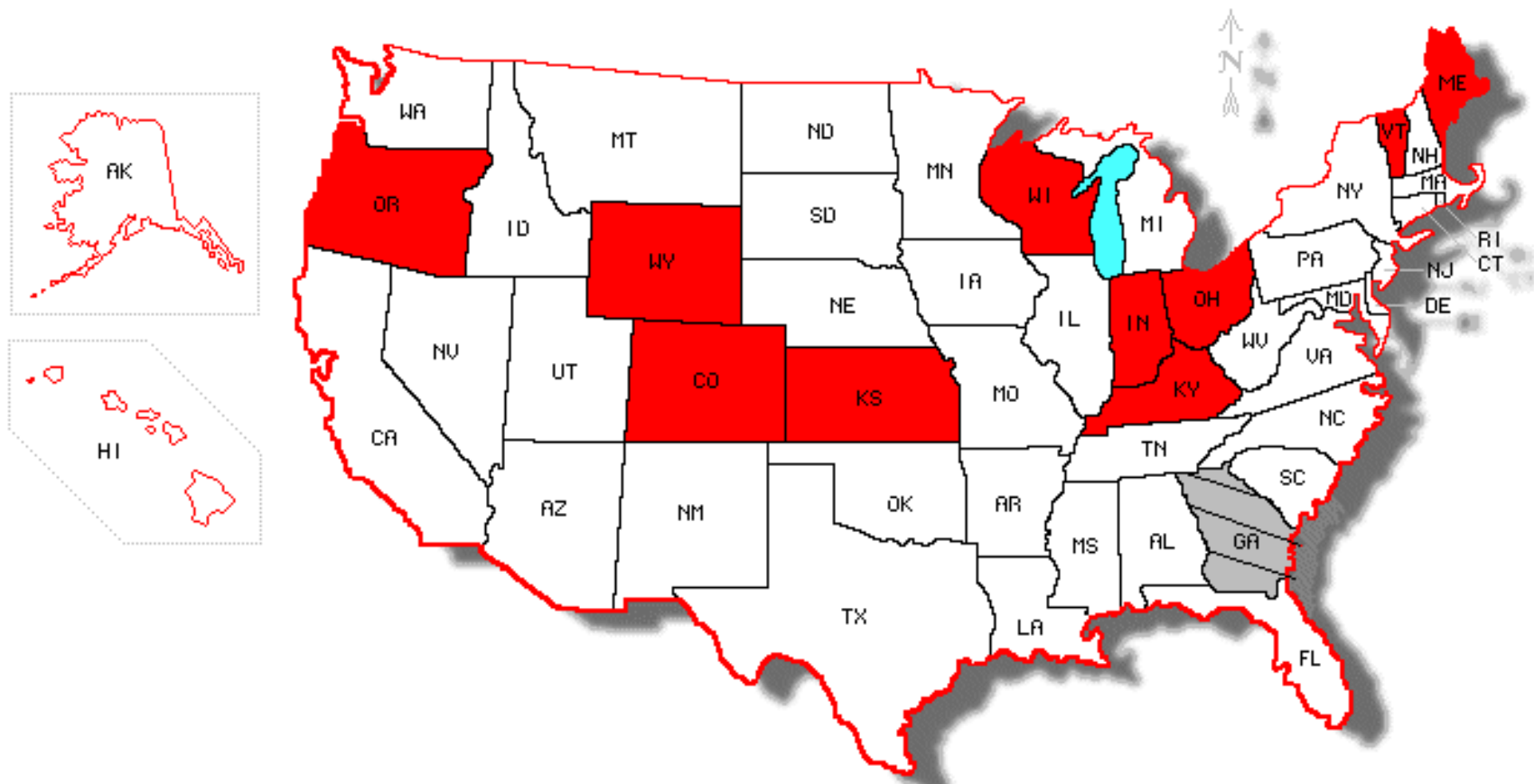


Blue (dark): By law, seclusion is defined as rooms/spaces child prevented from exiting

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

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**States that Ban Seclusion or Limit it to
Physical Danger Emergencies for All Children (Jan. 12, 2014)**



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

Grey (light, slashes): By law, seclusion is banned for all children. In this map, this is only Georgia.

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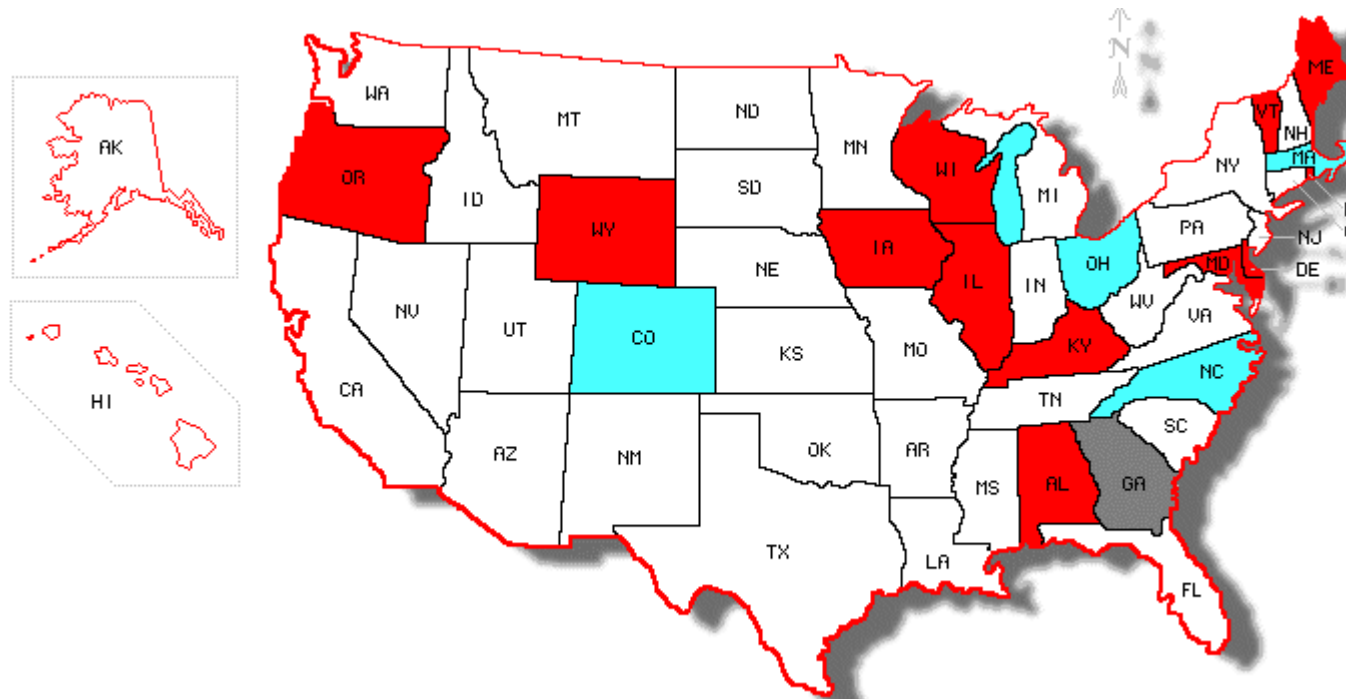
Brown (dark): By law, seclusion is banned for all children for children with disabilities.

Florida was removed from this category in 2014 because its law is silent. See report at footnote 35 and accompanying text for explanation.

Please note that some of these laws apply to all children and so include children with disabilities.

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**States that Ban Seclusion or Require
Continuous Visual Monitoring of All Children (Jan. 12, 2014)**



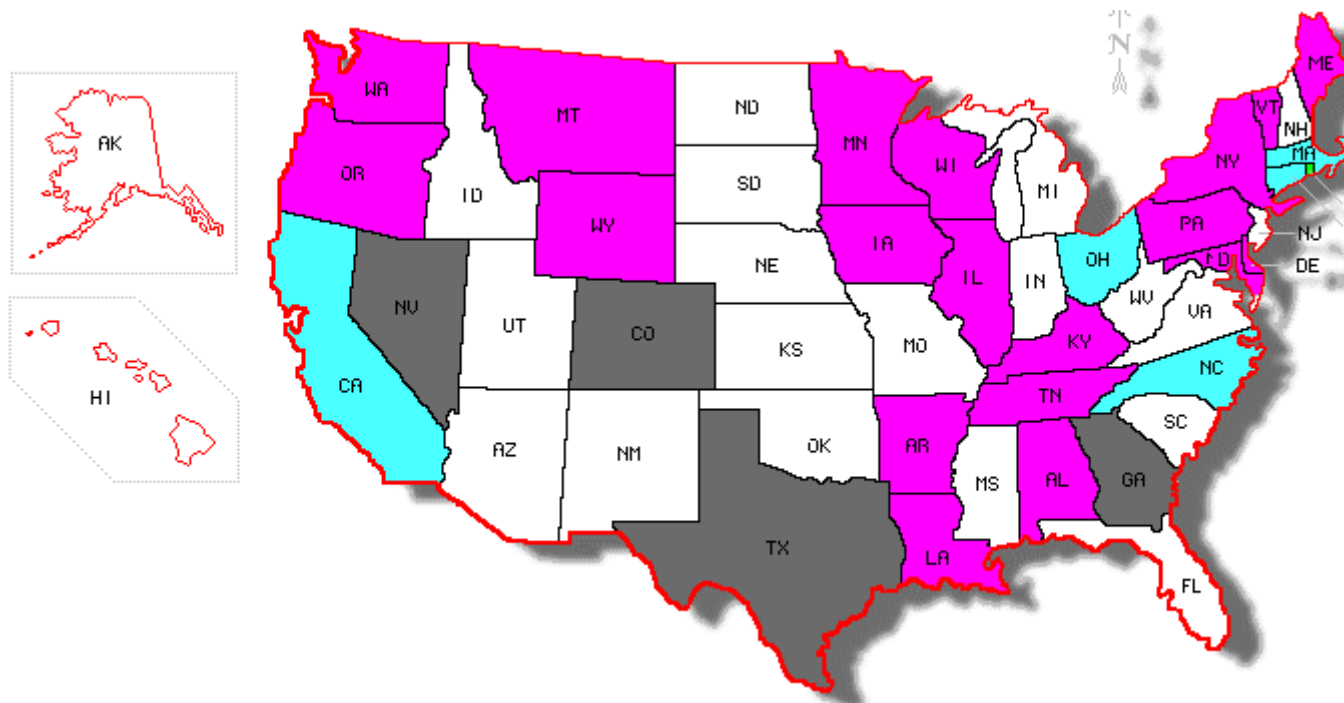
Red (Dark): By law, Continuous Observation of seclusion of all children is required to prevent children from harming themselves. Children have been harmed in seclusion when staff did not monitor or monitored by being outside and checking inside the room occasionally.

Cyan (Light) State has some form of monitoring, but does not require staff to continuously watch the child in the room. These can include “reasonable” monitoring and similar standards. (Ohio, Mass., N.C., Colo.)

Grey (Medium): By law, seclusion is banned for all children.

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**States that Ban Seclusion or Require
Continuous Visual Observation of Children with Disabilities in Seclusion (Jan. 12, 2014)**



Pink (medium): By law, continuous observation of seclusion of children with disabilities is required to prevent children from harming themselves. Children have been harmed in seclusion when staff did not monitor or monitored by sitting outside and checking inside the room occasionally.

Grey (dark): By law, seclusion is banned for children with disabilities.

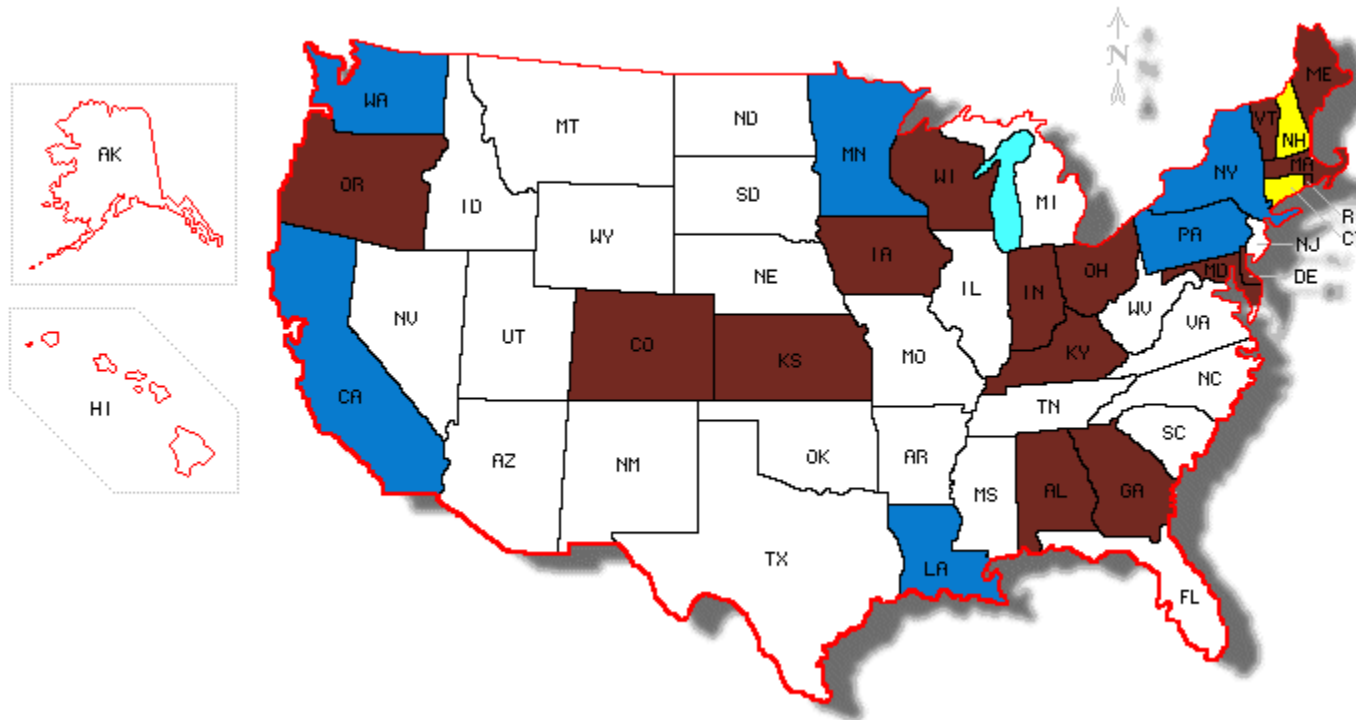
Cyan (light): State has some form of monitoring, but does not require staff to continuously watch the child in the room (e.g., “reasonable” monitoring or “access” to staff).

Please note that some of these laws apply to all children and so include children with disabilities.

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**Restraint & Seclusion Cannot be Used if Less Restrictive Interventions
Would Resolve the Issue (Jan. 12, 2014)**

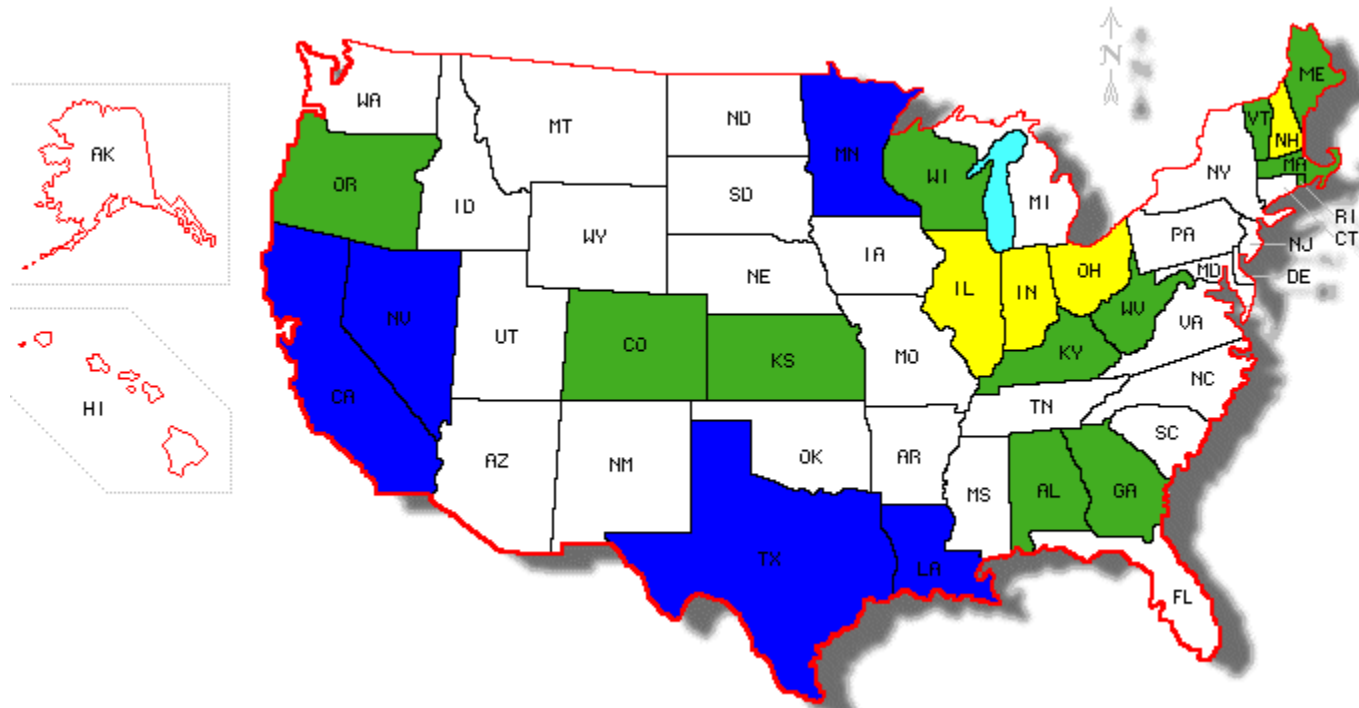
(i.e., state requires less restrictive interventions to fail or be deemed ineffective first)



Brown (Dark): By law, less restrictive methods must fail or be deemed ineffective before S/R are used (all children)
Blue (Medium): By law, less restrictive methods must fail/be deemed ineffective before S/R are used (children w/disabilities only).
Yellow (Lightest): CT and NH require less restrictive methods to fail or be deemed ineffective before restraint is used. But seclusion can be used even if less restrictive methods have not failed or been deemed ineffective.

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By Law, the Intervention Must End When the Emergency Ends (Jan. 12, 2014)



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

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

Yellow (Lightest): IL and NH require restraint to end when the emergency ends, but permit seclusion to last for a longer time period. OH (2013) requires seclusion to end when the emergency ends but has no such language applicable to restraint. IN requires both to end when the emergency ends or after a brief period (currently undefined; may be defined in forthcoming regulations).

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State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint (Effective Jan. 12, 2014)

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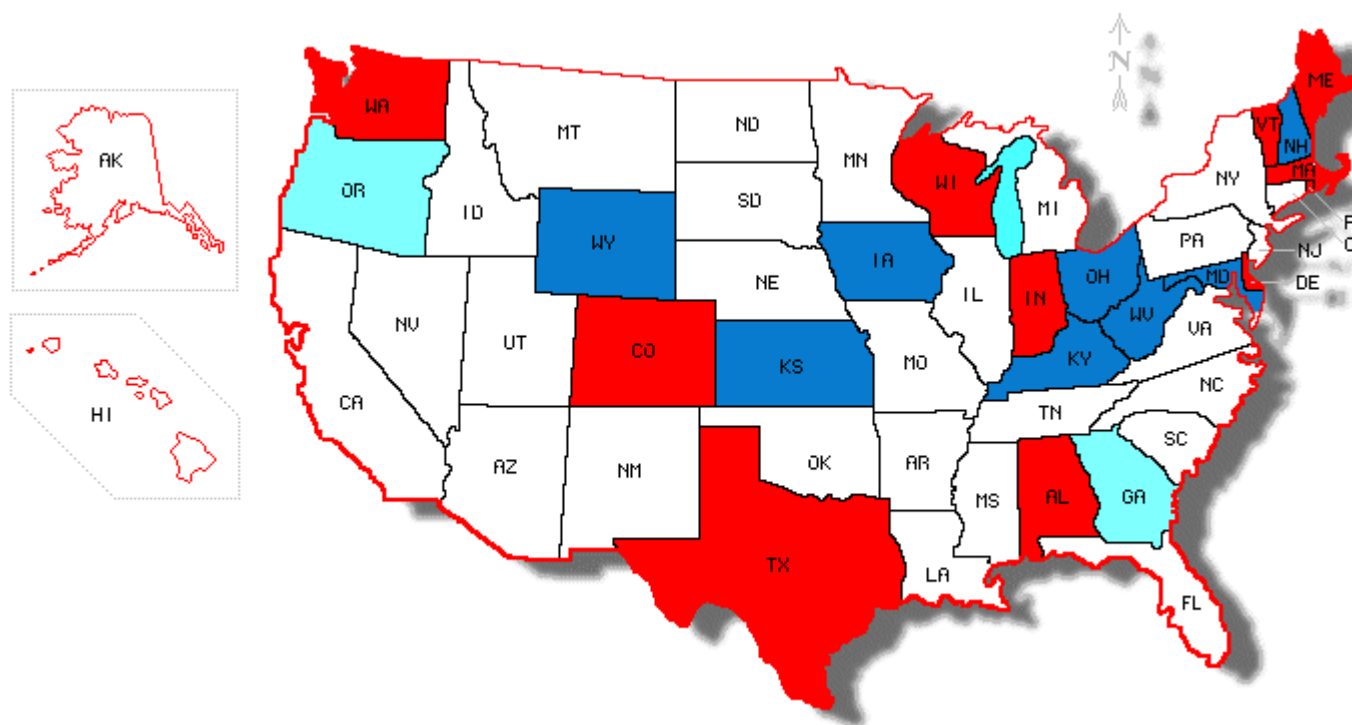
Please see page i for instructions about copying and/or sharing. Please do not remove my name and email address from the charts. D means Children with Disabilities Only; ALL Means All Children.

	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
AK				
AL	ALL-Ban		ALL-Ban	ALL-Ban
AR				
AZ				
CA				
CO	ALL-Ban		ALL-Ban	ALL-Ban
CT	D-Ban			D- banned unless otherwise in IEP
DE	ALL-Ban		Banned but Dept. of Educ. can waive with little limitation	ALL-Ban
DC		<i>Suggests ban in Voluntary Guidance- not law - can change</i>	<i>Suggests ban in Voluntary Guidance- not law - can change</i>	<i>Suggests ban in Voluntary Guidance- not law - can change</i>
FL	D-Ban			
GA		ALL-Ban	ALL-Ban	ALL-Ban
HI				
IA	ALL-Ban	ALL-Ban	ALL-Ban	ALL-Ban
ID				
IL			ALL-Ban	ALL-Ban
IN	ALL-Ban			
KS	ALL-Ban		ALL-Ban	ALL-Ban
KY	ALL-Ban		ALL-Ban	ALL-Ban
LA	D-Ban		D-Ban	
MA	ALL-Ban	permits prone restraint if staff is trained in the technique	permitted w/parent consent & physician instruct.	permitted w/parent consent & physician instruct.
MD	ALL-Ban	ALL-Ban	ban except certain schools w/hospital accreditation.	

	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
ME	ALL-Ban		ALL-Ban	ALL-Ban
MI				
MN	D-Ban	specific limiting regulations imposed on prone restraint through Aug. 2013, per new Apr. 2012 statute.		
MO	<i>Suggests ban in Voluntary Guidance- not law - can change</i>			
MS				
MT			ban (except in certain residential facilities)	
NC				
ND				
NE	<i>Suggests ban in Voluntary Guidance- not law - can change</i>		<i>Suggests ban in Voluntary Guidance- not law - can change</i>	
NH	ALL-Ban	ALL-Ban	ALL-Ban	ALL-Ban
NJ				
NM	<i>Suggests ban in Voluntary Guidance- not law - can change</i>		<i>Suggests ban in Voluntary Guidance- not law - can change</i>	
NV			permitted w/doctor order, but must loosen every 15 min	
NY				
OH	ALL-Ban	ALL-Ban	ALL-Ban	ALL-Ban
OK	<i>Suggests ban in Voluntary Guidance- not law - can change</i>		<i>Suggests ban in Voluntary Guidance- not law - can change</i>	
OR		ALL-Ban	ALL-Ban	ALL-Ban
PA		D-Ban	D-Ban	
RI	ALL-Ban			ALL-Ban
SC	<i>Suggests ban in Voluntary Guidance- not law - can change</i>		<i>Suggests ban in Voluntary Guidance- not law - can change</i>	

	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
SD				
TN	D-Ban		D-Ban	permitted w/parent consent & physician instruct.
TX	D-Ban			
UT				
VA				
VT	ALL-Ban	allowed in certain circumstances if less restrictive restraints would not be effective	ALL-Ban	ALL-Ban
WA	ALL-Ban		cannot bind limbs to object or each other, but can do so if in IEP	
WI	ALL-Ban		ALL-Ban	ALL-Ban
WV	ALL-Ban	ALL-Ban	ALL-Ban	
WY	ALL-Ban	ALL-Ban	ALL-Ban	

**All Children: States Banning Restraints that Impair Breathing
or Banning Prone Restraint (Jan. 12, 2014)**
THIS MAP IS FOR COLOR PRINTING



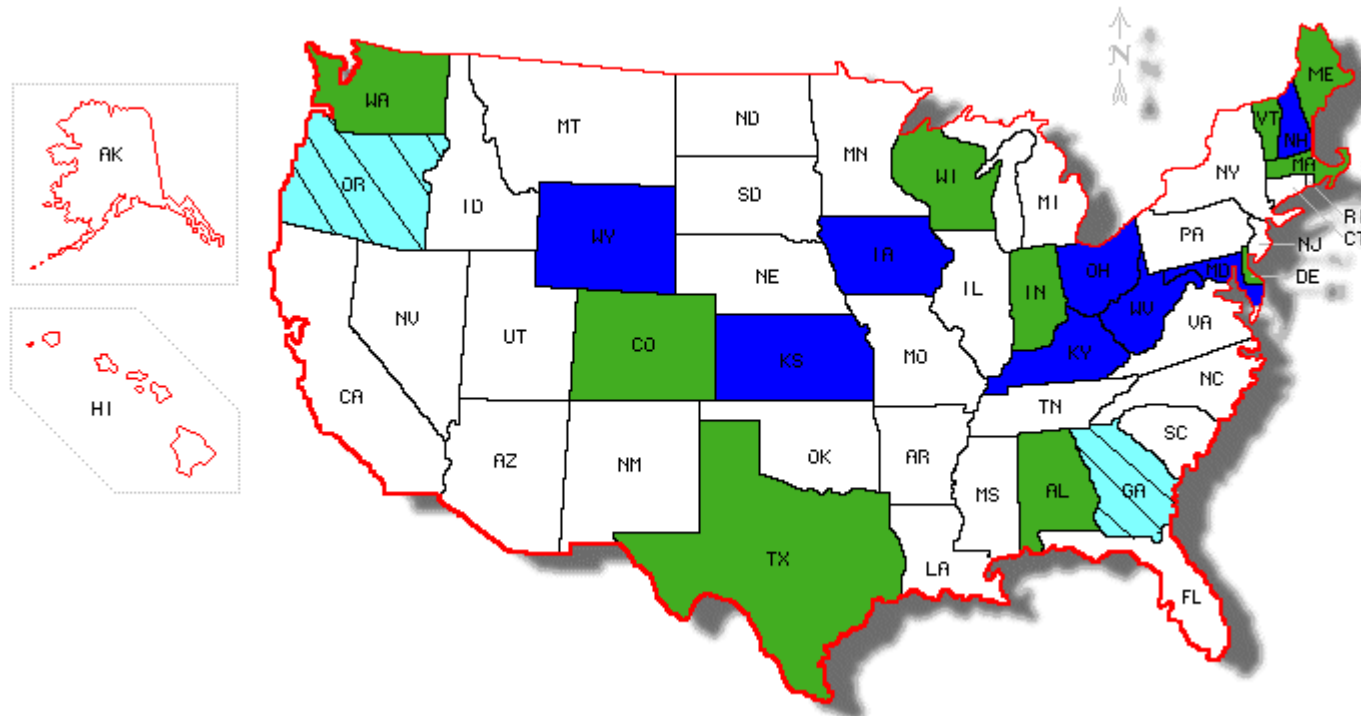
Red (dark): Law bans all restraints that impair breathing. **Cyan (light):** Law bans prone restraint only. **Blue (medium):** Law bans both.

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

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**All Children: States Banning Restraints that Impair Breathing
or Banning Prone Restraint (Jan. 12, 2014)**

THIS MAP WORKS ON BLACK & WHITE PRINTERS



Green (medium on B&W): Law bans all restraints that impair breathing.

Cyan (light, slashed): Law bans prone restraint only.

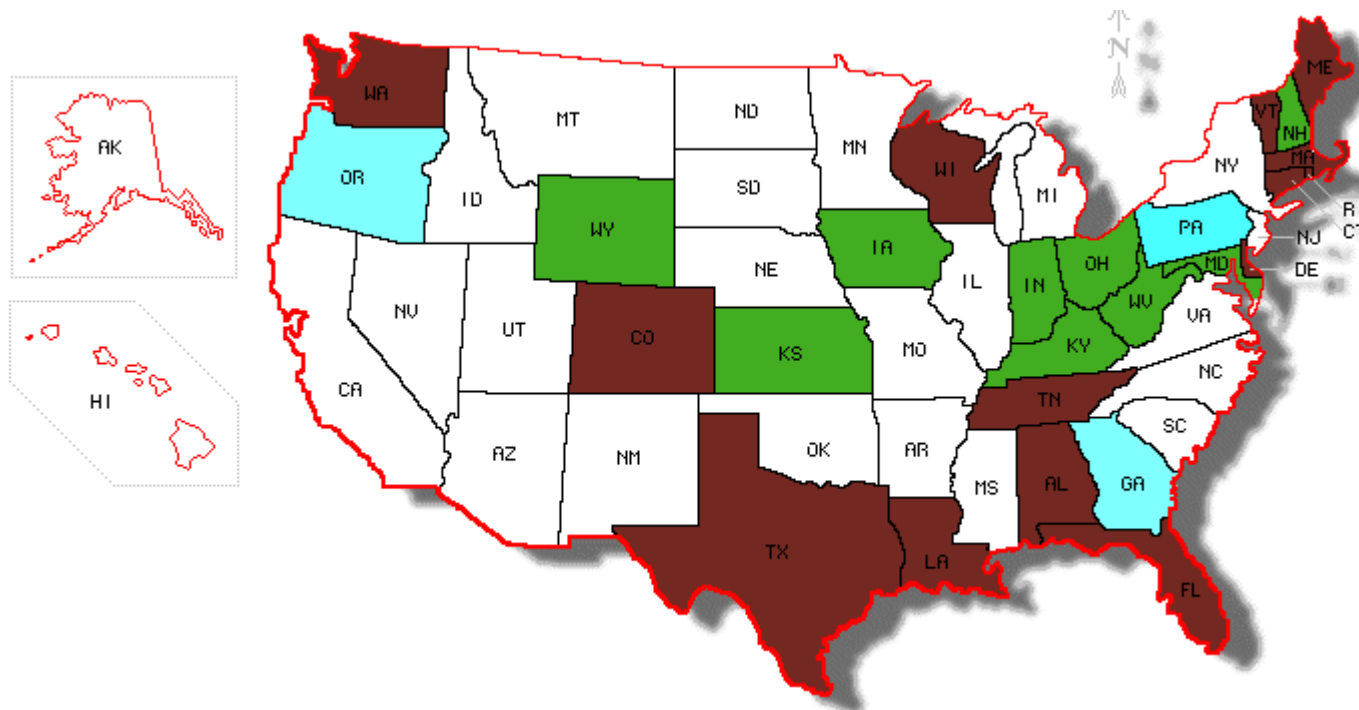
Blue (dark on B&W): Law bans both. These states are GA and OR.

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

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**Children with Disabilities: States Banning Restraints that Impair Breathing
or Banning Prone Restraint (Jan. 12, 2014)**

THIS MAP IS FOR COLOR PRINTING



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

Cyan (light): Law bans prone restraint only.

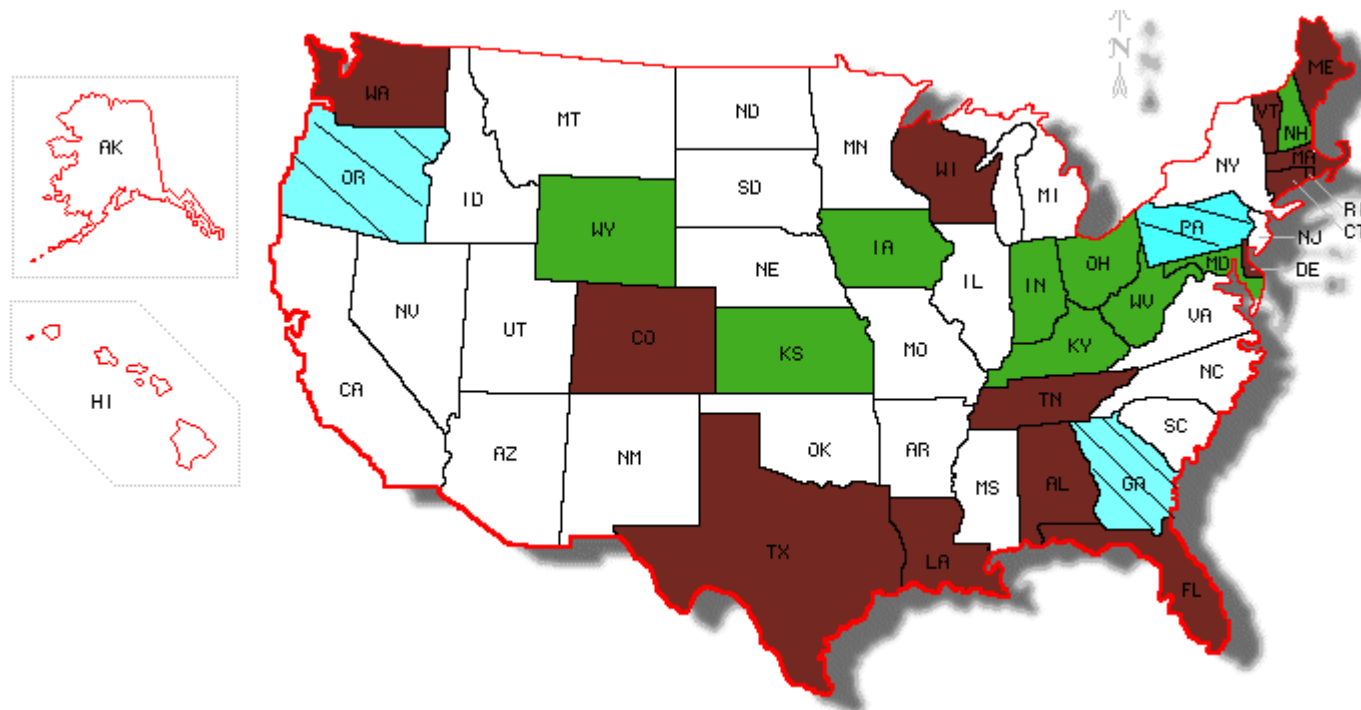
Green (medium): Law bans both.

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

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**Children with Disabilities: States Banning Restraints that Impair Breathing
or Banning Prone Restraint (Jan. 12, 2014)**

THIS MAP WORKS FOR BLACK AND WHITE PRINTERS



Brown (Dark on B&W printers): Law bans all restraints that impair breathing.

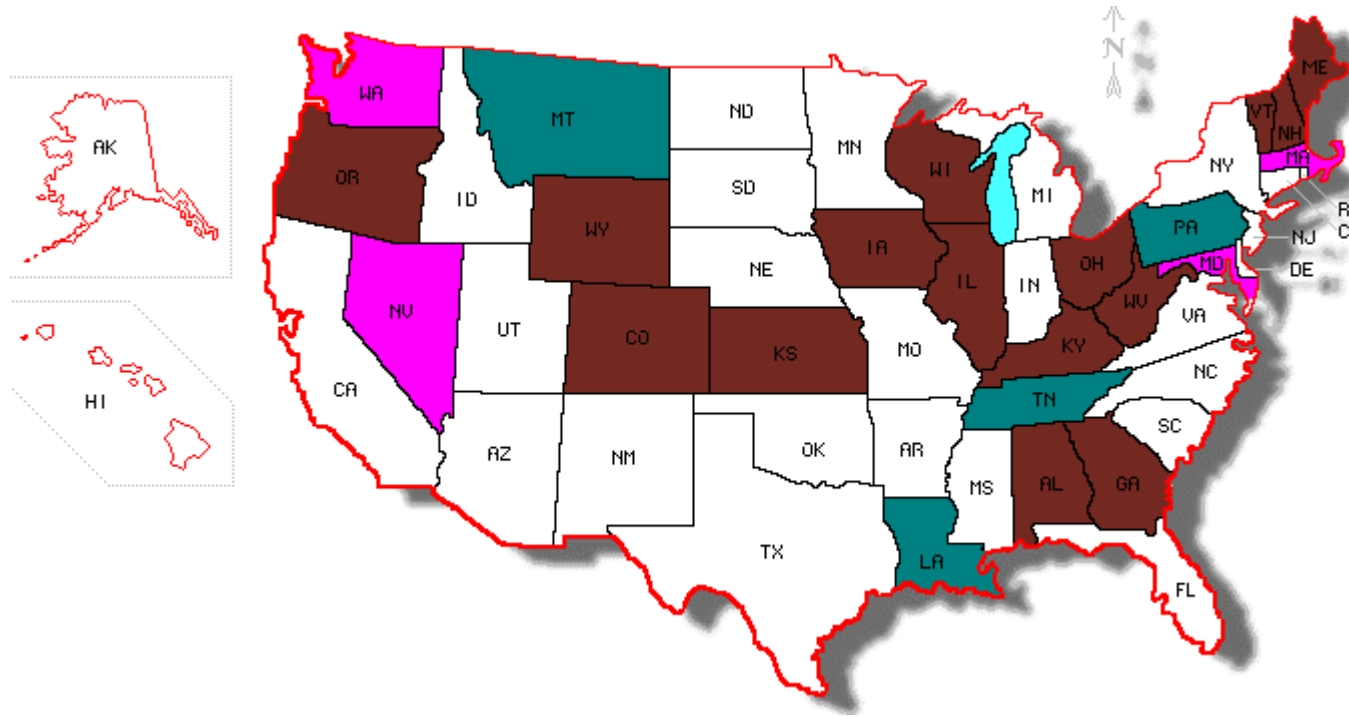
Cyan (Light, Slashed): Law bans prone restraint only.

Green (Medium on B&W printers): Law bans both.

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

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**Mechanical Restraints Are Banned By Law in 14 States (All Children)
and 18 States (Children with Disabilities) (Jan. 12, 2014)**



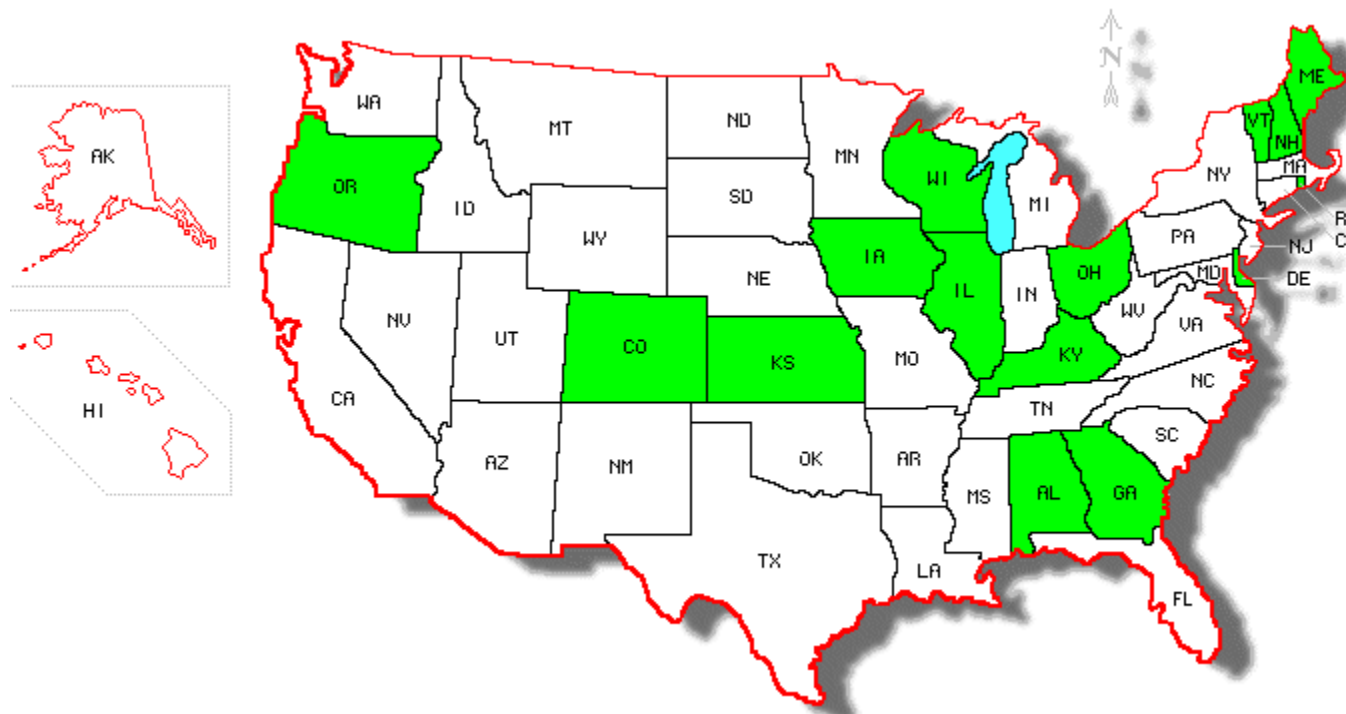
Brown (dark): By law, mechanical restraint is prohibited for all children.

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

Pink (lightest): By law, mechanical restraint may be used but with restrictions. 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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States Prohibiting Chemical Restraint (Jan. 12, 2014)



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

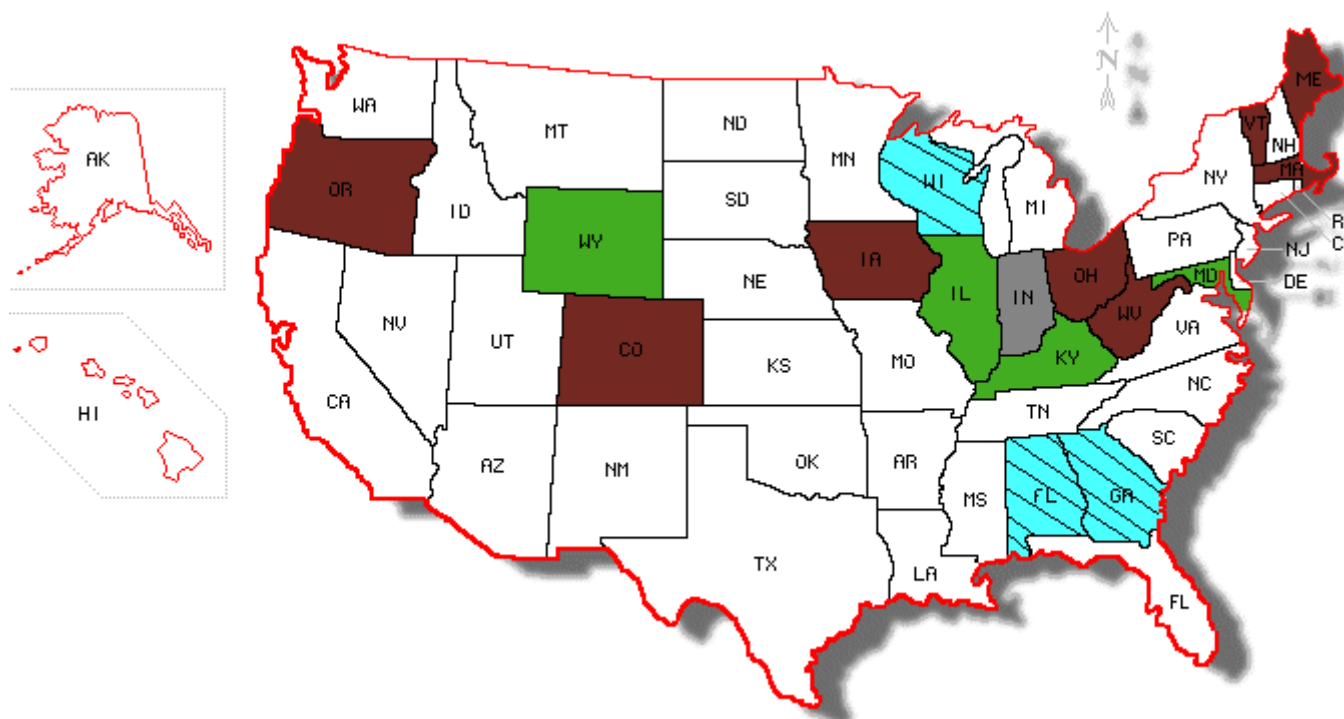
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Notifying Parent of Restraint/Seclusion Event. (Effective Jan. 12, 2014)					
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	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer or other deadline	Fuller written follow-up required
AK				<i>Voluntary guidelines: "as soon as reasonably possible"</i>	
AL			ALL		
AR					
AZ	ALL for Seclusion only. No notification for Restraint.				
CA			D		
CO	ALL				ALL
CT	D- attempted (other deadline can be set for seclusion in IEP)			D (if seclusion is in IEP, IEP team sets deadline)	D (IEP team can decide whether to do a fuller write-up if Seclusion in IEP)
DE				ALL- "timely" in statute. Regs to define further.	
DC		<i>Nonbinding Guidance - not law, can change</i>			
FL	D				D
GA			ALL		
HI					
IA	ALL- attempted				ALL
ID					
IL		ALL			
IN				2013: As soon as possible, with commission to write more specific regulations	

	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer or other deadline	Fuller written follow-up required
KS				ALL- 2 School Days	
KY	ALL				All- if verbal/electronic communication first day fails
LA		D			D
MA	ALL	No notice if parent waives notice (at school request) or lasts for less than 5 mins.			ALL
MD		ALL unless otherwise stated in IEP/BIP.			
ME	ALL				ALL
MI					
MN	D				D - if verbal/electronic communication first day fails
MO		<i>Voluntary Guidance - not law, can change</i>			
MS					
MT		D			
NC				Notification required in some circumstances; may remain hidden in others. See Report.	
ND					
NE		<i>Voluntary Guidance - not law, can change</i>			
NH		attempted (restraint only).			ALL (restraint only)
NJ					
NM					

	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer or other deadline	Fuller written follow-up required
NV		<i>Voluntary Guidance - not law, can change</i>			
NY				Must Notify - No Deadline Set	
OH	ALL				ALL
OK		<i>Nonbinding Guidance - not law, can change</i>			
OR	ALL				
PA				Notification required; effective deadline is 10 days	
RI				ALL ASAP, but no longer than 2 days	ALL
SC		<i>Nonbinding Guidance - not law, can change</i>			
SD					
TN	D- reasonable efforts				
TX	D- good faith efforts				D
UT		D			
VA				<i>Voluntary Guidelines- LEA can decide. Not law; can be changed.</i>	
VT	ALL-attempted				ALL
WA		D			D
WI			ALL (2012)		
WV	ALL- "good faith"				ALL
WY		ALL unless parent agrees otherwise.			

**All Children: States by Law Requiring Schools to Take Steps to Inform Parent on
Same Day, within 24 hours/1 Calendar Day, or within 1 School Day or "As Soon As Possible" (Jan. 12, 2014)**



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

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

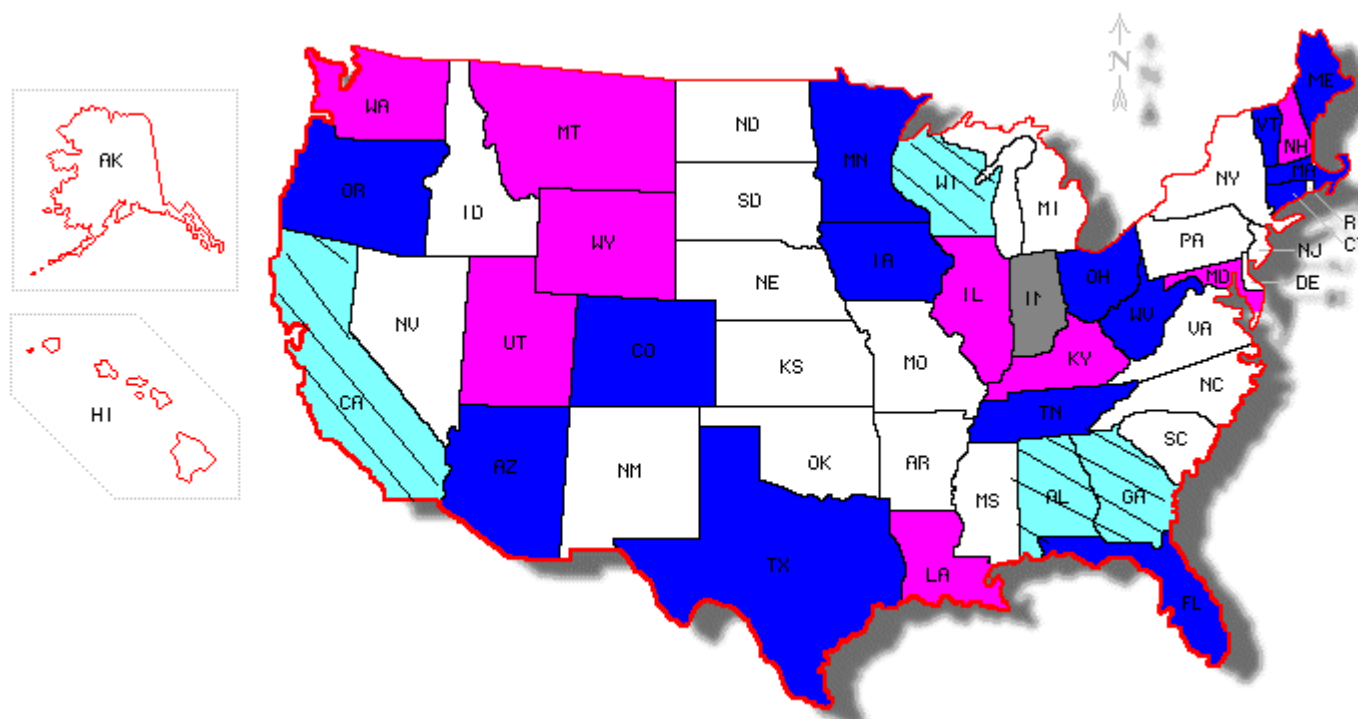
Cyan (lightest, slashed): Law requires parent notification within 1 school day or business day for all children (AL, GA, WI).

Grey: Indiana adopted a statute requiring parental notification "as soon as possible" applicable to all children. Regulations interpreting the statute have not been promulgated yet.

Note: 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.

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Children with Disabilities: State Laws Requiring Schools Take Steps to Inform Parent on Same Day, within 24 hours/1 Calendar Day, or within 1 School Day (Jan. 12, 2014)



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

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

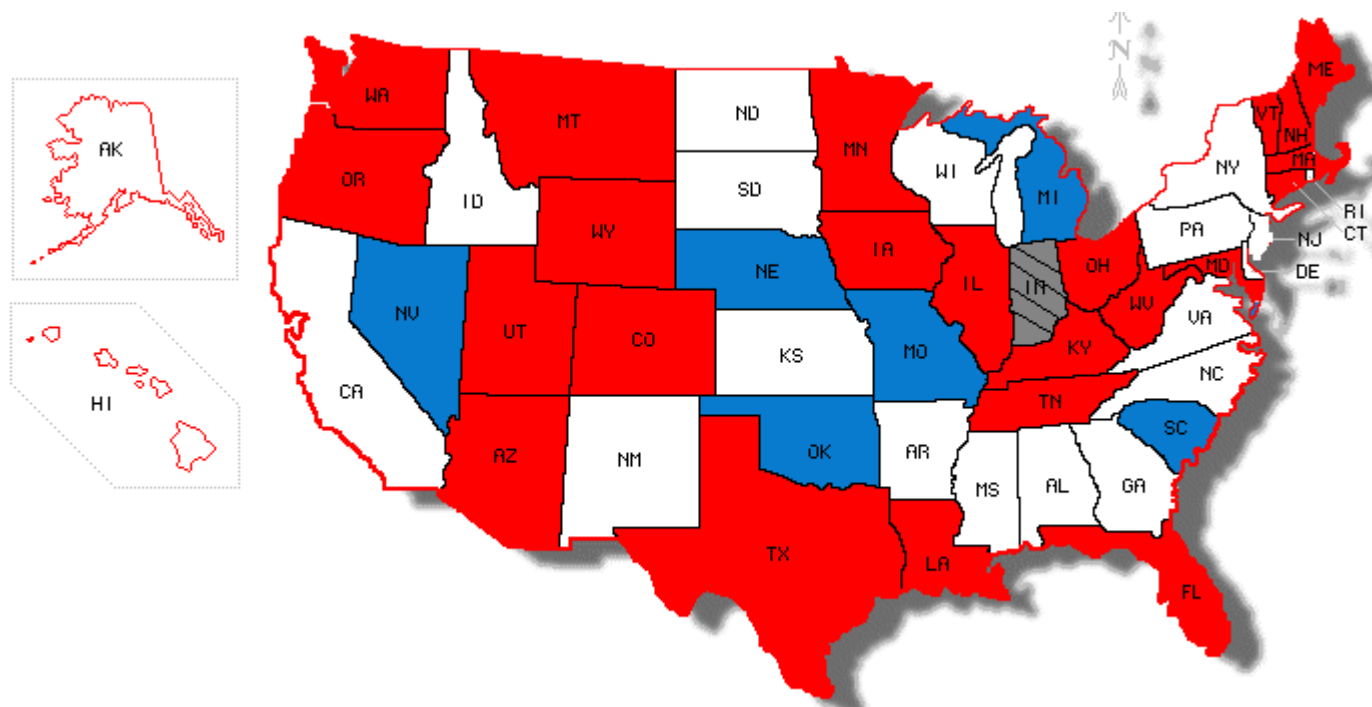
Cyan (lightest): Law requires school to inform parents within 1 school day or business day for children with disabilities (AL, CA, GA, WI).

Grey: IN adopted new statute requiring parental notification “as soon as possible” for all children.

Note: In Connecticut, the IEP team selects the notification period (if any) if seclusion is included in the IEP. 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.

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**Majority of States Support Informing Parents Within 1 Day or “As Soon As Possible”
(by law or nonbinding policy) (Jan. 12, 2014)**



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

Red (dark): Law requires school to take steps to inform parents within 1 day or 24 hours or less (such as same day).

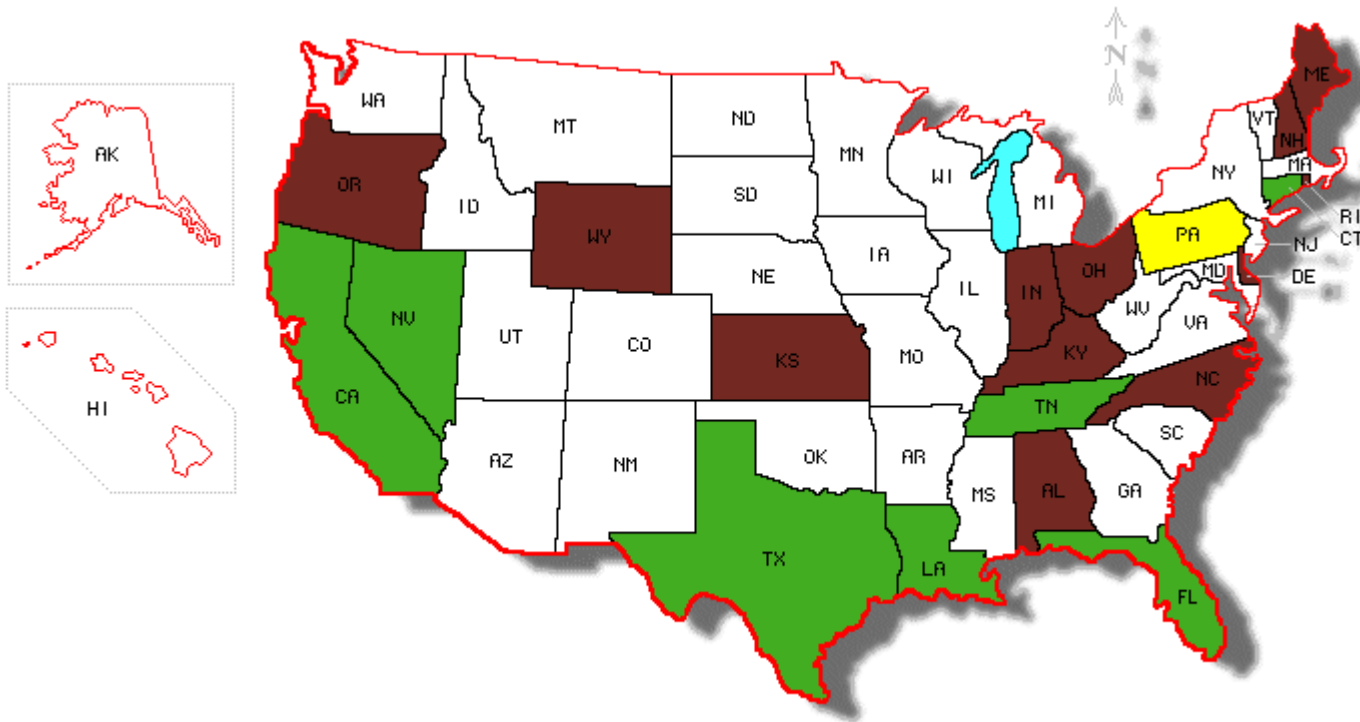
Blue (lighter): Nonbinding policy suggests notifying parents within 1 day or less.

Indiana (**Light Grey**) has adopted a statute requiring notification “as soon as possible,” which is close to a single day and definitely is not a long period. Its state “model plan” includes same day notification. The binding regulations under the statute have not been written yet.

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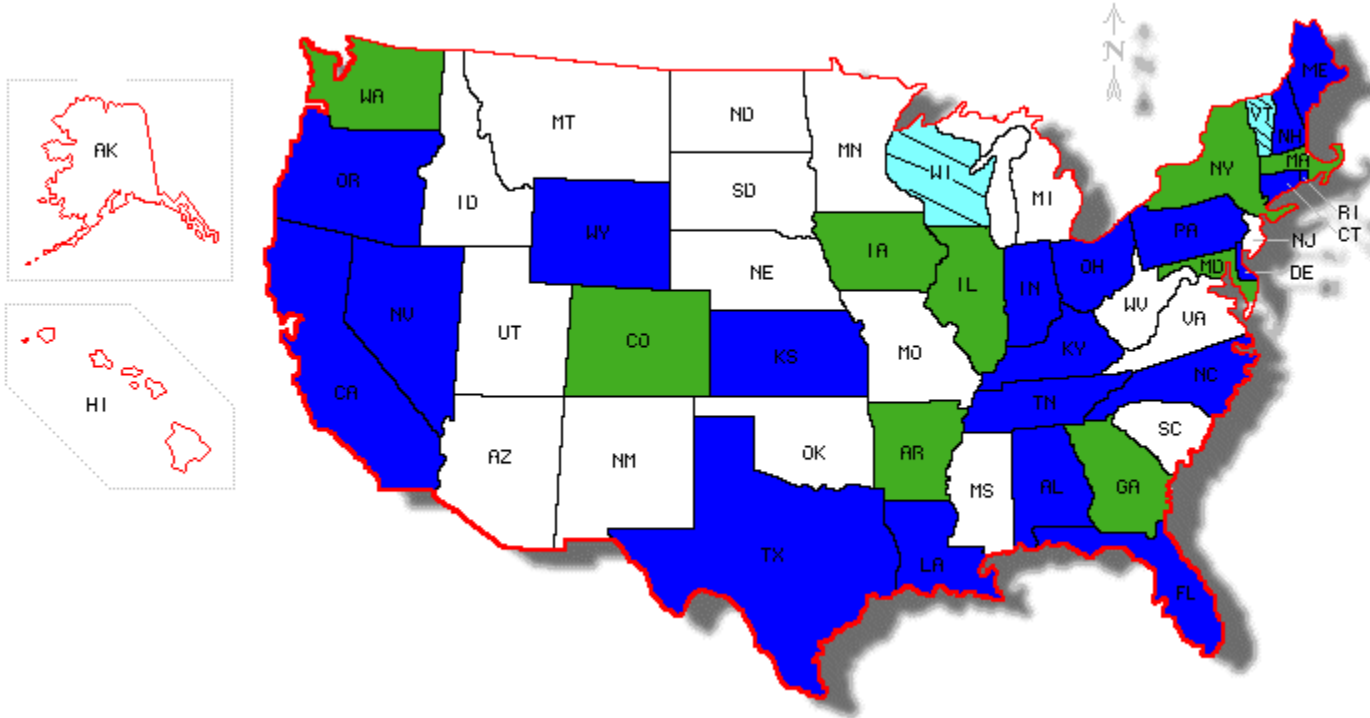
$$N$$

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Green (medium): By law, data is reported to SEA for children with disabilities only.

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**States Requiring Data Collection and Reporting at State, LEA, or School Level By Law.
This Demonstrates that Reporting Data is Not Burdensome. (Jan. 12, 2014).**



For states requiring reporting to the LEA or requiring records to be kept at the LEA level when restraint/seclusion are used, a national data or state-level data collection simply requires additional steps to report that information to others. It may require the use of computerized forms, but software programs can be easily designed and used.

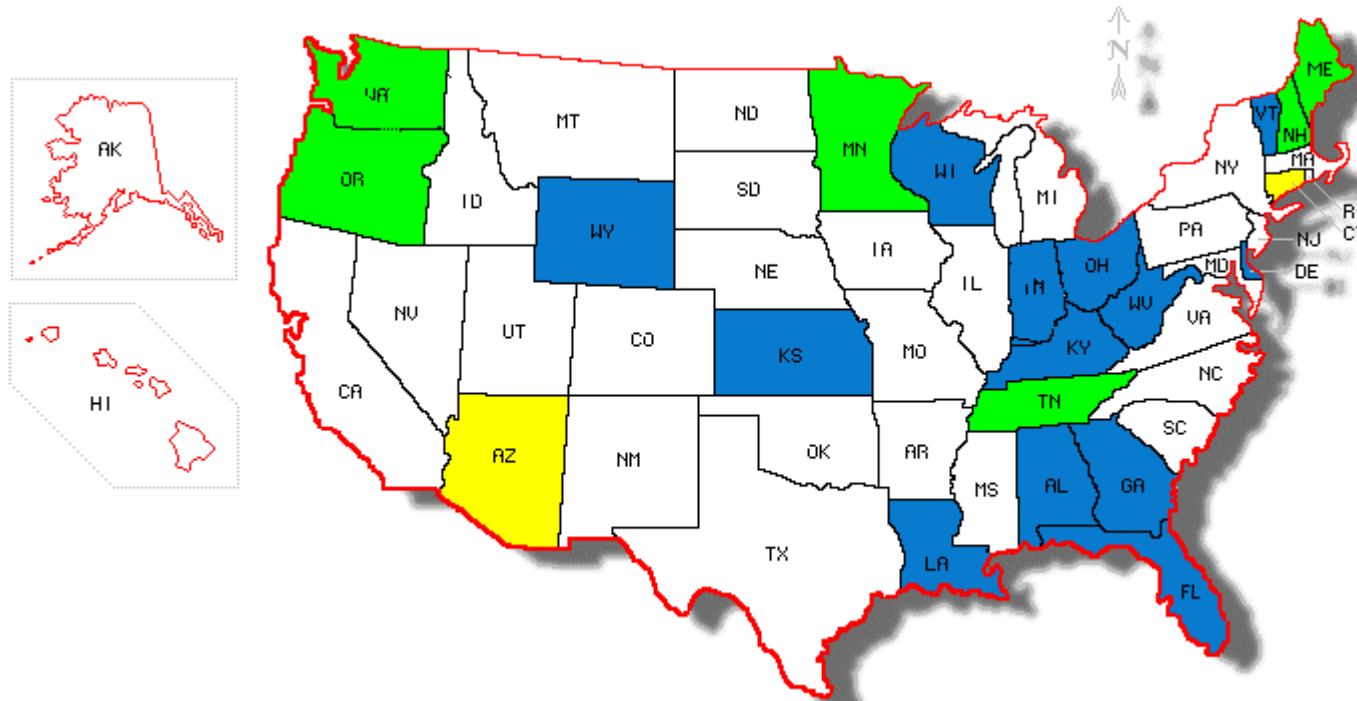
Blue (dark): Law requires collecting and reporting data to State Education Agency. PA requires collection of data but it is only shown to SEA during monitoring visits.

Cyan (lightest): Law requires collecting and reporting data to Local Education Agency (School District).

Green (medium): Law requires collecting and reporting data at the school level.

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**Congressional Impact: States Adopting/Overhauling Laws
Since First Congressional Bill Introduced in 2009 (Jan. 12, 2014)**



Blue (medium): Adopted new restraint/seclusion laws after Congressman George Miller introduced first restraint/seclusion bill in 2009.

Green (dark): Overhauled (significant changes) to existing restraint/seclusion laws after Congressman George Miller introduced first restraint/seclusion bill.

Yellow (light): Connecticut's legislature did not pass a complete overhaul bill, but did add an important provision requiring collection and reporting of data to the state. Previously, data collection had been inconsistent and not properly kept. Arizona adopted some protections in a new statute, but not a comprehensive statute that provides meaningful protection against both restraint and seclusion.

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