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# How Safe Is The Schoolhouse?

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



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March 30, 2013 (Updated to include new laws that were effective as of March 16, 2013)

**The report has been updated to include changes made in 2012 and early 2013 to state restraint and seclusion laws and policies. (Due to production needs, the cut-off date was March 16, 2013.) This 2013 edition also more fully discusses laws applicable to all children. 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/Fall 2013.

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## Important Introductory Information

**About the Report.** This report was revised in March 2013 to discuss new state restraint and seclusion laws and policies. It presents interim research for a law review article analyzing state approaches. Due to production needs, the cut-off date for new laws/policies was March 16, 2013.

**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, regulations, and executive orders that are legally binding. It distinguishes them from nonbinding guidelines and policies. (3) The bibliography contains the state laws, policies, and materials to avoid a blizzard of footnotes. (4) **The March 2013 report more fully breaks out whether a state’s laws extend to all children or only those with disabilities. Many states protect only the latter, due to the historical abuse of people with disabilities.** In this report, a superscripted d (<sup>d</sup>) indicates a law/policy applicable to children with disabilities; a superscripted m (<sup>m</sup>) means the state has a mix of disability-only and all-children laws. States without superscripted letters apply their laws (or lack of laws) to all children equally. (5) All information in the maps and charts is also in the text to maximize access by people of all abilities; some need text, some need visuals. There is no funding underwriting this work, so technology was limited. (6) “House bill” refers to the bill introduced by Representative George Miller in 2009 and 2011; “Senate bill,” to that introduced by Senator Harkin in 2011.

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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](http://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. 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](mailto:jessica@jnba.net). The report is available free of charge on AutCom’s webpage, [www.autcom.org](http://www.autcom.org). Information from HOW SAFE IS THE SCHOOLHOUSE? has been featured in various media reports, including on ABC News in December 2012 (<http://abcnews.go.com/WNT/video/death-school-child-restraints-spark-controversy-17842757> ).

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**X. STATE BY STATE SUMMARY.** This final section, after the charts and maps, allows readers to look up a particular state and read a summary of that state’s seclusion/restraint laws and/or guidance.

## 1. EXECUTIVE SUMMARY

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. Neither practice should be allowed when there is no emergency posing a danger to physical safety. Even then, they should not be used unless less restrictive measures would not resolve the issue. Yet, no federal laws protect America's 55 million school children from seclusion/restraint. Bills have been introduced by Congressman George Miller and Senator Tom Harkin. With no single federal seclusion or restraint law, American children are covered by a patchwork of state laws, regulations, nonbinding guidelines, and even utter silence. This report analyzes those 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, regulations, and executive orders, as they have the binding force of law. It does not include nonbinding policies which are not legally enforceable, and often consist of mere suggestions or factors to consider.
- **17 states have laws providing meaningful protections against restraint and seclusion for all children, 30 for children with disabilities.** These have the force of law and must be obeyed. Even these states offer varying protections, with key safeguards present in some states and missing in others. In addition, 2 states have laws protecting against one procedure but not the other; 8 have very weak laws (*e.g.*, Nebraska’s regulation instructs school districts to adopt any policy they choose and imposes no requirements whatsoever); and 12 have nonbinding, suggested guidelines that have no legal force and that are more easily changed by the State Department of Education.
- **Only 12 states by law allow restraint to be used only when necessary in emergencies threatening physical danger for all children; 17, for children with disabilities.** Many states have no laws or have loopholes that allow restraint to be used with little limitation. Because the practices are so dangerous, they should be used only when necessary to protect physical safety.
- There are 32 states that would define seclusion as a room a child cannot exit (door is locked, blocked by furniture, equipment, child-proofing, or staff, etc.). **Only 9 states protect all children from non-emergency seclusion; only 15 protect children with disabilities.** By law, only 1 state bans all seclusion for all children; 4, for children with disabilities. Another 8 by law allow seclusion of all children only when necessary in an emergency to protect against physical danger; 15, children with disabilities.
- Restraints that impede breathing and threaten life are forbidden by law in only 18 states for all children; 25 states, for children with disabilities. These laws may be phrased as prohibiting restraints that impair breathing, life-threatening restraints, or prone restraints. Prone restraint specifically is forbidden in only 10 states for all children; 11, for children with disabilities.

- Mechanical restraints include chairs and other devices that children are locked into; duct tape and bungee cords, ties, rope, and other things used to restrain children; and other devices. Only 14 states ban mechanical restraint for all children; 18, for all children. Only 13 states ban dangerous chemical restraints for all children.
- Children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized. But 29 states permit seclusion of children with disabilities without requiring staff to continuously visually monitor them; the number rises to 30 for all children. At Atlanta teen died in seclusion while being check on occasionally.
- Certain requirements are needed to ensure that seclusion/restraint are used only as a last resort and only as long as an emergency lasts. Some children have remained in seclusion/restraint until they can sit perfectly still, show a happy face, 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 14 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used on all children; 20, children with disabilities. Only 14 states by law require restraint and/or seclusion to stop the emergency ends for all children; 22, for children with disabilities.
- **33 states lack laws requiring that parents of all children be informed of restraint/seclusion; 22, lack them for children with disabilities.** Parents must be notified promptly of seclusion/restraint, so they can seek medical care for concussions, hidden injuries, other injuries, and trauma. But only 11 requiring schools to take steps to notify parents of all children within 1 day; 20, parents of children with disabilities. Of those states with parental notification laws or policies, the vast majority are for 1-day notification, suggesting there is broad support for this.
- Data collection is very important. In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. At least 33,000 students were restrained/secluded in Texas and California in 2007-08. Yet, only 16 states collect even minimal data at the state level on restraint/seclusion use each year. Still, 27 states require that data be kept at the state, local, or school level, indicating that keeping such records is not burdensome.

Data provides important sunshine. Florida began keeping data in 2010. In 2011-12, it recorded 9,751 restraint and 4,245 seclusion episodes. The data reporting and publication caused one Florida school district that used these procedures frequently to end seclusion and reduce its restraint use by 2/3.

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

- In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint for children with disabilities; far fewer, for all children. In 2011, Senator Harkin introduced a similar restraint and seclusion bill. Together, the Miller and Harkin

bills have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features.

- Since the first Congressional bill was introduced in late 2009, 10 states had adopted new laws and 4 have overhauled existing laws to significantly increase protections. All incorporated important features from the Miller/Harkin bills, although to varying degrees. These features include applying the law to all children; banning non-emergency use of restraint or seclusion; prohibiting restraints that impede breathing or threaten life; forbidding mechanical and chemical restraint; parental notification within a day; and data collection.
- The Harkin bill included an important new feature, prohibiting the use of restraints that prevent children from communicating that they are in danger. Of the states that began their process after the bill was introduced and successfully adopted laws or polices, all have included this requirements. Of the 20 students who died in the GAO report, at least 4 verbal children told staff that they could not breathe. Many other children cannot speak and rely on sign language or augmentative devices to communicate.

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

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

# HOW SAFE IS THE SCHOOLHOUSE?

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

*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 effect of law.*

### I. INTRODUCTION

In 2009, the Government Accountability Office (GAO) documented the use of seclusion and restraint upon hundreds of school children, resulting in death, injury, and trauma. Stories included a 7-year-old girl dying after being held face down by staff, kindergarteners tied to chairs with duct tape and suffering broken arms and bloody noses, and a young teen who hung himself while unattended in a seclusion room. Most incidents involved children with disabilities.<sup>1</sup> In 2012-13, national, state, and local news media continued to report on the dangers of restraint and seclusion.<sup>2</sup>

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

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

<sup>2</sup> See, e.g., 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>; Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 <http://bit.ly/cnnrsgeor>; *Locked Away Series*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Aug. 5-7, 2012; <http://bit.ly/ColDispSecl>; Rachel Dove-Baldwin, *Parents Concerned about In-School Abuse*, WILLIAMSON (WV) DAILY NEWS, Oct. 6, 2012, <http://bit.ly/WilliamsRS>.

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

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

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

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

<sup>7</sup> TASH AND THE ALLIANCE TO PREVENT RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION, IN THE NAME OF TREATMENT: A PARENT’S GUIDE TO PROTECTING YOUR CHILD FROM THE USE OF RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION (2005).

<sup>8</sup> Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures*

use of restraint in educational and other environments.<sup>9</sup> Staff have also been injured and traumatized by these practices.

In May 2009, House hearings examined the dangers of restraint and seclusion.<sup>10</sup> In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee) and Congresswoman Cathy McMorris Rodgers introduced a national bill to protect children from restraint, seclusion, and other aversives. The bill passed the House but did not become law. In April 2011, Miller reintroduced the Keeping All Students Safe Act, H.R. 1381. In December 2011, Senator Tom Harkin (Chair, Senate Health Education Labor and Pensions Committee) introduced a Senate bill, also named the Keeping All Students Safe Act, S. 2020. In 2012, Senate hearings documented important positive behavioral support programs that had greatly reduced the use of restraint and seclusion.<sup>11</sup> Neither Senate nor House bill had been passed when the 112th Congress adjourned on January 3, 2013. As a result, new bills will be introduced in the new Congress. In this report, the “House bill” refers to the Miller bill as introduced in 2009 and 2011; the Senate bill refers to the Harkin bill as introduced in 2011.

This report has three purposes. First, it examines and describes the current state laws about seclusion/restraint. The term “laws” includes statutes, regulations, and executive orders, all of which are binding and have the effect of law. It does not include state guidelines or policies which do not have legal effect. The March 2013 report breaks out information into laws and policies protecting all children and those protecting only children with disabilities--an expansion from the original 2012 focus on disability. Second, the report analyzes the impact of the national Congressional efforts on the states, particularly those states which have enacted laws or strengthened them since Congressman Miller introduced his first bill in 2009. Finally, the report explores particular state requirements which provide important protections.

At present, there is no federal statute to protect children nationwide; state laws govern the use of restraint and seclusion. State approaches vary widely – a patchwork of laws, regulations, voluntary guidance, and complete silence covering the nation. Many parents, people with disabilities, and members of the public are often ignorant of what their state laws say. This report concentrates on the states because state law presently controls the issue. This is not to suggest that state activities may substitute for federal action. Some states have strong laws; others have weak or nonexistent laws. Moving across a river or 30 miles down a highway can make the difference. Going from Philadelphia to its New Jersey suburbs, or Illinois to Indiana, can deprive a child of all safeguards. Memphis, Tennessee parents moving to neighboring Arkansas find no restraint protections; weaker seclusion protections; and no right to be told if their child is restrained or secluded.

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*in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

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

<sup>10</sup> *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearing Before the House Comm. on Education and Labor*, 111th Congress (2009);

<sup>11</sup> *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).

## State Changes in 2012 and 2013

This report was first published in January 2012. Since that time, a number of states have adopted or revised statutes and/or regulations: Connecticut (revision 2012), Kansas (previously had nonbinding guidelines, adopted regulation in 2013), Kentucky (previously had nonbinding guidelines, adopted regulation in 2013), Maine (revision 2012), Minnesota (revision 2012), Nebraska (minor regulation adopted in 2012), and Wisconsin (previously had nonbinding guidelines, adopted regulation in 2012). Alaska (2012) and Ohio (2013) issued guidance policies rather than legally-binding statutes or regulations.

Five states took action since last edition of the report in Summer 2012. Connecticut passed a new law requiring data collection (2012). A more comprehensive bill enlarging protections for children failed. Alaska (2012) issued guidelines as part of a special-education handbook. Three states undertook reforms in early 2013, Kansas, Kentucky, and Ohio. The Kansas State Board of Education approved a regulation on February 13, 2013. It will be effective after filing and publication steps are complete. As it is not subject to change, it is counted as a regulation in this report, but its status is appropriately noted. Kentucky's regulation became effective on February 1, 2013. Ohio previously had only an executive order limiting certain forms of restraint. On January 15, 2013, it adopted broad restraint and seclusion policy guidelines to be effective in the 2013-14 school year. The policy does not protect children in charter schools because Ohio state law limits the policies that can be imposed on those schools.<sup>12</sup> At the same time, Ohio proposed a regulation that requires state legislative review and then approval by the Board of Education. The regulation was filed with the Ohio Register on February 27, 2013 and a hearing was held on it on March 12, 2013.<sup>13</sup> For purposes of this report, Ohio's Executive Order is counted as in the same category as statutes and regulations, and its policy is counted with the policies. If Ohio later adopts the proposed regulation, it will be counted with the other regulations.

Finally, as of March 16, 2013, bills were pending in Arizona, Florida, Indiana, Maine, Minnesota, New Jersey, Oregon, and Washington, along with proposed regulations in Washington, D.C. If enacted, the bills in Arizona, Indiana, and New Jersey would become the first laws in their states; the remaining proposals would revise existing statutes and regulations. Arizona's bill would permit schools to use seclusion for any reason at all unless parents withdrew consent, and permit seclusion even if parents withdrew consent if someone was in danger. Indiana's bill would create a commission and require schools to submit local restraint and seclusion plans for review. New Jersey's bill would be a more comprehensive, standard restraint and seclusion law.

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<sup>12</sup> Ohio Rev. Code § 3314.04; see also Mark Sherman, *Ohio Board of Education to Vote on Restraint, Seclusion Proposal*, Special Ed. Connections (LRP), January 14, 2013.

<sup>13</sup> Ohio Dept. of Educ., *EDCONNECTION WEEKLY UPDATE*, Jan. 22, 2013 (summarizing rule process); Register of Ohio, *Most Recent Filings of Rule No. 3301-35-15* (retrieved Mar. 6, 2013).

## II. PATCHWORK OF STATE PROTECTIONS AGAINST SECLUSION AND RESTRAINT

### A. MEANINGFUL PROTECTIONS IN LAW

As of March 16, 2013, only 17 states by law protect all children equally from both restraint and seclusion: Alabama, Colorado, Georgia, Illinois, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Massachusetts, Maryland, Maine, North Carolina, 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.

In addition, four states provide some protections for children without disabilities and others 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. Ohio protects all children from certain forms of restraint by executive order and as of January 2013 had adopted guidelines (not statute or regulation) limiting both restraint and seclusion, with proposed regulations pending for consideration. Washington has some minimal protections from restraint for all children and then more substantial protections from restraint and seclusion for children with disabilities.

There are 30 states with statutes and regulations requiring schools to provide some meaningful protections against both restraint and seclusion for children with disabilities.<sup>14</sup> They are Alabama, California<sup>d</sup>, Colorado, Connecticut<sup>d</sup>, Florida<sup>d</sup>, Georgia, Illinois, Iowa, Kansas (2013-pending final promulgation)<sup>15</sup>, Kentucky (2013), Louisiana<sup>d</sup>, Maine, Maryland, Massachusetts, Minnesota<sup>d</sup>, Montana<sup>d</sup>, Nevada<sup>d</sup>, New Hampshire<sup>m</sup>, New York<sup>m</sup>, North Carolina, Oregon, Pennsylvania<sup>d</sup>, Rhode Island, Tennessee<sup>d</sup>, Texas<sup>d</sup>, Vermont, Washington<sup>m</sup>, West Virginia, Wisconsin, and Wyoming. Of these, 10 adopted their laws after the Miller bill was introduced in December 2009 (Alabama, Florida<sup>d</sup>, Georgia, Kansas, Kentucky, Louisiana<sup>d</sup>, Vermont, West Virginia, Wisconsin, and Wyoming), and 4 substantially strengthened them (New Hampshire, Maine, Oregon, and

**Only 17 state laws meaningfully protect all children from both restraint and seclusion; only 30 provide similar protection for children with disabilities alone.**

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<sup>14</sup> Prior editions of the report counted states which protected only against either restraint or seclusion as providing meaningful protections. Because these states do not have laws protecting children from one of the two dangerous practices at issue, it is inaccurate to count them as having meaningful protections in general. This gives a misleading impression about the state’s law. 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.

<sup>15</sup> On February 13, 2013, Kansas’ State Board of Education adopted its regulation. It will be finally promulgated after it is filed with the Secretary of State, and published in the Kansas Register. Regulations take effect the third Friday after publication. Kansas Dept. of Administration, POLICY AND PROCEDURE MANUAL FOR THE FILING OF KANSAS ADMINISTRATIVE REGULATIONS (July 2012).

Tennessee<sup>d</sup>).<sup>16</sup>

America should protect all children from restraint/seclusion. These dangerous techniques can hurt any child, and hence should be limited to threats to physical safety. Many states take special care is often taken to protect rights and safety of children with disabilities because these practices historically have been used upon them; they have disproportionately suffered death, injury, and trauma. Children with significant disabilities may not be able to talk, cognitively process, or effectively communicate what happened to them. The Civil Rights Data Collection, showed significantly disproportionate use upon children with disabilities and children of color.<sup>17</sup>

Even these states offer varying protections. Key safeguards are present in some states and missing in others. Some protect more against restraint than seclusion or vice versa, meaning that the intervention chosen by staff determines the degree of protection.<sup>18</sup>

The form of these protections varies. As of March 16, 2013, for the 17 states protecting all children, 2 have statutes; 6 have both statutes and regulations; 12 have regulations alone; and 1 has a restraint statute and a seclusion regulation (applicable only to children with disabilities). Of the 30 states with some meaningful level of protection for children with disabilities, 5 have statutes only, 11 have statutes and regulations, and 15 have regulations alone.<sup>19</sup> In many states, regulations are more easily changed than statutes, going through a State Department of Education approval process rather than a vote by two houses of a legislature and approval by the Governor. (In some states, legislative committees do review regulations.) An Executive Order is also easily changed, requiring only the Governor's approval. Accordingly, weaker national seclusion/restraint proposals have the potential to weaken state regulations, and stronger national proposals, to strengthen them.

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<sup>16</sup> 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.

<sup>17</sup> Students with disabilities comprised 12% of the students in the 2009-10 collection, but almost 70% of students who were physically restrained. 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). The disproportionate impact upon children with disabilities is also 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 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.

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

<sup>19</sup> These 5 states have statutes alone: Florida<sup>d</sup>, Louisiana<sup>d</sup>, North Carolina<sup>d</sup>, Nevada<sup>d</sup>, and Wisconsin. These 11 states have both statutes and regulations: California<sup>d</sup>, Connecticut<sup>d</sup>, Illinois, Maine, Maryland, Minnesota<sup>d</sup>, New Hampshire<sup>m</sup> (statute for restraint; regulations<sup>d</sup> for seclusion), Oregon, Tennessee<sup>d</sup>, Texas<sup>d</sup>, and Wyoming. Finally, these 15 states have only regulations: Alabama, Colorado, Georgia, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Massachusetts, Montana<sup>d</sup>, New York<sup>m</sup>, Pennsylvania<sup>d</sup>, Rhode Island, Vermont, Washington, and West Virginia. New Hampshire's Special Education regulations cover restraint and seclusion, in language similar to the 2008 regulation. In September 2010, a new restraint statute was adopted. It overrides the regulations if there is a conflict. Hence, the regulations control seclusion but not restraint.

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

## **B. LEGAL PROTECTION FROM ONE BUT NOT THE OTHER**

Two states provide meaningful protections in law against one practice but not the other, Arkansas and Ohio. For this reason, they are in their own category.

While Arkansas has comprehensive regulations protecting children with disabilities from seclusion, it has no state law limiting restraint (or protecting all children from seclusion). In Ohio, an Executive Order forbids prone restraint, defined as face-down restraint for an “extended period of time.” It also restricts physical restraint to situations involving “harm to the individuals and others,” and only in accord with planned state agency regulations governing its use.<sup>20</sup> The Executive Order is akin to a regulation and has legal effect. Ohio has no statute, regulation, or Executive Order regarding seclusion. In January 2013, Ohio’s State Board of Education approved guidelines that will seek to limit seclusion and restraint to emergencies threatening physical harm and impose other limits on their use in the 2013-13 school year. The Board also moved an accompanying regulation along the path toward promulgation. After legislative review, the Board will consider it again in April 2013. Once the regulation is promulgated, Ohio’s status in this report will likely be upgraded, see *supra* p.6.

## **C. WEAK PROTECTIONS IN LAW**

As of March 16, 2013, there were 8 states with statutes or regulations 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); Delaware<sup>d</sup> (autism regulation gives some protection but lets committees authorize aversive procedures; no limits on use in non-emergencies or on students without autism); Hawaii<sup>d</sup> (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

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<sup>20</sup> See FLA. STAT. 1003.573; OHIO EXEC. ORDER NO. 2009-13S (Aug. 3, 2009). The Executive Order, issued by former Governor Strickland, was made effective until rescinded. In October 2011, disability and civil rights groups thanked current Governor Kasich for “choosing to continue” the Order. <http://bit.ly/OhioItr>. The fact that the Governor’s “choice” dictates indicates how easy it is for the Executive Order to be changed or rescinded.

imposing any requirements whatsoever); Utah<sup>d</sup> (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, 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 March 16, 2013, there were 12 states with voluntary guidelines or policies that are not legally binding. These documents 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 lists of factors that schools might consider. In most of these states, students lack mandatory legal protection, other than the handful of weak protections described above. Nonetheless, such guidelines represent a State’s opinion that seclusion and restraint are dangerous techniques and that their use should be sharply restricted.

As of March 16, 2013, there are 12 states with such non-binding guidance. Of these, 3 policies apply to students with disabilities, Alaska<sup>d</sup>(2012), Oklahoma<sup>d</sup>, and Utah.<sup>d</sup> New Mexico’s<sup>m</sup> seclusion principles applies to all children; its restraint principles, to children with disabilities. Another 8 apply to all children, Indiana, Michigan, Missouri, Nebraska, Ohio (2013), South Carolina, Virginia, and Washington, D.C.<sup>21</sup> There have been four substantive changes to this category since the publication of the last edition in 2012. Alaska added nonbinding guidance. Ohio adopted a policy effective in the 2013-14 school year that applies to all public school students except those in charter schools. Ohio also sent an accompanying regulation to the state legislature for review. Kentucky and Kansas had been among the states with non-binding guidelines. In February 2013, both adopted regulations. See *supra* p. 6 for more information.

Guidelines are not statutes or regulations.<sup>22</sup> They lack the force of law and its protections. They are readily changed, requiring only approval by the state Department of Education, rather than a formal legislative or rulemaking process. Many are phrased in voluntary terms, such as those in Alaska (“These guidelines do not require a district to develop a policy”); Indiana (principles “the Department recommends”); and Missouri (a “model policy”). Their insufficiency is apparent from the recent replacement of guidelines with statutes and regulations in Kansas, Kentucky, Louisiana, Vermont, and Wisconsin, and the seeking of legally binding statutes and regulations in Michigan, Ohio, and Washington, D.C.

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<sup>21</sup> Washington, D.C. and Ohio use seemingly-mandatory rather than “permissive” language in their documents, e.g., mechanical restraints “are not authorized” in Washington, D.C. Nevertheless, these policies are not binding statutes or regulations that protect children. They lack legal force. Indeed, at the same time that Ohio passed its policy, it took steps to move a similar regulation through the end stages of its regulatory process. D.C. has also proposed a regulation. Like any other guidance, these policies may be more easily changed, and need not go through a regulatory or legislative process. State practice determines whether the State will act to ensure that the policies are followed and whether there are any repercussions for employees or districts that fail to adhere to them.

<sup>22</sup> 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, and schools within the state would have to follow them. Thus, these mandatory “policies” would differ markedly from the kind of nonbinding guidance currently in place. Such nonbinding guidance documents should not be recognized or treated as statute, regulations, or the mandatory state policies under the proposed bill.

A few states' experiences with guidelines are noteworthy. 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.<sup>23</sup>

**In seeking legislation, the Michigan P&A wrote: "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."**

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. Wisconsin students continued to be hurt and traumatized by restraint and seclusion. The directives were without the "the force of law" and were not sufficiently enforced. Wisconsin enacted a new statute in March 2012, replacing the old nonbinding directives with mandatory law.<sup>24</sup>

Most recently, Kentucky adopted a regulation in 2013. Between 2000 and 2013, Kentucky had only voluntary seclusion guidelines. The 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.<sup>25</sup>

#### **E. STATES WITH NEITHER LAWS NOR VOLUNTARY POLICIES**

Six states have absolutely nothing, despite efforts in at least three to take action: Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota.<sup>26</sup>

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

<sup>24</sup> DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN (2009); 2012 WISC. LAWS 146 (Mar. 19, 2012; previously Senate Bill 353).

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

<sup>26</sup> In New Jersey, "Matthew's Law" has been considered each legislative session, but has not passed. Idaho deferred any decision on regulations in December 2010. An Arizona task force drafted recommendations in 2009 but the State did not act upon them, and the law did not require school districts to adopt them (or any policy). Arizona is currently considering a very limited seclusion bill.

### III. RESTRAINT & SECLUSION AS EMERGENCY INTERVENTIONS

Seclusion and restraint are risky, emergency interventions that should be used only when necessary to protect individuals from severe physical danger. This section of the report analyzes whether states limit 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 hundreds of stories the GAO collected, at least 20 involved children who died from restraint. Other children suffered injuries, including broken bones, bloody noses, and post-traumatic stress syndrome.<sup>27</sup> Most recently, in 2012, a New York teenager with disabilities died in restraint.<sup>28</sup> Given the risks, restraint should only be used in rare emergencies where it must be deployed to protect people from serious physical danger. Instead, restraint has been used for failing to do class work, being unable to pay attention due to disability issues, pushing items off desks, convenience, punishment, and the like.<sup>29</sup>

The GAO collected at least 20 stories of children who died in restraint.

**Overview.** Of the 51 states, 12 by law limit restraint of all children to threats of physical harm; 17 by law restrict restraint of children with disabilities in this way. Accordingly, 39 states permit restraint of all children when absolutely no one is in danger (34 states for children with disabilities). These 39/34 states break down as follows: 8 limit restraint in some way but explicitly permit it in non-emergencies for all children; 15 limit restraint in some way for children with disabilities but explicitly permit it in non-emergencies. In addition, 31 states lack laws protecting all children from restraint (19 have no laws protecting even children with disabilities from restraint). Some of these states have voluntary guidelines.

Laws (Statute/Regulation). 51 “states”	Restraint only if Physical Danger	Explicitly Allow when No One in Danger	No Laws Protecting From Restraint
All Children	12	8	31
Only Children W/Disabilities	17	15	19

<sup>27</sup> GAO REPORT at 1, 8, 10-12.

<sup>28</sup> Brian Ross, Angela M. Hill and Matthew Mosk, Parents Protest Dangerous Discipline for Autistic, Disabled Kids, ABC NEWS WEB REPORT, Nov. 29, 2012.

<sup>29</sup> See generally NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009); J. BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009); see also GAO REPORT at 22-25; 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.

## 1. Restraint Limited to Physical Danger

Only 12 states limit the use of restraint to imminent threats of physical danger for all children.<sup>30</sup> They are Alabama, Colorado, Georgia, Illinois, Kansas (2013-pending final promulgation), Maine, New Hampshire, Ohio (currently Exec. Order), Oregon, Rhode Island, Vermont, and Wisconsin. The remaining 39 do not provide this important safeguard for all children. These 39 are Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, 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 12 states limit restraint to emergencies threatening physical danger for all children (17 states for children with disabilities). Other states allow it when absolutely no one's safety is at risk.**

Only 17 states by law limit restraint of children with disabilities to emergencies involving an immediate risk of physical harm or serious physical harm. Four explicitly require an imminent threat of serious or substantial physical harm/injury: Louisiana<sup>d</sup>, New Hampshire, Oregon, and Rhode Island. Florida<sup>d</sup> appears to implicitly use this standard, although the statute is not explicit, and subject to being ignored.<sup>31</sup> There are 12 states that require an immediate threat of physical harm: Alabama, Colorado, Connecticut<sup>d</sup>, Georgia, Illinois, Kansas (2013-pending final promulgation), Maine, Ohio (currently Exec. Order), Pennsylvania<sup>d</sup>, Tennessee<sup>d</sup>, Vermont, and Wisconsin.

On February 13, 2013, Kansas approved a regulation that limits restraint and seclusion to threats of physical danger. It includes within this definition “violent action that is destructive of property.” This language makes clear that property damage must entail an imminent threat of physical danger to qualify. Hence, the Kansas regulation is far different than regulations in other states that allow restraint to be used for property destruction without regard to physical danger. For this reason, Kansas is counted among the emergency/danger states.

## 2. Permitting Restraint under Non-Emergency Conditions/Laws with Loopholes

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<sup>30</sup> For purposes of this report, physical harm and bodily harm/injury/danger/safety are treated synonymously.

<sup>31</sup> Florida's 2011 statute, FLA. STAT. 1003.573, implicitly suggests a serious physical harm standard, by requiring the school to explain in its report why there was an imminent risk of serious harm if seclusion/restraint were used. Florida practitioners confirm that the language's purpose was to impose a physical harm standard. Yet, the statute is not explicit and can be misinterpreted as permitting seclusion/restraint for unlimited purposes.

A number of states have laws permitting restraint even when there is no danger of physical harm—either explicitly or because a loophole allows the law to be circumvented. There are 8 such laws applicable to all children; 15 to children with disabilities.

Nevada<sup>d</sup>, Texas<sup>d</sup>, and West Virginia authorize restraint of for threats of physical harm or serious destruction of property. Six states by law, Alaska, Iowa, Michigan, Montana<sup>d</sup>, New York (this provision applicable to all children), Washington<sup>d</sup>, permit restraint for threats of physical harm, destruction of property, or educational disruption. Thus, tantrums may result in the use of restraint--a dangerous proposition. Indeed, property destruction, educational disruption, and the like are appropriately handled through positive behavioral supports, de-escalation, conflict resolution, and other adjustments.<sup>32</sup> 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, another wide loophole.

**Several states have language allowing restraint when no one is in danger or have loopholes in laws that seem to protect children. (8 all children; 15 children with disabilities only).**

Massachusetts and Maryland by regulation allow restraint for threats of serious physical harm or as stated in a child’s Behavioral Intervention Plan (BIP) or Individualized Education Program (IEP).<sup>33</sup> Maine recently eliminated a similar regulatory provision. These rules appear superficially strong, but the loopholes let schools use restraint for almost any reason. Indeed, they may create incentives to put restraint in an IEP to avoid questions about whether there was an emergency.

Likewise, California<sup>d</sup> law contains a significant loophole. It authorizes restraint in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. The statute and regulations are worded in such a way that California does not forbid the use of restraint in non-emergencies. Consequently, if restraint is used because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and protections in the law do not apply.<sup>34</sup> California’s law applies only to children with disabilities.

Minnesota<sup>d</sup> may have a similar problem, depending on how the courts and the state Department of Education interpret the law. Minnesota’s statute defines “physical holding” and then restricts only “physical holding.” Prior to April 2012, physical holding was defined similarly to physical restraint (with a few exceptions). But in 2012, the legislature redefined “physical holding” as a physical restraint for the purpose of preventing physical injury. The statute continues to limit only

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<sup>32</sup> 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 also allow restraint for destruction of property. 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).

<sup>33</sup> For children with disabilities, the BIP is often part of the IEP.

<sup>34</sup> *See* CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

“physical holding” as defined by the statute and not other physical restraints. This makes it arguable that physical restraint used for other purposes may be outside the statute’s reach.<sup>35</sup> It appears, however, that the drafters likely meant to limit all physical restraint to threats of physical injury while limiting seclusion to threats of physical injury or serious destruction of property. It remains to be seen whether the State Department of Education, the courts, or other state practice will or can clarify the matter. This may turn on the authority of the Department of Education.

Kentucky, which adopted its regulation in February 2013, seemingly restricts the use of restraint to threats of physical harm, but it also allows restraint “as permitted under KRS . . . 503.110.” This statutory provision establishes a defense to a criminal offense for a teacher and 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.<sup>36</sup> This is dangerous. The GAO documented stories of children who were died after being restrained for being “uncooperative,” “disruptive,” and refusing to remain seated.<sup>37</sup>

### 3. States without Legal Limits on Restraint

There are 31 states with no laws limiting the use of restraint on all children; 19 with no laws restricting the use of restraint on children with disabilities. Of these, 6 have policies urging that restraint be limited to physical danger: Indiana, Nebraska, Oklahoma<sup>d</sup> (serious physical harm), South Carolina, Virginia, and Washington, D.C. In addition to physical harm, Utah’s<sup>d</sup> guidance suggests permitting restraint for serious property damage; New Mexico’s<sup>d</sup>, destruction of property; and Missouri’s, destruction of property or as stated in the IEP, 504 plan, or behavioral plan. These guidelines lack the force of law and are easily changed. The 19 states also include 10 that do not seek in law or even in voluntary guidance to limit the reasons for which restraint may be used: Arkansas, Arizona, Delaware,<sup>38</sup> Hawaii, Idaho, Mississippi, North Dakota, New Jersey, South Dakota, and Wyoming. Their laws are largely or entirely silent.

**31 states lack laws protecting all children from restraint; 19 lack laws protecting children with disabilities.**

<sup>35</sup> MINN. STAT. § 125A.0941-42 (revised by Senate Bill S.F. 1917, signed Apr. 3, 2012); 2009 c 96 art 3 s 11 (statute as originally enacted in 2009).

<sup>36</sup> 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 defense to criminal offenses 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.

<sup>37</sup> GAO REPORT at 10-11.

<sup>38</sup> Delaware permits committees to authorize “emergency interventions” for children with autism if there is a threat of physical harm or destruction of property. But it does not protect other children from emergency interventions, or limit the use of the interventions in non-emergencies. It thus provides almost no protection.

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

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. Children have been secluded in locked closets and rooms and in unlocked rooms they cannot exit--often because furniture or staff block the door. Seclusion often is used for non-emergencies and continued long after any emergency has ended. One New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.<sup>39</sup> One Kentucky child was secluded in a closet because he did not put things away fast enough; another was secluded in 2012 because staff believed she did not do well with the planned activity, baking cookies.<sup>40</sup>

Children confined in closets and seclusion rooms have been denied food, water, and the restroom.<sup>41</sup> 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.<sup>42</sup>

**Overview.** The seclusion discussion is broken into three parts. First, the report focuses on how seclusion is defined; 32 states define it as a space from which a child cannot exit. Second, it explores states that deal with seclusion's by banning it or otherwise limiting it as a general matter. Third, it analyzes states that permit seclusion but limit it to emergencies or allow it to be used more broadly, even when no one is in danger. The two schemes overlap and some states appear in both second and third sections.

Laws (Statute/Regulation).	Ban All Seclusion	Seclusion Only if Physical Danger	Explicitly Allow when No One in Danger; Have Loopholes	No Meaningful Legal Protections From Seclusion
All Children	1	8	9	33
Only Children W/Disabilities	4	10	17	22 <sup>43</sup>

<sup>39</sup> GAO REPORT at 13.

<sup>40</sup> KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

<sup>41</sup> 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); SCHOOL IS NOT SUPPOSED TO HURT (2009) at 15-20; CCBD, *Position Summary on the Use of Seclusion in School Settings* at 236.

<sup>42</sup> NATIONAL DISABILITY RIGHTS NETWORK, *SCHOOL IS NOT SUPPOSED TO HURT* (2012) at 11.

<sup>43</sup> These numbers do not add up to 51. Missouri appears twice as it has a limited law banning solitary, locked confinement while awaiting law enforcement personnel, and recommended guidelines for other forms of seclusion. New Mexico appears twice, as it considers locked seclusion to be a fire code violation but has guidelines endorsing other forms of seclusion as unrestricted behavioral interventions.

## 1. Seclusion Defined

Unlike restraint, different states define seclusion differently, leading to differences in the degree of protection students receive. Some states regulate only “locked” seclusion and are silent about doors blocked by staff, furniture, or cheap child-proofing devices that adults can easily open but children with some physical or cognitive disabilities cannot.

As of March 16, 2012, there are 32 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (*e.g.*, the door is locked or blocked in some way). Of these, 22 states do it by law: Colorado, Connecticut<sup>d</sup>, Georgia, Illinois, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine (2012 update to rule), Maryland, Massachusetts, Minnesota<sup>d</sup>, Montana<sup>d</sup>, North Carolina (and also including a room a child cannot leave due to physical or mental incapacity), New Hampshire<sup>d</sup>, Nevada<sup>d</sup>, Oregon, Rhode Island (if without access to staff), Tennessee<sup>d</sup>, Vermont, Wisconsin, and Wyoming (definition of “isolation”). Another 10 states have a similar definition in nonbinding guidance: Alaska<sup>d</sup> (added to 2013 report), Indiana, Michigan, Missouri, Nebraska, Ohio (2013), Oklahoma<sup>d</sup>, South Carolina (if child alone), Virginia, and Washington, D.C. Two states by law define seclusion only as locking a child in a room: Alabama and Florida. In the U.S. Congress, the House bill has defined seclusion as locked isolation; the Senate bill, as locked isolation or a space from which the child is prevented from leaving.

**32 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.**

**Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting, whether locked or blocked in some other way, as this is the majority view in America by far.**<sup>44</sup>

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<sup>44</sup> Rooms from which children are prevented from exiting are termed “seclusion” in this report even if called something else in state law or policy (*e.g.*, “confinement,” “isolation,” or “quiet room”). Some schools even use the term “time out” for isolation in a seclusion room into which a child has been forced and 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. This report’s definition focuses on the room’s function. For example, Wyoming bans “locked seclusion,” while, under strict limits permitting “isolation” (an unlocked space from which a child cannot exit). Wyoming defines “isolation” as most states and this report define “seclusion,” and thus, it is considered “seclusion” for purposes of this report, unless otherwise stated. Where it would make a difference, the report treats Wyoming’s locked seclusion and isolation differently.

## 2. States Banning and Restricting Seclusion as a General Matter

There are 13 states regulating seclusion by banning or restricting it as a general matter, rather than based on the purpose for which it is used. One, Georgia, bans all seclusion for all children; 3 other states (4 total) ban it for children with disabilities, Nevada<sup>d</sup>, Pennsylvania<sup>d</sup>, and Texas<sup>d</sup>.<sup>45</sup> Thus, these states forbid all use of rooms that children are prevented from exiting, whether locked or where the door may not be locked, but it is blocked or obstructed so a child cannot exit. Given the dangers that seclusion poses, a ban is an important protection for children.

**Only 1 state bans all seclusion for all children; only 4 ban it for children with disabilities.**

In addition, 4 states prohibit all/most forms of locked seclusion for all children, and 8 do so for children with disabilities: Alabama, Arkansas<sup>d</sup>, Maine, Montana<sup>d</sup> (except in certain residential treatment facilities), New Mexico<sup>d</sup> (fire code violation), New York<sup>d</sup>, Wisconsin, and Wyoming. These states would permit seclusion in spaces children cannot exit because furniture or heavy items are shoved up against a door, staff is holding the door shut, or it is otherwise obstructed. These rooms are as dangerous as those with formal locks.<sup>46</sup> Moreover, 3 states, Washington, D.C., Ohio (2013), and Michigan, urge eliminating locks in their nonregulatory guidance.

In 2013, Kentucky adopted a regulation prohibiting schools from secluding children in rooms with doors that are locked or obstructed. The regulation allows other forms of “seclusion,” which is defined as the involuntary confinement of a child alone in a room from which he/she is prevented from leaving. Together, these provisions permit only a small subset of seclusion activity, such as a placing a child in a door with an unlocked and unobstructed door but the child’s disability prevents him/her from exiting.

Hence, the remaining 45 states lack laws applicable to all children that ban seclusion in either rooms children cannot exit or in locked rooms; 38, for children with disabilities. Of these states, 6 by law allow locked seclusion only if the lock can automatically release, either through an emergency alarm system or when a person stops holding it: Connecticut<sup>d</sup>, Illinois, Iowa, Florida<sup>d</sup> (fire code referenced), Minnesota<sup>d</sup>, and South Carolina (fire code referenced). Most seclusion laws and guidelines are silent about fire, safety, and building codes, although these codes likely limit locked doors and impose other construction and fire safety requirements (banning

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<sup>45</sup> Texas law forbids the use of locked spaces unless there is a threat of bodily harm involving weapons, and only while awaiting the arrival of law enforcement. It permits time-out, which it defines as an unlocked room from which egress is permitted. Thus, Texas law appears to implicitly forbid unlocked rooms from which children cannot exit because the door is blocked, etc. Nevertheless, the absence of an explicit prohibition may be viewed as a gap that is exploited to use of such rooms.

<sup>46</sup> 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 n. 34 and accompanying text. In the 2012 edition of this report, this footnote was included but due to a typographic error, California was also counted among the states forbidding locked seclusion. This error has been corrected in the 2013 report, so that only 8 states, not 9, are counted in this category.

interference with sprinklers, having requirements for construction of internal walls, etc.). When seclusion policies omit them, they leave staff and parents unaware and can lead to a belief that locking students in closets and rooms is permissible.<sup>47</sup> Of course, a door that automatically unlocks in an emergency does not eliminate the grave physical or psychological dangers of seclusion.<sup>48</sup> 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.

### 3. Restricting Seclusion to Physical Safety Emergencies

Another way of dealing with seclusion's dangerousness is to ban or restrict it except when it is necessary due to threats to safety. Very few states protect all children from non-emergency use of seclusion. As of March 16, 2013, Georgia is the only state to ban all seclusion for all children for any reason. Only 8 states have laws limiting the seclusion of all children to emergency threats of physical danger, Colorado, Kansas (2013-pending final promulgation), Kentucky (2013), Maine, Oregon, Vermont, Wisconsin, and Wyoming.

The numbers are slightly higher for children with disabilities, for whom 15 states by law prohibit non-emergency use of seclusion for children with disabilities. Of these, 4 ban all forms of seclusion (Georgia, Nevada<sup>d</sup>, Pennsylvania<sup>d</sup>, and Texas<sup>d</sup>) and 10 have laws limiting seclusion to emergencies where it is necessary to prevent immediate physical harm to a person: Colorado, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup> ("substantial" physical harm), Maine, Oregon ("serious" physical harm), Tennessee<sup>d</sup>, Vermont, Wisconsin, and Wyoming. In addition, Florida<sup>d</sup> appears to have implicitly incorporated a serious physical harm standard by requiring incident reports to explain why the use of seclusion met this standard. Still, the lack of an explicit limitation means some may interpret the law to allow seclusion for other reasons.<sup>49</sup> Kansas' 2013 regulation is included here; it forbids seclusion unless 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.<sup>50</sup>

**Only 9 states protect all children from non-emergency seclusion. 15 states protect children with disabilities. The rest allow seclusion even when nobody is in danger.**

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<sup>47</sup> For an excellent discussion of the effect that fire, building, and other safety codes may have on seclusion rooms, see SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2011). A building with more than five seclusion rooms may be considered a jail in South Carolina.

<sup>48</sup> Nebraska also suggests doors that automatically unlock in its voluntary guidance. Kansas had done so in its 2007 voluntary guidance, but eliminated this in its 2013 regulation.

<sup>49</sup> Florida's statute appears to have implicitly included a serious physical harm standard. The 2012 report counted Florida in two different categories. It was counted among the "emergency" states for restraint, but inadvertently omitted from the "emergency" seclusion states, although its statute was properly summarized. In the 2013 report, this has been corrected. Florida has been included in both emergency groups.

<sup>50</sup> Previously, Kansas had nonbinding guidelines allowing the use of seclusion as stated in a child's BIP/IEP and considering seclusion to be a behavior modification technique. The new regulations recognize its danger and the need to restrict it to threats of physical harm only, regardless of whether a child has a BIP/IEP.

Rhode Island and Massachusetts partially ban seclusion, forbidding seclusion unless the child has access to a staff member. Access is undefined; a staff member who checks a room occasionally or is down the hall may be accessible for a verbal child who can shout. Yet Jonathan King died in Atlanta in seclusion while the teacher sat outside, checking the room occasionally. The states that ban locked seclusion, such as Alabama, but not other forms of seclusion, including those in which the door is blocked by furniture or equipment, also partially ban seclusion.

#### **4. States Permitting Seclusion for Non-Emergencies either Explicitly or Implicitly**

There are 42 states without laws preventing non-emergency seclusion of all children, and 36 states without such laws for children with disabilities. In these states, children may be exposed to the dangers of seclusion even when they have done nothing to put someone's safety at risk.

There are 17 states that have laws, but that explicitly permit seclusion in non-emergencies or have significant loopholes in laws that would otherwise protect children. They are Alabama, Arkansas<sup>d</sup>, California<sup>d</sup>, Connecticut<sup>d</sup>, Illinois, Iowa, Maryland, Massachusetts, Minnesota<sup>d</sup>, Missouri, Montana<sup>d</sup>, New Hampshire<sup>d</sup>, New Mexico<sup>d</sup> (fire code violation), New York<sup>d</sup>, North Carolina, Rhode Island, and West Virginia. Of these, 9 apply to all children. The other 8 apply only to children with disabilities, meaning that those states do not regulate seclusion for children without disabilities.

Of the 17 states, 7 explicitly permit seclusion when no one is in danger. Minnesota<sup>d</sup> permits seclusion for emergency threats of physical harm or serious destruction of property. Five states by law permit seclusion for threats of physical harm, destruction of property, or educational disruption: Arkansas<sup>d</sup> (but limiting seclusion to severe occurrences), Iowa, Montana<sup>d</sup>, New York<sup>d</sup>, and Illinois.<sup>51</sup> While time-out in a space a child is able to leave may be appropriate for disruptive behavior, seclusion is not. North Carolina permits seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP. Seclusion may be included in an IEP/BIP for any reason. In effect, this gives staff freedom to use seclusion, even when not necessary to protect anyone. Of these states, 3 state laws apply to all children and the others are without limitations on the use of seclusion for children without disabilities.

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

California's<sup>d</sup> loophole is large. 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.<sup>52</sup>

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<sup>51</sup> Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

<sup>52</sup> See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

Another group of states appear to ban seclusion, but define it in such a way that it is permitted under many circumstances. There are 5 states that forbid locked seclusion, but permit seclusion in rooms with blocked/obstructed doors even when no one is in danger: Alabama, Arkansas<sup>d</sup>, Montana<sup>d</sup> (except in certain residential treatment facilities), New Mexico<sup>d</sup> (fire code violation), and New York<sup>d</sup>. Missouri forbids locked, solitary confinement, except while awaiting the arrival of law enforcement authorities. Furthermore, Massachusetts bans seclusion rooms if students lack “access” to staff, a term which is undefined. This potentially allows students to be locked in rooms for any reason with little limit if they can call or signal for staff. West Virginia is similar, banning seclusion when a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. “Supervised” seclusion is not regulated.

New Hampshire<sup>d</sup> prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP after certain conditions are met. This has two loopholes. First, it allows unobserved, locked seclusion for almost any reason when written into the IEP. Second, it allows seclusion for any reason without any regulation whatsoever as long as the child is observed. This allows children to languish in rooms for hours. Likewise, Rhode Island bans seclusion unless the child is observed, and seclusion has been agreed to in the child’s BIP. Hence, as long as a child is observed and his BIP includes seclusion, he/she can be secluded for any reason and the seclusion can last for any duration.

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

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

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

**In 2012, the media reported that Connecticut children were confined to “scream rooms.” A superintendent suggested that seclusion was regularly added to the IEPs of children with disabilities and used routinely. One solution was simply to move the rooms to lessen the noise, rather than proactively cut their use.**

Rather than seeking to reduce use of the seclusion rooms (in which children were screaming), the district decided they would “be moved to out-of-the-way locations so their use in the future is not

disruptive to other students.”<sup>53</sup> If seclusion was banned, or treated as an emergency intervention to prevent physical danger, staff would be extremely unlikely to view seclusion as a regular or appropriate intervention for students with disabilities, or to apparently view the rooms as distractions that simply should be moved or hidden.

## **5. States Lacking Any Legal Protections from Seclusion**

There are 33 states without meaningful legal protections from seclusion for all children; 22, for children with disabilities. Of these, 7 apply guidelines or voluntary principles to all children urging that seclusion should be limited to threats of physical harm; 9 apply them to children with disabilities: Alaska<sup>d</sup>, Indiana, Michigan, Nebraska, Ohio (added Jan. 2013), Oklahoma<sup>d</sup>, South Carolina, Virginia, and Washington, D.C. Another 2 states have guidelines that suggest permitting seclusion under circumstances which would harm children. Missouri’s guidelines suggest states consider allowing seclusion for threats of physical harm, destruction of property, or as stated in the IEP. (Missouri also forbids solitary locked confinement unless awaiting law enforcement personnel.) Utah<sup>d</sup> advocates for limiting restraint to threats of physical harm or serious destruction of property.

The remaining 10 states lack even recommended guidance limiting seclusion to certain circumstances: Arizona, Delaware,<sup>54</sup> Hawaii, Idaho, Mississippi, New Jersey, New Mexico (seclusion endorsed broadly as a behavior modification, although locked seclusion is banned as a fire code violation), North Dakota, South Dakota, and Washington.

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

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

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<sup>53</sup> Shawn R. Beals, *Angry Parents, Scared Students Seek Answers About Farm Hill School ‘Scream Rooms,’* HARTFORD COURANT, Jan. 12, 2012. (Square bracketed material in original; curly bracketed material added.)

<sup>54</sup> Delaware permits the use of “emergency interventions” for threats of physical harm or destruction of property by children with autism. But it places no limits on the use of seclusion with other children or the non-emergency use of seclusion for children with autism.

## 1. Less Restrictive Measures Must Fail

If less restrictive methods would resolve an issue, they must be implemented first. Restraint and seclusion not only expose children to danger, but escalate behaviors and lead to a cycle of violence. By contrast, positive interventions, conflict resolution, and de-escalation resolve difficult situations and help prevent and reduce the utilization of restraint and seclusion.<sup>55</sup> Research shows that these measures are among the most useful strategies for reducing seclusion and restraint use, according to the National Association of State Mental Health Program Directors.<sup>56</sup>

**14 states require staff to first try less harmful methods before they use S/R on all children; 20 states, for children with disabilities.**

By law, less restrictive methods must either fail or be deemed ineffective before seclusion and restraint are used in 14 states on all children and in 20 states on children with disabilities alone: Alabama, California<sup>d</sup>, Colorado, Georgia, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine, Massachusetts, Maryland, Minnesota<sup>d</sup>, New Hampshire (restraint only), New York<sup>d</sup>, Oregon, Pennsylvania<sup>d</sup>, Rhode Island, Vermont, Washington<sup>d</sup>, Wisconsin, and Connecticut<sup>d</sup> (restraint only; less restrictive methods need not fail to use seclusion when permitted in the IEP).<sup>57</sup> Ten of these adopted the provision after the 2009 introduction of Representative Miller's bill containing this requirement. The requirement was also included in the bill Senator Harkin introduced in 2011. Montana requires less restrictive methods to have been tried, but not necessarily to have been ineffective.

Hence, 37 states have no least-restrictive measures clause in their laws for all children, and 31 lack it for children with disabilities. As a result, personnel can quickly escalate to restraint/seclusion, even when a much less harmful intervention would resolve the problem. Of these states, 6 suggest it in their nonbinding guidance for all children, and 9, for children with disabilities: Michigan, Missouri, New Mexico (restraint only), Ohio (added Jan. 2013), Oklahoma<sup>d</sup>, South Carolina, Utah<sup>d</sup>, Virginia, and Washington, D.C.

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<sup>55</sup> See H.R. REP. NO. 111-417 at 20-21. For example, in one Utah case, a child was repeatedly restrained for smearing fecal matter on the wall and banging his head. A functional behavioral assessment determined that he was doing this because the restraints were one of the few sources of physical contact he had. School personnel were able to end the behaviors by giving the child hugs and interactions for positive behavior, according to COPAA Executive Director Denise Marshall. Thus, a less restrictive intervention, identified through a functional behavioral assessment, stopped the child from injuring himself, while restraints only encouraged him to do so. Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

<sup>56</sup> KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005).

<sup>57</sup> Although Washington does not limit the reasons for which seclusion may be used, it does consider seclusion and mechanical restraint as "aversives" to be used only as a "last resort." Physical restraint as that term is commonly understood is not considered an "aversive" and is not subject to the last resort requirement. WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135; 392-172A-03110 (4) (last resort provision).

## 2. Intervention Cannot Continue When the Emergency No Longer Exists

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These dangerous, harmful procedures should 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.<sup>58</sup> Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks. Such requirements are unrelated to an emergency or safety. In addition, some states or school personnel require that seclusion or restraint continue for required time periods, even if there is no longer an emergency. Of course, if a state bans seclusion, then the requirement is necessary only for restraint.

**Only 14 states require these procedures to end when the emergency ends for all children, and 12, for children with disabilities.**

Only 14 states by law require restraint and/or seclusion to end when the emergency ends for all children, and 19, for children with disabilities: Alabama, California<sup>d</sup>, Colorado, Georgia, Illinois (restraint only), Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine, Massachusetts, Minnesota<sup>d</sup>, New Hampshire (restraint only), Nevada<sup>d</sup>, Oregon, Rhode Island, Texas<sup>d</sup>,<sup>59</sup> Vermont, Wisconsin, and West Virginia.<sup>60</sup>

The remaining states (37 all children; 32 children with disabilities) have no laws forbidding the intervention from continuing after the emergency ends. Indeed, there are 6 states that explicitly allow restraint/seclusion to continue even if there is no emergency. They set time limits or require children to be calm or composed, which is often impossible for children with autism and other disabilities. A child may be upset and crying, and yet threaten no one. Some even let the IEP team decide when restraint or seclusion should end, which has nothing to do with an emergency. These states are Connecticut<sup>d</sup> (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); Montana<sup>d</sup> (duration set in IEP/BIP); and New Hampshire<sup>d</sup> (IEP team decides

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<sup>58</sup> 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.

<sup>59</sup> 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.

<sup>60</sup> 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.

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 can 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, the 30 minute rule appears designed to protect the child, by ensuring that staff members take action to promptly end restraint or seclusion.

There are 8 states with nonbinding guidelines supporting the principle that the intervention should end when the emergency ends: Alaska<sup>d</sup> (added 2013), Indiana (restraint only), Missouri, Nebraska, Ohio (added 2013), Oklahoma<sup>d</sup>, South Carolina, and Washington, D.C. Such guidance lacks the force of law. Indiana's nonbinding guidance also recommends that seclusion end within 30 minutes after the behavior ends or as specified in the IEP. There are 21 states that are wholly silent: Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, 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 suggest any through voluntary guidelines.

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

At least 20 states have laws indicating that seclusion/restraint may not be used as a means of discipline or punishment. The states include Alabama, California<sup>d</sup>, Colorado, Connecticut<sup>d</sup>, Georgia, Illinois, Iowa, Kentucky (2013), Louisiana<sup>d</sup>, Maine, Massachusetts, New Hampshire, New York<sup>d</sup>, Oregon, Pennsylvania<sup>d</sup>, Rhode Island, Tennessee<sup>d</sup>, Vermont, West Virginia, and Wyoming. Some also explicitly state that the interventions are not a substitute for educational programming. Other states that do not include this language explicitly may still have the requirements if they limit restraint/seclusion to threats of physical harm or ban seclusion entirely. Such requirements by definition prevent the procedures from being used for discipline and punishment.

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

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

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

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

## 1. Restraints that Restrict Breathing And Threaten Life

Restraints that impede breathing and threaten life are extraordinarily dangerous without further question. According to the GAO, 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. 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.<sup>61</sup>

Nonetheless, only 18 states have laws prohibiting these extremely dangerous restraints on all children; 25, on children with disabilities. These laws are 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. It compresses the child's ribs so the chest cavity cannot expand, and pushes the abdominal organs up so they restrict the diaphragm and reduce the room for lung expansion.<sup>62</sup>)

The language used can differ. Of the states, 15 ban all restraints that obstruct breathing or that threaten life for all children; 21 for children with disabilities. The states with explicit bans are: Alabama, Colorado, Connecticut<sup>d</sup>, Florida<sup>d</sup>, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine, Maryland, Massachusetts, Minnesota<sup>d</sup>, New Hampshire, Rhode Island, Tennessee<sup>d</sup>, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Texas<sup>d</sup> has an implicit ban. It requires that any restraint be implemented in a way that protects the child's "health and safety" and forbids restraint that deprives the child of basic human necessities, which would encompass breathing. In addition to these states, 4 more ban prone restraint only: Georgia, Ohio, Oregon, and Pennsylvania<sup>d</sup>. There are also 7 states (counted above) that ban both prone restraint and other forms of restraint that impair breathing: Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Maryland, New Hampshire, 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, Ohio has adopted a state policy that seeks to restrict other restraints that impair breathing and is in the process of considering a similar regulation.

Furthermore, 3 states do not ban, but regulate, prone restraint, Massachusetts, Vermont, and Minnesota. Massachusetts permits staff trained in prone restraint to use the dangerous procedure.

**33 states have no laws forbidding the use on all children of restraints that impede breathing and threaten life; 26 have no laws for children with disabilities.**

<sup>61</sup> GAO REPORT at 10-11; Greg Toppo, *Restraint Can Dispirit and Hurt Special-Ed Students*, USA TODAY, May 18, 2009.

<sup>62</sup> DISABILITY RIGHTS CALIFORNIA, *THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION* 17-18 (2002); see also NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) at 13 ("Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.")

Vermont allows it under certain circumstances if less restrictive restraints would not be effective. Such regulations likely undercut the state's 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.

A 2012 Minnesota law allows prone restraint through August 2013 by staff who are trained in the use of prone restraint, 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 also prohibits restraints that impair the ability to breathe or that restrict "a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or result[ ] in straddling a child's torso." It requires the state Department of Education to publish data quarterly on the use of prone restraint and to plan for ending prone restraint.

Seven states with nonbinding guidance suggest forbidding these highly dangerous restraints: Alaska<sup>d</sup>, Missouri, Nebraska, New Mexico<sup>d</sup>, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These voluntary principles are not equivalent to statute or regulation, but they do reflect the state's views of the issue.

For comparison, both Congressional bills would ban restraints that restrict breathing; the bill that was introduced by Senator Harkin would prohibit all life-threatening restraints.

## 2. Mechanical & Chemical Restraint

Mechanical restraints include chairs and furniture that children are locked into; devices that restrain arms, legs, torsos and other body parts; duct tape, straps, bungee cords, and ropes used to tie children to furniture or to tie limbs together; weighted materials; and similar mechanisms. They are dangerous, 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.<sup>63</sup>

In February 2013, the shoes of an 8-year old girl with Down Syndrome were duct-taped so tightly that she could not walk and her ankles were bruised, according to a news report.<sup>64</sup> Children have been left in mechanical restraints for long periods of time, exacerbating the harm.

**Only 14 states ban the use of mechanical restraints on any child. These include locking devices, duct-tape, and tying children to furniture. Only 13 ban dangerous chemical restraints on any child.**

<sup>63</sup> See generally SCHOOL IS NOT SUPPOSED TO HURT (2009) at 21-26.

<sup>64</sup> Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl's Feet Duct-Taped*, INDIANAPOLIS STAR, Feb. 6, 2013.

As of March 16, 2013, laws ban mechanical restraint use on any child in 14 states (18 states for children with disabilities). The states with bans are: Alabama, Colorado (except armed security officers), Georgia, Illinois, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine, Montana<sup>d</sup>, New Hampshire, Oregon, Pennsylvania<sup>d</sup>, Tennessee<sup>d</sup>, Vermont, Wyoming, West Virginia, and Wisconsin. Generally, these states include 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.

This means that 37 states do not ban mechanical restraints for all children (33 for children with disabilities). Of these, 4 have specific provisions regarding mechanical restraint. Maryland is the strictest, forbidding mechanical restraint except in certain schools with hospital accreditation. The other 3 are framed as restrictions, but they can broadly permit mechanical restraint. Massachusetts allows mechanical restraint with parental consent and physician instructions. Nevada<sup>d</sup> lets schools use 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<sup>d</sup> only 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.

Chemical restraints can kill and injure.<sup>65</sup> As of March 16, 2013, 13 states ban chemical restraints by law in school: Alabama, Colorado, Georgia, Illinois, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Maine, New Hampshire, Oregon, Rhode Island, and Vermont, and Wisconsin (2012, change from nonbinding guidance that suggested allowing them with medical oversight). These laws apply to all children. Another 3 restrict them: Connecticut<sup>d</sup> (bans chemical restraints unless otherwise stated in IEP), Massachusetts (permitted with parental consent and physician instructions), and Tennessee<sup>d</sup> (permitted with parental consent and physician instructions). These pose the same risks of danger as similar mechanical restraint laws; with permission, chemical restraints can be used freely. The remaining 38 states have no laws.

Among the states without laws, 6 have nonbinding guidelines urging that mechanical restraints not be used: Nebraska, New Mexico<sup>d</sup>, Ohio, Oklahoma<sup>d</sup>, South Carolina, and Washington, D.C. The remaining 32 states are completely silent. There are 4 with guidance urging that chemical restraints not be used: Missouri, Nebraska, Ohio, and Washington, D.C.; 35 states are entirely silent.

For comparison, both 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, as children may be locked or strapped into therapy chairs or other devices, and left for hours in rooms and closets,

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<sup>65</sup> 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).

hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom because she was screaming. She flipped the chair over on herself and was hanging by the restraints. She also urinated on herself.<sup>66</sup> In Massachusetts, a preschooler was allegedly strapped into a therapy chair for being rambunctious, and left alone by a teacher in a closed, darkened closet as he cried--until another teacher rescued him.<sup>67</sup> CNN has documented the story of a child who was confined in a seclusion room and strapped into a chair; a special education teacher found him and reported the situation to her superiors.<sup>68</sup>

## **B. OTHER SECLUSION REQUIREMENTS**

### **1. Monitoring 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, while the teacher sat outside, looking in occasionally.<sup>69</sup> In January 2011, an Indiana student attempted suicide by hanging in a seclusion room where he was not observed, the National Disability Rights Network alleged. He previously had been placed in the room and forbidden to use the bathroom, causing him to urinate on himself, and then secluded for another day for having relieved himself.<sup>70</sup> Other children locked unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized.

**13 year old Jonathan King killed himself in seclusion as the teacher sat outside, occasionally checking on him. In 2011, another child attempted suicide while unobserved in seclusion.**

**29 states with laws permitting seclusion of children with disabilities do not require the staff to continuously watch them, subjecting those children to danger. For all children, this rises to 39 states.**

There are 39 states that allow students without disabilities to be placed in seclusion but lack laws requiring them to be watched continuously by staff; 29 states lack laws requiring continuous visual monitoring of children with disabilities.

The states with protections break down as follows. All forms of seclusion (whether the door is locked or blocked by furniture, etc.) are banned in 4 states for children with disabilities, and 1 state

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<sup>66</sup> ALABAMA DISABILITIES ADVOC. PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

<sup>67</sup> James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

<sup>68</sup> Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 and accompanying blog story.

<sup>69</sup> Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

<sup>70</sup> NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT 11 (2012).

for all children: Georgia, Nevada<sup>d</sup>, Pennsylvania<sup>d</sup>, and Texas<sup>d</sup>). Of those permitting seclusion, only 11 by law require continuous, direct visual monitoring of all children in seclusion rooms; 18 states, of children with disabilities: Alabama, Arkansas<sup>d</sup>, Illinois, Iowa, Kentucky (2013), Louisiana<sup>d</sup>, Maryland, Maine, Minnesota<sup>d</sup>, Montana<sup>d</sup>, New York<sup>d</sup>, Oregon, Rhode Island, Tennessee<sup>d</sup>, Vermont, Washington<sup>d</sup>, Wisconsin, and Wyoming (“isolation” rooms).

Laws in 3 states allow staff to monitor the room occasionally but do not require continuous visual monitoring of all children: Colorado (“reasonably monitored”); Massachusetts (“access” to staff required); 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 do not limit seclusion of children without disabilities: California<sup>d</sup> (“adequate” supervision for unlocked seclusion) and Connecticut<sup>d</sup> (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. A child can be left alone and unwatched for stretches of time in a room with an observation window.

Other states lack statutes or regulations that require monitoring at all. Six states seek continuous visual monitoring in their state guidance: Alaska<sup>d</sup> (2012); Michigan, Ohio (2013), Oklahoma<sup>d</sup>, South Carolina, and Washington, D.C., and 3 advocate for the *ability* to see the student at all times: Indiana, Missouri, and Nebraska. These guidelines do not have the force of law and are subject to change. (In February 2013, Ohio filed a proposed regulation that would require staff to continually supervise the child and the use of rooms in which the child is capable of being watched; the regulation is currently pending.) In addition, 14 states are entirely silent about monitoring children in seclusion: Arizona, Delaware, Florida, Hawaii, Idaho, Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Utah, Virginia, and West Virginia.

## 2. Minimum Room Condition Requirements.

There have been complaints that students have been secluded in small, darkened closets or boxes, and injured by furniture they can overturn or other dangerous items. There have also been reports that children have been routinely denied access to the bathroom, food, and water. In some cases, children have removed their clothing to be able to urinate in the room or urinated on themselves.<sup>71</sup> In 2012, there were several media stories children secluded in locked boxes or cells.<sup>72</sup> Such boxes almost certainly raise questions of compliance with state fire and building codes.

Some states regulate seclusion room conditions through statutes and regulations; two added such requirements in 2012 (Maine and Wisconsin), and one in 2013 (Kentucky).

States are more likely to impose lighting (16 states) and ventilation (14 states) requirements than access to essential bathroom facilities (8 states). Some room requirements in state statutes and

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<sup>71</sup> See generally NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009); J. BUTLER, UNSAFE IN THE SCHOOLHOUSE; OUT OF THE DARKNESS... INTO THE LIGHT (WISCONSIN); MPAS, SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS; Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

<sup>72</sup> *Parents Angry over School District's Use of "Isolation Booth"*, KOMO NEWS (WASHINGTON), NOV. 29, 2012; Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son "In a Box"*, FOX6NOW (Wisconsin), May 15, 2012; Carey Pena, *Elementary School Faces Lawsuit Over Padded Seclusion Room*, AZFAMILY.COM (KTVK-3TV, Arizona), Sept. 19, 2012.

regulations are as follows:

Room must be lit (16 states by law): Arkansas<sup>d</sup>, Colorado, Illinois, Iowa, Kentucky (2013), Louisiana<sup>d</sup>, Maine, Maryland, Minnesota<sup>d</sup>, New York<sup>d</sup>, North Carolina, Tennessee<sup>d</sup>, Vermont, Washington<sup>d</sup>, West Virginia, and Wyoming.

Heating/cooling/ adequate ventilation (14 states by law): Arkansas<sup>d</sup>, Colorado, Iowa, Kentucky (2013), Louisiana<sup>d</sup>, Maine, Maryland, Minnesota<sup>d</sup>, New York<sup>d</sup>, North Carolina, Tennessee<sup>d</sup>, Vermont, Washington, and Wyoming.

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

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

Bathroom access (8 states by law): Iowa, Maryland (hard 30 minute limit on seclusion), Minnesota<sup>d</sup>, New York<sup>d</sup> (denial is a forbidden aversive), North Carolina (same); Wisconsin, and Washington<sup>d</sup> (forbidden aversive to deny child “common hygiene care.”)

Access to water and food when normally served (2 states by law): Minnesota<sup>d</sup> and Wisconsin.

**Only 8 states require bathroom access for children in seclusion rooms; 16 require rooms to be lit; 14 require adequate heating/cooling.**

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 also among the states explicitly requiring compliance with fire, safety, and building codes. Minnesota requires obtaining a written statement that the 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. Indeed, no one should ever assume that a school or other building is exempt from a state fire, building, or safety code.<sup>73</sup>

Nonbinding guidelines in 4 states also suggest room condition requirements: Indiana, Ohio, 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. The most 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, and suffer severe trauma. The room requirements, however, ensure that seclusion rooms meet some very basic thresholds and children are not in icy

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<sup>73</sup> See *supra* n. 43 and accompanying text for a discussion of fire and other codes.

or overly hot rooms, boxes, unlit closets, denied access to bathrooms, in cells without functional sprinkler systems, etc.

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

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

### A. INFORMING PARENTS OF RESTRAINT/SECLUSION

Because of the dangers posed by seclusion/restraint, it is important that school staff inform parents promptly. Far too often, parents are unaware of what happened to their child. Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door. 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 did not know about any of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.<sup>74</sup> Phyllis Musumeci's son, Christian, reported that her son was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his parents' removing him from school. His parents found out a year later, when they requested school logs (those for one year were reported missing).<sup>75</sup> Other parents have reported learning of restraint and abuse only after finding bruises and other injuries to their children's bodies.<sup>76</sup>

This section examines state parental notification requirements. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/next day notification, followed by a more extensive written report to parents. New Hampshire appears twice as its restraint and seclusion rules differ.

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<sup>74</sup> *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearing Before the House Comm. on Education and Labor, 111th Congress 60-61 (2009).*

<sup>75</sup> *Gradebook: A Weekend Interview with Phyllis Musumeci*, TAMPA BAY TIMES, Jan. 24, 2009. Although Ms. Musumeci was able to access such laws, most states and school districts do not require that they be maintained. Hence, most parents are unable to determine whether their child was restrained or secluded.

<sup>76</sup> 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.

For students with disabilities, 29 states have laws requiring schools to apprise parents when their child was restrained or secluded. Of these, 20 states require that the school take steps to inform parents on the same day or within 1 calendar day/24 hours. Of the remainder, 4 require notification within 1 school or business day; 2 allow either 2 calendar or school days; and only 3 permit more time. This leaves 22 states that do not require schools to perform the very basic, simple act of informing parents in a timely manner that their child with a disability was subjected to potentially dangerous procedures.

Fewer states require schools to notify all parents when their child has been restrained or secluded. Only 18 state laws require schools to notify parents of all students of restraint or seclusion, meaning 33 do not have such laws.<sup>77</sup> Of these, 11 require steps to be taken to inform parents on the same day or within 1 calendar day/24 hours. 3 permit notification within 1 school or business day; 2 permit either 2 calendar or school days; and 1 has a longer time period.

### **Parental Notification on Same Day or Next Day/24 Hours**

It is important the parents be told within 24 hours that their child was subjected to restraint or seclusion, so they can seek prompt medical consultations.

Concussions, hidden internal injuries or bleeding, other medical issues, and psychological trauma need to be identified immediately. A “business day” or “school day” standard can delay notification over weekends and lengthy school holidays. There are 20 states that by law direct states to take steps to inform parents of children with disabilities restraint/seclusion either on the same day or within 24 hours/the next calendar day. Of these, 14 require a more detailed written follow-up communication. There are 11 states applying similar legal protections to all children.

Same day notification (7 state laws, all children; 12, children with disabilities): 7 states have laws requiring schools to take steps to apprise parents of all children of restraint/seclusion on the same day restraint or seclusion occurs; 5 others have laws order such notification for children with disabilities only: Colorado<sup>†</sup>, Iowa<sup>†</sup> (attempted), Maine, Massachusetts<sup>†</sup> (unless parents waive requirement or restraint lasts less than 5 minutes), Oregon<sup>†</sup>, Vermont<sup>†</sup> (documented attempt), West

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<sup>77</sup> These 18 states with laws requiring parents of all children to be notified are Alabama, Colorado, Georgia, Illinois, Iowa, Kansas (2013- pending final promulgation), Kentucky (2013), Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts(unless parents waive their right to notice in response to school request or the incident lasts for less than 5 minutes), New Hampshire (restraint only), North Carolina (but applying limitations that can excuse notification), Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming.

### **Notifying Parents**

**33 states lack parental notification laws for all children; 22 lack them for children with disabilities. 24-hour notice is vital to detect concussions, hidden internal injuries, and psychological trauma.**

**Only 11 states require notice within 24 hours or less for all children; 20, for children with disabilities.**

**Still, 24 hour notice is the most common notification requirement, indicating its importance.**

Virginia<sup>†</sup> (“good faith”), Connecticut<sup>†d</sup> (attempted; longer deadline applicable if seclusion in IEP), Florida<sup>†d</sup>, Minnesota<sup>†d</sup>, Tennessee<sup>d</sup> (“reasonable efforts”), Texas<sup>†d</sup> (“good faith effort”). A number require actual notice, and others, reasonable attempts and good faith efforts to notify parents on the same day.

24 hour or 1 calendar day notification (5 state laws, all children; 8, children with disabilities):

These states have laws directing schools to take steps to notify the parent within one calendar day or 24 hours: Illinois, Kentucky (2013), Maryland (unless otherwise stated in IEP/BIP), New Hampshire<sup>†</sup> (“reasonable efforts,” restraint only), Wyoming (written notice required unless parent agrees otherwise), Louisiana<sup>†d</sup>, Montana<sup>d</sup> (“as soon as possible, but not less than 24 hours”), and Utah<sup>d</sup>.

More detailed written follow-up required (9 state laws, all children; 13, children with disabilities):

Several states require a more detailed written follow-up notification after the quick same day/24 hour notice. They are: Colorado, Illinois, Iowa, Maine, Massachusetts, New Hampshire (restraint only), Oregon, Vermont, West Virginia, Connecticut<sup>d</sup>, Florida<sup>d</sup>, Louisiana<sup>d</sup>, Texas<sup>d</sup>. Other states mandate written communication only if verbal or electronic communication on the first day fails, including Kentucky (2013) and Minnesota<sup>d 78</sup>.

## **1. States Permitting Longer Notification Period**

There are 9 states that allow more time for parental notification, although 3 apply only to children with disabilities, meaning that parents of children without disabilities have no notification rights. Of these, 4 state laws direct notification within 1 school or business day: Alabama, California<sup>d</sup>, Georgia, and Wisconsin. Rhode Island requires notices as soon as possible, but no later than 2 days; Kansas (2013-pending final promulgation) gives schools 2 school days. Another 3 have substantially longer deadlines: Pennsylvania<sup>d</sup> (setting no deadline, but requiring an IEP meeting within 10 days which effectively is the outer deadline); New York<sup>d</sup> (required, but no deadline), and North Carolina (notify parents “promptly” with written follow up within 30 days if child was injured or if event lasted longer than 10 minutes; also requires notification if the school violated statutory prohibitions). Interestingly, the three laws permitting the longest periods, Pennsylvania<sup>d</sup>, New York<sup>d</sup>, and North Carolina, were adopted in 2005 or earlier. This was before the media and Congress began a heavy focus on restraint/seclusion and when electronic communication may have been somewhat less widespread. No statute or regulation adopted or amended in the 8 years since 2005 has permitted notification to take longer than two school days. Moreover, aside from Kansas, all range from same day to 24 hours/1 calendar day to 1 school day.

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<sup>78</sup> Some state laws require that the supplemental written notification be sent within 24 hours of the use of restraint/seclusion. This is a good practice, given mail delays. These include Florida<sup>d</sup>, Illinois, Kentucky, Louisiana<sup>d</sup>, Oregon, Texas<sup>d</sup>, and Vermont. Other state laws mandate verbal/electronic communication within 24 hours or less, to be followed by a more extensive written report a few days later. These include Colorado (written report within 5 days), Connecticut<sup>d</sup> (2 school/business days), Iowa (3 days); Maine (7 days); Massachusetts (3 school days); New Hampshire (allowing several days for written notice); West Virginia (1 school day). In each of these states, the written notification must contain many details not required in the immediate notification, the likely reason for the delay. For example, in Colorado, the written supplement contains a detailed description of the incident and the type and duration of restraint/seclusion; the behavioral antecedents; de-escalation and alternative efforts; and any injuries. It must also identify staff present and involved. The other state laws are similar.

Thus, there are 33 states without laws requiring parental notification for all children, and 22 without laws requiring notification of parents of children with disabilities. In those states without statutes or regulations, 11 have suggested guidelines. Of these, 7 suggest notice on the same school day: Michigan, Missouri<sup>†</sup>, Nebraska<sup>†</sup>, Ohio<sup>†</sup> (2013-parents notified immediately with fuller written notice sent in 24 hours), Oklahoma<sup>d</sup>, South Carolina<sup>†</sup>, and Washington, D.C. <sup>†</sup> (The states with the daggers also suggest a fuller written notice afterwards.) Nevada's guidance urges notification within one calendar day. Indiana's guidelines leave it up to the IEP team, and Virginia suggests the school/school district set a time period. Alaska<sup>d</sup> suggests notices "as soon as reasonably possible." Of the 11 states with such voluntary guidance, 9 would apply their principles to all children. There are 12 states that do not even suggest parental notification in voluntary guidance: Arkansas, Arizona, Delaware, Hawaii, Idaho, Mississippi, North Dakota, New Hampshire (seclusion only), New Jersey, New Mexico, South Dakota, and Washington.

## 2. Loopholes

Of the states that ostensibly require notice in 24 hours or less, 5 have sizeable loopholes, as does a sixth with even longer deadlines. These state laws allow the IEP team to set another deadline (Maryland); leave the decision entirely to the IEP team when seclusion is included in the IEP (Connecticut<sup>d</sup>); allow parents to agree to a different deadline (Wyoming); allow schools to request that parents waive the right to notice (Massachusetts); or are limited in their application to certain situations (California<sup>d</sup> and North Carolina). Massachusetts 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<sup>d</sup> requires notice within 1 school day when an emergency intervention has been used. Yet, because the law does not apply when restraint or seclusion is used for non-emergencies, California<sup>d</sup> does not require notification in non-emergencies. Likewise, North Carolina limits the circumstances under which notice is required. Under its rules, parents are not told of "nonobservable" injuries. But concussions and hidden internal injuries are the circumstances under which parents most need notification. In addition, parents need not be told of seclusion episodes that comply with the rules or last less than specified time periods. Thus, parents may not learn of episodes of restraint/seclusion that cause their children psychological trauma or impede their learning.

**5 states have loopholes in their notice rules, including allow the IEP team to decide if the parents are notified and allowing schools to ask parents to waive notification. Many uneducated parents may not understand.**

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

## B. DEBRIEFING

A debriefing is a meeting that occurs after an incident of restraint or seclusion. Staff members, the parents, and the student may attend. Debriefings help reduce and eliminate restraint and seclusion, by determining what caused the event, how it could be avoided, and by analyzing, planning for, and implementing positive interventions.<sup>79</sup> They have been described as “critical.”<sup>80</sup> They are one of the six core strategies identified for decreasing the use of seclusion and restraint by the National Association of State Mental Health Program Directors (NASMHPD).<sup>81</sup>

There are 15 state laws requiring a debriefing, including 10 laws applicable to all children. This means that 41 states do not require debriefings for all children and 36 do not require them for children with disabilities. The 15 are: Alabama, Colorado, Maine, Massachusetts, Maryland, Oregon, Rhode Island, Vermont, Wisconsin, Wyoming, California<sup>d</sup>, Connecticut<sup>d</sup>, Louisiana<sup>d</sup>, Minnesota<sup>d</sup>, Nevada<sup>d</sup>, and Pennsylvania<sup>d</sup>. No other states require a debriefing by law. Kentucky’s 2013 regulations permit one if requested by parent or student. There are 7 states that suggest a debriefing in nonbinding guidelines: Indiana, Michigan, Missouri, Nebraska, Ohio (2013), Oklahoma<sup>d</sup>, South Carolina (seclusion only), and Washington, D.C.

For comparison, the bill introduced by Senator Harkin in 2011 would have required a debriefing, where school, parent, and student analyze the antecedents to the event, plan for positive behavioral interventions to prevent further use of restraint, and plan for a functional behavioral analysis.

## C. DATA COLLECTION AND SUNSHINE

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

In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. The GAO described six states that collected data: California<sup>d</sup>, Connecticut<sup>d</sup>, Kansas<sup>d</sup>, Pennsylvania<sup>d</sup>, Texas<sup>d</sup>, and Rhode Island. Texas and California reported 33,000 instances alone in 2007-08, according to the report.<sup>82</sup> (In a previous GAO report, investigators found that even when seclusion/restraint data is collected, it is likely to be underreported due to inconsistent reporting rules.<sup>83</sup>)

As of March 16, 2013, there are 16 state laws requiring annual data collection; 9 of these apply to all children and 7 only to children with disabilities: Alabama, California<sup>d</sup> (but only for emergency interventions, not those used in non-emergencies), Connecticut<sup>d</sup> (2012 amendment), Florida

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<sup>79</sup> *Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Interim Final Rule*, 66 FED. REG. 7148, 7152 (Jan. 22, 2001). A systematic debriefing process also counters implementation drift—the tendency to go back to prior patterns of routinely using seclusion/restraint as a response. BethAnn Glew, *Reducing The Use Of Seclusion And Restraint In Segregated Special Education School Settings Through Implementation Of The Collaborative Problem Solving Model* (2012) (unpublished dissertation, Duquesne University).

<sup>80</sup> *Psychiatric Facilities Interim Final Rule*, 66 FED. REG. at 7152.

<sup>81</sup> KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005).

<sup>82</sup> GAO REPORT at 5, 7. The list was not intended to be complete.

<sup>83</sup> H.R. REP. NO. 111-417 at 13.

<sup>d</sup>(monthly and annually), Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Maine (2012), North Carolina, New Hampshire (restraint only), Nevada<sup>d</sup>, Oregon, Rhode Island, Tennessee<sup>d</sup>, Texas<sup>d</sup>, and Wyoming. Of these, 11 states added this requirement after 2009 to mirror Congressman Miller's and Senator Harkin's bills. A fourteenth state, Pennsylvania requires that the data be made available to the SEA when it monitors an LEA. Nevada<sup>d</sup> further requires a report when the rights of a child are violated by restraint or seclusion. Massachusetts and Minnesota have limited data collection requirements. In Massachusetts, data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported. In Minnesota, only prone restraint data is collected.

Michigan recommends data collection in nonbinding guidance, and Ohio seeks state-level reporting of data in its 2013 policy. But policies that are not statutes or regulations are subject to change. 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 that were 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 long hidden from public view. But the sharp increase state laws requiring data collection 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; it recorded 9,751 restraint and 4,245 seclusion episodes in 2011-12.<sup>84</sup> The data provided vital sunshine that caused 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 eliminated the use of seclusion, where children who are acting out are left alone in a room. And the number of restraints dropped nearly two-thirds since the 2010-11 school year, when 2,394 cases were reported." 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 Miami-Dade Schools (345,000 students).<sup>85</sup>

**In 2010, Florida passed a data collection and sunshine law. In 2011-12, it recorded 9,751 restraint and 4,245 seclusion episodes. The data reporting and publication caused one Florida school district to end seclusion and to cut its restraint use by 2/3.**

<sup>84</sup> 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.

<sup>85</sup> 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](http://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.<sup>86</sup>

## 2. Data Reporting to the School or LEA

Some states mandate data collection at lower levels, indicating that data could readily be collected at the state level. By law, data is reported to the LEA or school board in 11 states, 7 of which apply the rules to all children: Alabama, Florida<sup>d</sup>, Kansas (2013-pending final promulgation), Maine, North Carolina, Nevada<sup>d</sup>, Oregon, Tennessee<sup>d</sup>, Texas<sup>d</sup>, Vermont (certain circumstances), and Wisconsin.

Other states keep data at the school-wide level as well, including Arkansas (seclusion only), California<sup>d</sup>, Colorado, Connecticut<sup>d</sup>, Florida<sup>d</sup>, Iowa, Kansas (2013-pending final promulgation), Massachusetts (if the restraint lasts for more than 5 minutes or there is an injury, unless the parent waives the requirement), Nevada<sup>d</sup>, Rhode Island, and Tennessee<sup>d</sup>.

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: California<sup>d</sup>, Colorado, Connecticut<sup>d</sup>, Florida<sup>d</sup>, Georgia (but not seclusion as it is banned), Illinois, Iowa, Kentucky (2013), Louisiana<sup>d</sup>, Massachusetts (if the incident lasted more than 5 minutes or led to an injury), Maryland, Maine, Minnesota<sup>d</sup>, New York<sup>d</sup> (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<sup>d</sup>, Rhode Island, Texas<sup>d</sup>, Vermont, Washington<sup>d</sup>, Wisconsin, and Wyoming.

In addition, a few states have suggested guidelines which seek data at lower levels. Nebraska and South Carolina suggest data be reported to the LEA or school board. There are 8 states that recommend in guidance that incident reports be placed in the child's file: Michigan, Nebraska, Ohio (2013), Oklahoma<sup>d</sup>, South Carolina, Virginia, and Washington, D.C.

The fact that states complete these kinds of reports indicates that they could readily provide information through a computerized system to the state. There are indications that not all school districts properly report data, however, and that not all states collect it properly, possibly resulting in under-reporting.<sup>87</sup>

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<sup>86</sup> Molly Bloom and Jennifer Smith Richards, *Special Report: Education: Isolation Chambers*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Aug. 5, 2012.

<sup>87</sup> Jordan Fenster, *Connecticut Education Department Data Shows 18,000 Instances of Restraint or Seclusion in 2009-10*, NEW HAVEN REGISTER, Jan. 26, 2012.

## D. TRAINING AND OTHER MATTERS

A number of the deaths and injuries described in the GAO report involved poorly trained or untrained staff.<sup>88</sup> Disability Rights California has documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year-old child down the hall by his wrists.<sup>89</sup> In Ohio, untrained school staff have used life-threatening prone restraint--which was banned by Executive Order years ago--and used 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.<sup>90</sup>

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

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

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

In the paragraphs below, some state training programs are designated “(restraint only).” Some ban some form of seclusion and require only restraint training. New Hampshire’s restraint statute and seclusion regulation do differ.

Training in conflict de-escalation and prevention of seclusion/restraint ( 16 state laws, all children; 21, children with disabilities): Alabama, Colorado, Connecticut<sup>d</sup>, Georgia, Illinois, Kansas (2013-pending final promulgation), Kentucky (2013), Massachusetts, Maryland, Maine, Minnesota<sup>d</sup>, North Carolina, Nevada<sup>d</sup>, Oregon, Rhode Island, Tennessee<sup>d</sup>, Texas<sup>d</sup>, Vermont, Wisconsin, West Virginia, and Wyoming.

<sup>88</sup> H.R. REP. NO. 111-417 at 18.

<sup>89</sup> DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIF. SCHOOLS: A FAILING GRADE (June 2007).

<sup>90</sup> Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

Training in positive behavioral support training as part of seclusion/restraint laws (11 state laws, all children; 15, children with disabilities): Alabama, California<sup>d</sup>, Georgia, Iowa, Kansas (2013-pending final promulgation), Kentucky (2013), Minnesota<sup>d</sup>, Montana<sup>d</sup> (requiring person trained in positive interventions on IEP team), North Carolina, Nevada<sup>d</sup>, Pennsylvania<sup>d</sup>, Rhode Island, Tennessee<sup>d</sup>, Vermont, and Wyoming.

Training in safe and appropriate use of seclusion/restraint (17 state laws, all children; 21, children with disabilities): Alabama (restraint only), Colorado, Connecticut<sup>d</sup>, Georgia (restraint only), Illinois, Iowa, Kentucky (2013), Massachusetts, Maine, Maryland, Minnesota<sup>d</sup>, New Hampshire (restraint only), New York<sup>d</sup>, North Carolina, New York<sup>d</sup> (restraint only), Oregon, Rhode Island<sup>d</sup>, Tennessee<sup>d</sup>, Texas<sup>d</sup>, 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<sup>d</sup>, Illinois, Maine, Massachusetts, Maryland, Minnesota<sup>d</sup>, 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<sup>d</sup>, Illinois, Iowa, Massachusetts, Maryland, Minnesota<sup>d</sup>, 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<sup>d</sup>, Rhode Island (school only), Tennessee<sup>d</sup> (if funding is available for training), and Wyoming (school only).

Certification, proof proficiency, or periodic re-training required (6 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.

Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. These 6 states have voluntary guidance urging training in conflict de-escalation and prevention of seclusion/restraint: Indiana, Missouri, Nebraska, Oklahoma<sup>d</sup>, South Carolina, and Virginia. There are 7 states with nonbinding guidelines urging training in safe and appropriate use of seclusion/restraint: Indiana, Missouri, Nebraska, Oklahoma<sup>d</sup>, South Carolina, Virginia, and Washington, D.C. Five states have guidelines that seek training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Washington, D.C., Oklahoma<sup>d</sup>, South Carolina, and Virginia. Four states incorporate training in the dangers of seclusion/restraint in their guidance: Indiana, Oklahoma<sup>d</sup>, South Carolina, and Virginia. Finally, Ohio (2013) directs schools to provide training about the requirements of its state policy; a companion regulation is still pending.

## VI. CHANGES IN RESTRAINT/SECLUSION LAW

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

In December 2009, when Congressman George Miller introduced the first national restraint 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 to the same degree 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. Indeed, today, there are 17 states with some meaningful protections against both seclusion and restraint for all children, and 30 that protect children with disabilities. Many of the newly-acting states incorporated aspects of the Congressional bills, which strengthened them. Aspects of both bills have been adopted by the states. Unique aspects of the 2011 Harkin bill have already appeared in statutes and regulations adopted in 2012 and 2013. This is not, however, to say that state laws are substitutes for a federal law. Many state laws are limited and they do not adequately protect children from restraint and seclusion. Other states are still unable to adopt or strengthen state laws or regulations.

This section of the report analyzes some features of the two Congressional bills and their adoption into state law. Since Congressman George Miller introduced the first national bill in 2009, 14 states have taken significant action incorporating features of the Miller and Harkin bills. There are 10 states that adopted new statutes or regulations (Alabama, Florida<sup>d</sup>, Georgia, Kansas (2013-pending final promulgation), Kentucky (2013), Louisiana<sup>d</sup>, Vermont, Wisconsin, West Virginia, and Wyoming), and 4 that substantially strengthened theirs, Maine, New Hampshire, Oregon, and Tennessee<sup>d</sup>. Minnesota and Connecticut also revised certain statutory provisions in 2012, but they did not overhaul its law as other states did. Still, Connecticut is of note because it adopted a mandatory data collection requirement, a feature of the Congressional bills.

**14 states have adopted new laws or overhauled old ones to adopt important safeguards in the Miller and Harkin Congressional bills.**

Of the 14 state laws adopted or overhauled since December 2009, 11 apply to all children, an important innovation contained in the Miller and Harkin bills. Only Florida<sup>d</sup>, Louisiana<sup>d</sup>, and Tennessee<sup>d</sup> limit their laws to children with disabilities.

Of the 14 states, 11 incorporate the requirement that physical restraint may not be used unless there is an imminent danger of physical injury for children with disabilities, and 9 for all children. These states are the majority of the states limiting restraint to emergency threats of physical danger, showing the tremendous impact of the two Congressional bills. The Miller and Harkin

bills differed on the exact wording of the physical danger requirements, but each would impose such a requirement.

Of the 14 states that adopted or updated their seclusion laws, 1 bans all seclusion. There are 11 that limit seclusion to emergencies threatening physical danger for children with disabilities and 8 that do the same for all children.<sup>91</sup> These new states comprise the majority of states that ban non-emergency seclusion. The Miller bill introduced in 2009 and 2011 would have restricted seclusion to such emergencies; the Harkin bill introduced in 2011 would have banned seclusion.

Similarly, 9 of the states that took action since 2009 require less restrictive measures to have failed or been ineffective for children with disabilities; 8, for all children. In addition, 10 require the intervention to end when the emergency ends for children with disabilities; 9 for all children. These were both features of the Miller and Harkin bills. The states acting since 2009 make up nearly half of the states with each provision.

Moreover, of the 14 states acting since 2009, 13 ban mechanical restraint and 9, chemical restraint for children with disabilities; 11 ban mechanical restraints, and 9, chemical for all children. These make up the majority of states banning either restraint, again demonstrating the impact of the Congressional bills on the states. In addition, all 14 states that adopted laws since 2009 ban restraint that restricts breathing or prone restraint, with 11 applying their laws to all children. (The Miller and Harkin bills would have prohibited restrictions on breathing--which by definition include prone restraint--and mechanical and chemical restraints).

The states that took action since 2009 also largely mimicked the Miller and Harkin provisions on parental notification, with 10 requiring same day or 24 hour parental notification for children with disabilities (7 of these apply to all children). Some states require a good faith effort on the same day or within 24 hours, followed by written notification. The Miller and Harkin bills would have required mandatory same day notification, followed by written notification within 24 hours). Of the remaining 4 "recent actors," 3 states used a 1 business day period (all children), and 1 used a 2 school day period (all children).

In addition, the Miller and Harkin bills would have required data collection. Of the "recent actors," 10 require some data collection. These comprise the majority of states that require data to be reported to the SEA. Of these, 7 apply their rules to all children. In addition, Connecticut<sup>d</sup> adopted a mandatory data requirement in 2012. The Miller and Harkin bills would have required a fuller 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 would have required a debriefing, a feature also adopted in Wisconsin and Maine in 2012, and Kansas and Kentucky in 2013. The Harkin bill also would have forbidden restraints that prevent children from communicating (e.g., communicating physical distress or a medical emergency), a feature adopted by Minnesota<sup>d</sup> (2012), Kansas (2013-pending final promulgation), and Kentucky (2013). Thus, all 3 states that began the process after introduction of the Harkin bill

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<sup>91</sup> There are only 14 states that updated their seclusion laws because New Hampshire did not revise its seclusion regulations when it adopted its new restraint statute in 2010. For Wyoming, see footnote above stating how its differing forms of seclusion and isolation are treated in this report.

included this provision. This demonstrates the impact on state development that the strong Congressional bills have.

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 law is among the weakest of those adopted in the last four years; it included the fewest features of the Miller bill.

Two particular provisions that were not adopted include the Miller bill monitoring provision and the training components. The Miller bill would require personnel to provide in-person monitoring of children in seclusion, and if this is not safe, other continuous visual monitoring of the student. Only 1 of the 11 states that took recent seclusion action has adopted the same provision (Vermont). By contrast, 9 mandate continuous visual monitoring (the most common monitoring requirement in states that have them); 2 require staff to be "able" to see and hear the student at all times (but not actually to do so at all times); 2 leave it up to the school district, and 1 is silent. No state has adopted all of the Miller or Harkin bills' training components, and some states simply leave training details to the school district.

Nonetheless, the two national Congressional bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action. This likely impact is magnified because most states have seclusion/restraint regulations rather than statutes, and regulations are more readily changed, not needing support of a full legislature.

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 in the last two years did not adopt all features of the Congressional bills, and some weakened their features. Moreover, only 17 states by law give all children the same level of protection from both restraint and seclusion, showing that the states are not effective substitutes for a federal law.

The protection a child receives is still randomly decided by where he/she lives, just as it was in December 2009. Families who move a few miles east from Augusta, Georgia to North Augusta, South Carolina; or who move across the river from Philadelphia to New Jersey will lose their protections. Furthermore, attempts to regulate or adopt statutes have failed in several states. Other states with older, weaker provisions have not changed them (*e.g.*, most of the states that explicitly permit seclusion/restraint for mere educational disruption have made no efforts to change their laws, despite the danger.) Still others have only voluntary guidance, rather than legally binding and enforceable statutes and regulations. Such policies lack the force of law, do not provide mandatory protection, and are readily changed by the State Department of Education.

Furthermore, the existence of state laws does not support the position that legislation need only provide aspirational or basic goals for states to consider. Some state statutes, like Florida's, use a more aspirational model and simply require school districts to write their own policies. These statutes, however, provide little protection for children. A law suggesting but not mandating the conditions for using restraint/seclusion, or suggesting states pick a deadline for parental notification does little to protect children from the serious physical and psychological dangers of

these interventions. Put simply, a 24-hour notification provision enables parents to seek medical assistance promptly; a 7-day period or leaving the decision to the IEP team does not.

The harm of leaving choices up to the states is apparent from the recent situation in Connecticut<sup>d</sup>. In January 2012, the media reported about “scream rooms” (seclusion rooms) in one district. Parents complained that children were alone in these rooms for long periods of time, and alleged blood was cleaned from them, indicating that children were injured. School officials responded that the rooms were used regularly only with children with disabilities who had seclusion in their IEPs. When other parents complained of the noise, they simply offered to move the rooms so they would be less of a distraction.<sup>92</sup> They said nothing about eliminating the rooms or moving to positive interventions, and did not seem to question what they appeared to describe as routine use of the rooms for children with disabilities.

Connecticut law allows schools to use seclusion for any reason when it is included in an IEP. Connecticut also leaves many decisions about seclusion up to the IEP team—including whether and why seclusion can be used; the conditions of the room; requirements for monitoring children in seclusion; and how (or whether) to notify parents.<sup>93</sup> Connecticut further does not require that less restrictive interventions fail before seclusion is used—as long as it is in the IEP. By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail, and requires schools to take steps to notify parents within 24 hours, followed by full written notification within 2 business days. There is no ability to simply add restraint to a student’s IEP for any reason and thereby avoid the protections in the law. Like restraint, seclusion should not be a routine intervention. But leaving the decision up to the states has allowed this kind of situation to exist.

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

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

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<sup>92</sup> See, e.g., Julie Stagis, *Middletown: “Scream Rooms” Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 14, 2012; Kathleen Magen, *Experts Call ‘Scream Rooms’ Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 14, 2012; Lauren Petty, *Parents Protest “Scream Rooms” In Schools*, NBC CONNECTICUT, Jan. 11, 2012.

<sup>93</sup> See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

## 1. Ensuring Children in Restraint/Seclusion Can Communicate

It is important that all children be able to communicate if they cannot breathe or are in medical distress. The GAO reported on at least four cases in which verbal children who died or were injured in restraint told staff that they could not breathe.<sup>94</sup> Yet, many children cannot speak or have difficulty doing so. According to a Gallaudet University survey of 37,500 deaf and hard of hearing students, 40% used sign language as their primary method of communication in school.<sup>95</sup> Many children with autism and intellectual disabilities also have communications impairments; a number may be nonverbal. Some popular estimates report that up to 25 percent of children with autism are nonverbal. These, and other children, may use augmentative communication devices, which can range from simple symbol cards to dynamic computerized devices which “speak” for a child, or sign language.

**It is dangerous to restrain children who cannot talk in ways that prevent them from communicating that they are in danger. At least 4 children in the GAO report who died told staff they could not breathe.**

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

- Colorado: “No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating.” (Colorado defines restraint to include seclusion.)
- Iowa: “If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student’s primary mode of communication, the student shall be permitted to have the student’s hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.”
- Maryland: “In applying physical restraint, school personnel may not . . . ‘(ii) Place a student in any other position that will . . . restrict a student’s ability to communicate distress.’”
- 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

<sup>94</sup> GAO REPORT at 14, 16-17, 26, 29.

<sup>95</sup> GALLAUDET RESEARCH INSTITUTE, REGIONAL AND NATIONAL SUMMARY REPORT OF DATA FROM THE 2009-10 ANNUAL SURVEY OF DEAF AND HARD OF HEARING CHILDREN AND YOUTH 11 (2011).

following. . . or any physical restraint that impacts a student’s primary mode of communication.”

For comparison, Senator Harkin’s 2011 bill would have required that restraint cannot “interfere with the student’s ability to communicate in the student’s primary language or mode of communication.” Congressman Miller’s 2009 and 2011 bills were silent on this issue.

## 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 used is much greater than the threatened injury. In one Tennessee case, two adults allegedly lay on top of a 51 pound, 9-year-old boy with autism.<sup>96</sup>

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

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

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

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<sup>96</sup> Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

For comparison, the bill introduced by Senator Harkin in 2011 provided that “When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury.” Congressman Miller’s bills have been silent.

### **3. Medical and Psychological Contraindications**

Restraint and seclusion are dangerous 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.

These provisions are similar to those in Senator Harkin’s 2011 bill, which would have forbidden the use of restraint when contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.” Congressman Miller’s bill was silent on these issues.

### **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 face retaliation.<sup>97</sup> Nevada includes a non-retaliation provision in its statute: “Retaliation for

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<sup>97</sup> 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).

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 2011 bill would likewise have prohibited retaliation, using language similar to that in Nevada.

## **VII. CONCLUSION**

More than three years since the first national restraint/seclusion bill was introduced. But only 17 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 12 states limit restraint to emergencies threatening physical harm (all children), and 17 for children with disabilities by law. Only 9 states (all children) and 15 states (children with disabilities) protect children from non-emergency seclusion by law. 33 states (all children) and 22 states (children with disabilities) do not have laws requiring that parents be told their child was restrained or secluded. Each week brings additional media reports of restraint and seclusion, including a young Indiana girl with Down Syndrome who was bruised when her shoes were duct-taped in February 2013. Abusive interventions are neither educational nor effective. They are dangerous and unjust. It is time to provide meaningful protections against restraint and seclusion for children in all states across America.

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

This report has focused on state restraint and seclusion laws and policies in force and applicable to children in elementary and secondary schools. Statutes and regulations were given priority since they are legally binding and have the force of law. The following were excluded from consideration: proposed bills, regulations, and guidance that was 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 or 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 latter because it is legally binding and creates legal protections.<sup>98</sup>

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

**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 2012, Alaska included some voluntary guidelines as part of its Special Education Handbook. **State of Alaska Dept. of Educ. & Early Devel., SPECIAL EDUCATION HANDBOOK, WORKING DRAFT 146-147 (2012).**

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

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

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

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

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<sup>98</sup> In addition, searches were performed of the statutes, administrative regulations, and state Department of Education websites for Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. No materials in force were discovered.

**DELAWARE.** Within its special education regulations, Delaware has a very limited set of very weak regulations regarding using restraint and seclusion upon students with autism in emergencies. It does not protect other children with or without disabilities or protect students in non-emergencies. **DEL. EDUC. ADMIN. CODE tit. 13 §929: 2.0.** A proposed comprehensive state bill died in 2012.

**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 March 16, 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. Regulations were previously considered in 2010 and 2009 but never adopted. All regulations in force can be found on the D.C. Municipal Regulations website in Chapter 5E.

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

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

**HAWAII.** Hawaii has a limited statute and a board of education policy, both of which provide 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).

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

**INDIANA.** In 2009, Indiana adopted nonbinding guidance. **INDIANA DEPT. OF EDUC., POLICY GUIDANCE FOR USE OF SECLUSION AND RESTRAINT IN SCHOOLS (2009).** As of March 16, 2013, a bill was pending in the state legislature; the session adjourns on April 29, 2013.

**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 are awaiting filing and publication in the Kansas Register for final promulgation. **KANSAS DEPT. OF EDUC., EMERGENCY SAFETY INTERVENTIONS, K.A.R. 91-42-1, 91-42-2** (adopted February 13, 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 guidance for the new 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.** (In 2010, Louisiana had adopted a statute that only authorized the state to write nonbinding guidelines. In 2011, the new statute with specific mandates replaced the old one.)

**MAINE.** Maine has meaningful protections against seclusion and restraint in statute and regulation adopted in April 2012. In 2011, Maine proposed regulations, **CODE ME. R. § 05-071, Chapter 33.** In April 2012, the legislature and governor approved these regulations by statute, but amended them, as stated in **Committee Amendment, C-A H820 to L.D. 1838 (April 2012).** These replaced the prior regulations. A bill is presently pending to alter the regulations.

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

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

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

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

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

**MONTANA.** Montana has meaningful protections against seclusion and restraint in regulation. **MONT. ADMIN. R. 10.16.3346 (amended 2010).** Montana published guidance, *Aversive Treatment Procedures*, in 2001. This guidance largely described the regulations in force at the time. The regulation was updated a decade later and portions of the guidance may no longer be applicable.

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

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

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

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

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

**OHIO.** Ohio has an Executive Order and a guidelines policy. **OHIO EXEC. ORDER NO. 2009-13S (Aug. 3, 2009); see also 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).** A proposed regulation is undergoing state legislative review; it will be returned to the State Board of Education for consideration in Spring 2013. *See* Ohio Dept. of Educ., EDCONNECTION WEEKLY UPDATE, Jan. 22, 2013 (summarizing rule process); Register of Ohio, Most Recent Filings of Rule No. 3301-35-15 (retrieved Mar. 6, 2013).

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

**OREGON**. Oregon has meaningful protections against seclusion and restraint in statute. **2011 OREGON LAWS CHAP. 665** (former H.B. 2939; approved by Governor Aug. 2, 2011; restraint/seclusion terms, other than training, become effective July 2012). New regulations were promulgated in 2012, **OR. ADMIN. R. 581-021-0019** (2012). Oregon previously had regulations adopted in 2007. These were superseded by the new statute. Various bills are pending in Oregon to strengthen the law.

**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).

**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 restraints that impair breathing) in **WASH. ADMIN. CODE § 392-172A-03110.** A parental notification bill is presently pending in Washington.

**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 INSTRUC., WDPI DIRECTIVES FOR THE APPROPRIATE USE OF SECLUSION AND PHYSICAL RESTRAINT IN SPECIAL EDUCATION PROGRAMS (2009).**

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

## **IX. CHARTS AND MAPS**

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

### **II. PATCHWORK OF STATE PROTECTIONS AGAINST SECLUSION/RESTRAINT**

- Map: 17 States Have Meaningful Protections By Law for All Children
- Map: 30 States Have Meaningful Protections By Law for Children with Disabilities
- Map: Does the State Have a Statute, Regulation, or Both? (All Children)
- Map: Does the State Have a Statute, Regulation, or Both? (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
- Chart: Training Requirements in State S/R Laws
- 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

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

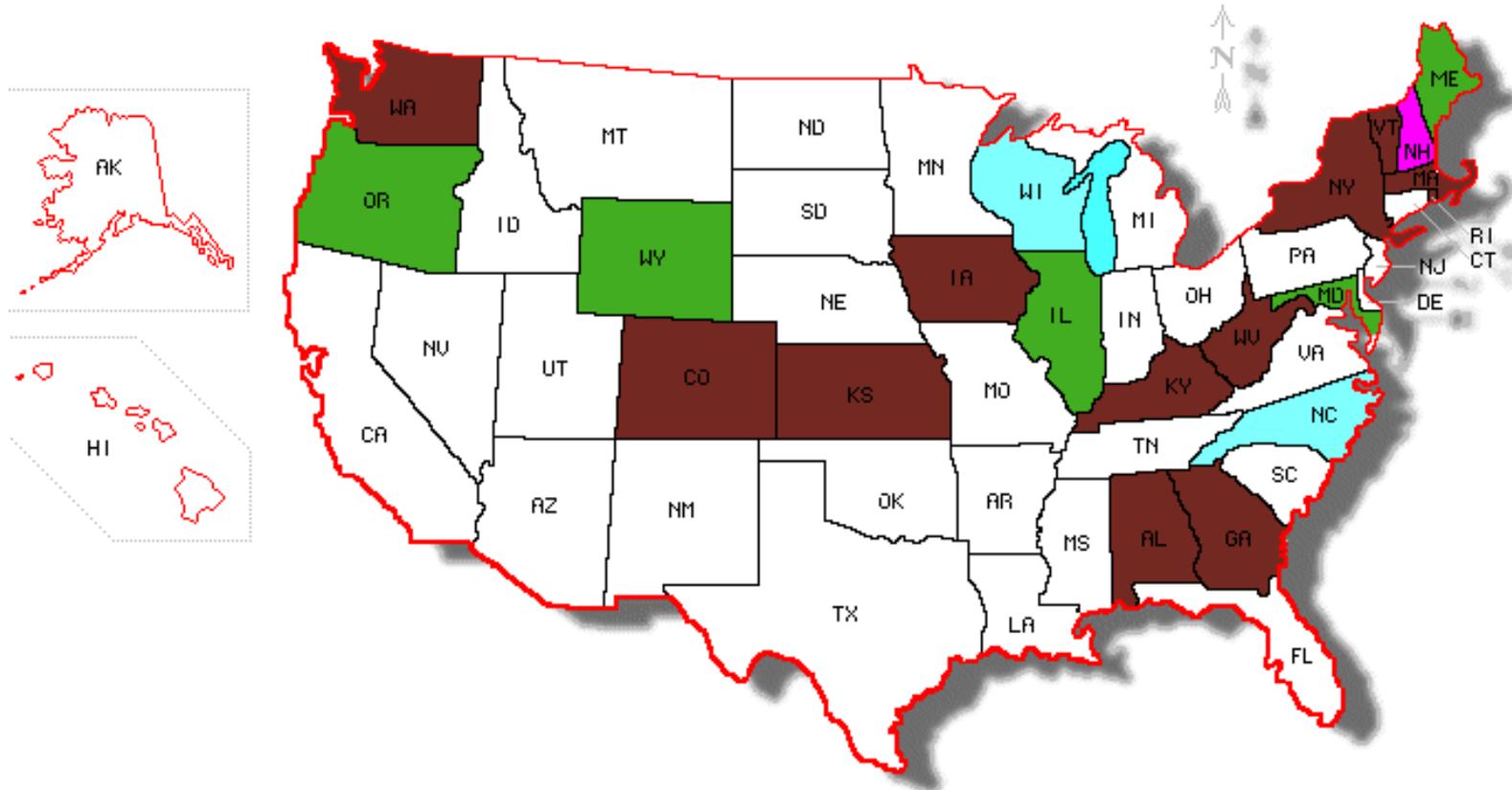
## **Important Notes About the Maps**

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 need to credit the maps in another way because of your publication's needs, please contact me to discuss. I am happy to work with you.





**All Children: Does the State Have a Statute, Regulation, or Both (March 2013)?**



Cyan (light): Statute

Brown (dark): Regulation

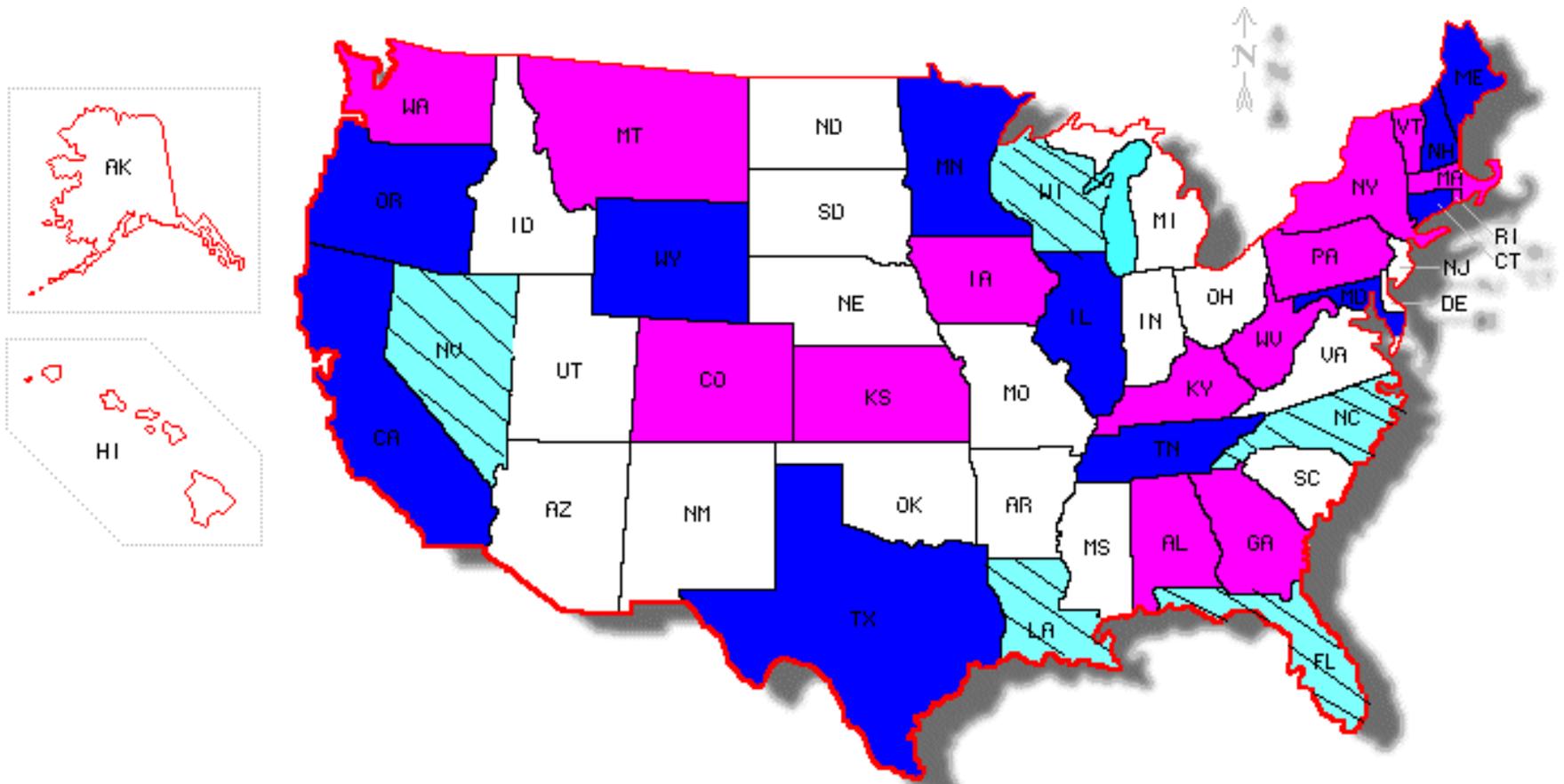
Green (medium): Both Statute and Regulation

Pink is New Hampshire, to indicate its unique status as the state with a restraint statute for all children and a seclusion regulation for those with disabilities.

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**Children With Disabilities: Does the State Have a Statute, Regulation, or Both (March 2013)?**



In this map, blue (dark) means regulation; pink (medium), both; cyan (light, slash marks), statute alone.

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## Is Restraint Limited to Immediate Emergency Threats to Physical Safety By Law? (Updated March 2013)

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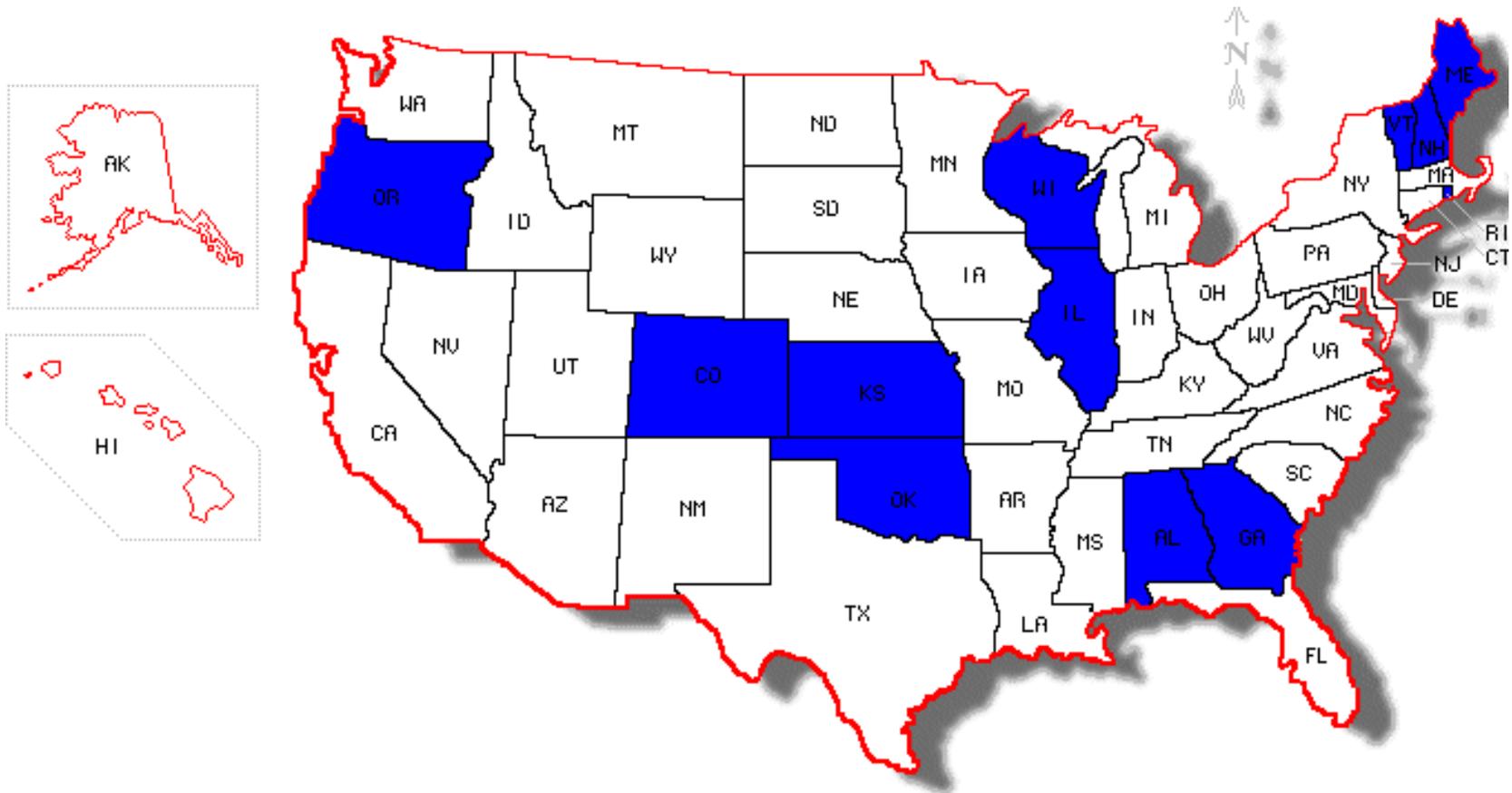
**D means Children with Disabilities Only; ALL Means All Children.**

	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Phys. Harm or as allowed in IEP (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
Total by law	<b>3 All, 5 D</b>	<b>8 All, 11 D</b>	<b>2 All</b>	<b>1 All, 3D</b>	<b>n/a</b>	<b>3 All, 5D</b>	<b>4</b>
AK							
AL		<b>ALL</b>					
AR							
AZ							
CA							D- (CA permits use of restraint in non-emergencies with little limitation due to law's wording)
CO		<b>ALL</b>					
CT		<b>D</b>					
DE							
DC		<i>Voluntary Guidance - Not law - Can Change</i>					
FL	<b>implied- D</b>						
GA		<b>ALL</b>					
HI							
IA						<b>ALL</b>	
ID							
IL		<b>ALL</b>					
IN		<i>Voluntary Guidance - Not law - Can Change</i>					
KS		<b>ALL (2013)</b>					

	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Phys. Harm or as allowed in IEP (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
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
ND							
NE		<i>Voluntary Guidance - Not law - Can Change</i>					
NH	ALL						
NJ							

	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Phys. Harm or as allowed in IEP (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
NM					<i>D only - Voluntary Guidance - Not law - Can Change</i>		
NV				D			
NY						ALL	
OH		<b>ALL</b>					
OK		<i>Voluntary Guidance - Not law - Can Change</i>					
OR	<b>ALL</b>						
PA		<b>D</b>					
RI	<b>ALL</b>						
SC		<i>Voluntary Guidance - Not law - Can Change</i>					
SD							
TN		<b>D</b>					
TX				D			
UT				<i>Voluntary Guidance - Not law - Can Change</i>			
VA		<i>Voluntary Guidance - Not law - Can Change</i>					
VT		<b>ALL</b>					
WA						D	
WI		<b>ALL (2012)</b>					
WV				ALL			
WY							

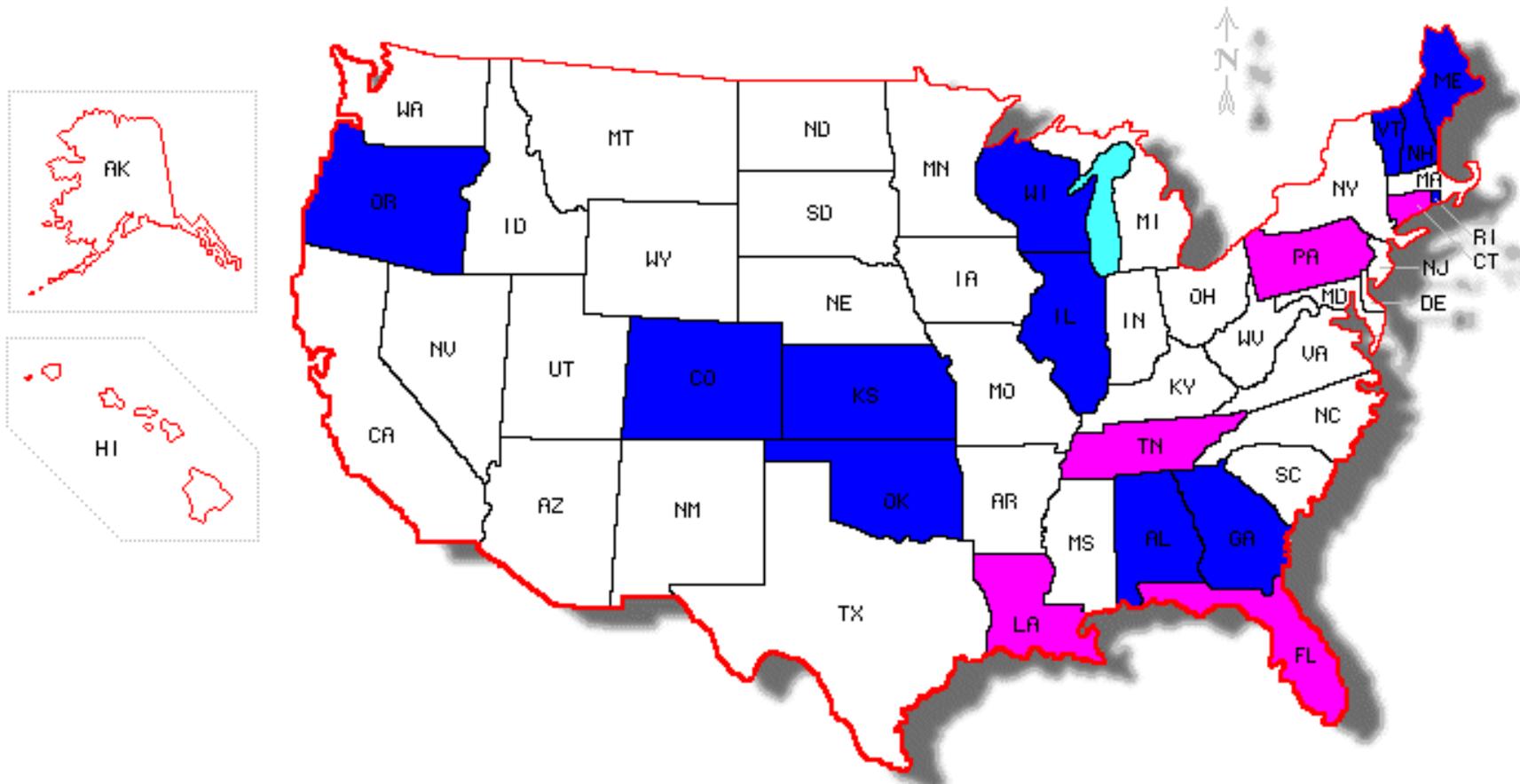
**Only 12 States Limit Restraint of All Children to Emergencies Threatening Physical Danger (March 2013)**



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 12 States (All Children) and 17 states (Children with Disabilities) (March 2013)**



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? (Updated March 2013)

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

	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 ( <b>This chart does not discuss fire codes</b> )	State Requires Locks to Automatically Release
AK	<i>D- Voluntary Guidance - Not law - Can Change</i>				
AL			ALL	ALL	
AR				D	
AZ					
CA			D	D (except certain licensed facilities)	
CO	ALL				
CT	D				
DE					
DC	<i>Voluntary Guidance - Not law - Can Change</i>				
FL			D		
GA	ALL	Total Ban			
HI					
IA	ALL				
ID					
IL	ALL				
IN	<i>Voluntary Guidance - Not law - Can Change</i>				
KS	<i>Voluntary Guidance - Not law - Can Change</i>				
KY					
LA	D				
MA	ALL (if child lacks staff "access")				
MD	ALL (if alone)				
ME	ALL (2012)			ALL (2012)	
MI	<i>Voluntary Guidance - Not law - Can Change</i>				
MN	D				
MO	<i>Voluntary Guidance - Not law - Can Change</i>				
MS					

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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 ( <b>This chart does not discuss fire codes</b> )	State Requires Locks to Automatically Release
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					
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					
WI	ALL (2012)			ALL (2012)	
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? (Updated March 2013)

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

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusion as per IEP or BIP
Total by law	1 ALL, 3D	1 ALL, 3D	5 ALL, 7D	1 ALL, 1 D	1 D	3 ALL, 5D	5 ALL, 2D
AK			<i>Voluntary Guidance - Not law - Can Change</i>				
AL							ALL (bans locked seclusion; no limits on seclusion where exit is blocked)
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							
DC			<i>Voluntary Guidance - Not law - Can Change</i>				
FL		D-implicit					
GA	ALL						
HI							

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Phys. Harm or as stated in IEP (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclun as per IEP or BIP
IA						ALL	
ID							
IL						ALL	
IN			<i>Voluntary Guidance - Not law - Can Change</i>				
KS			<b>ALL (2013)</b>				
KY			<b>ALL (2013)</b>				
LA		<b>D</b>					
MA							ALL [1]
MD				ALL			
ME			<b>ALL (2012)</b>				
MI			<i>Voluntary Guidance - Not law - Can Change</i>				
MN					D		
MO							<i>Voluntary Guidance - Not law - Can Change</i>
MS							
MT						D	
NC							ALL
ND							
NE			<i>Voluntary Guidance - Not law - Can Change</i>				
NH							D [2]
NJ							

	<b>Bans Seclusion</b>	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Phys. Harm or as stated in IEP (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclun as per IEP or BIP
NM							<i>ALL - Voluntary Guidance - Not law - Can Change. Considers seclusion legit. behavior modif. technique.</i>
NV	<b>D</b>						
NY						<b>D</b>	
OH							<i>ALL - Nonbinding Voluntary Guidance - Not law - Can Change. Proposed Regulation Pending.</i>
OK		<i>D- Voluntary Guidance - Not law - Can Change</i>					
OR		<b>ALL</b>					
PA	<b>D</b>						
RI							<b>ALL [3]</b>
SC			<i>Voluntary Guidance - Not law - Can Change</i>				
SD							
TN			<b>D</b>				
TX	<b>D</b>						
UT					<i>Voluntary Guidance - Not law - Can Change</i>		

	<b>Bans Seclusion</b>	<b>Emergency Immediate Threat Serious Physical Harm</b>	<b>Emergency Immediate Threat of Physical Harm</b>	Phys. Harm or as stated in IEP (loophole)	Phys. Harm or Serious Destr. Prop.	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclun as per IEP or BIP
VA			<i>Voluntary Guidance - Not law - Can Change</i>				
VT			<b>ALL</b>				
WA							
WI	<b>ALL (2012)</b>						
WV							<b>ALL [4]</b>
WY			<b>ALL</b>				

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

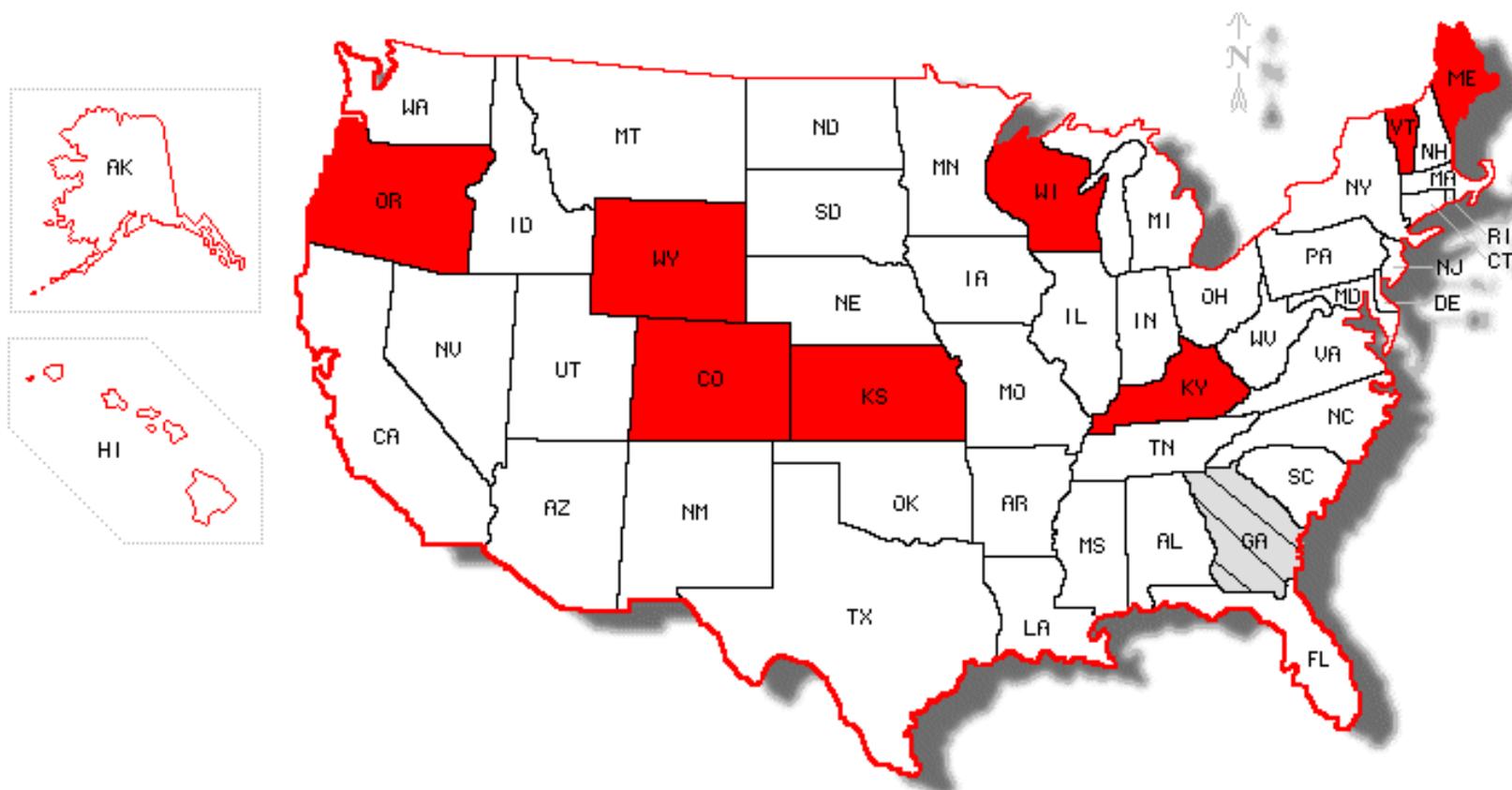
[2] NH effectively permits unobserved seclusion for any reason if permitted by the IEP (after certain conditons are met). It also allows seclusion for any reason as long as the child is observed (e.g. by video camera or window).

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

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



**States that Ban Seclusion or Limit it to  
Physical Danger Emergencies for All Children (May 2013)**



Red (dark): 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.

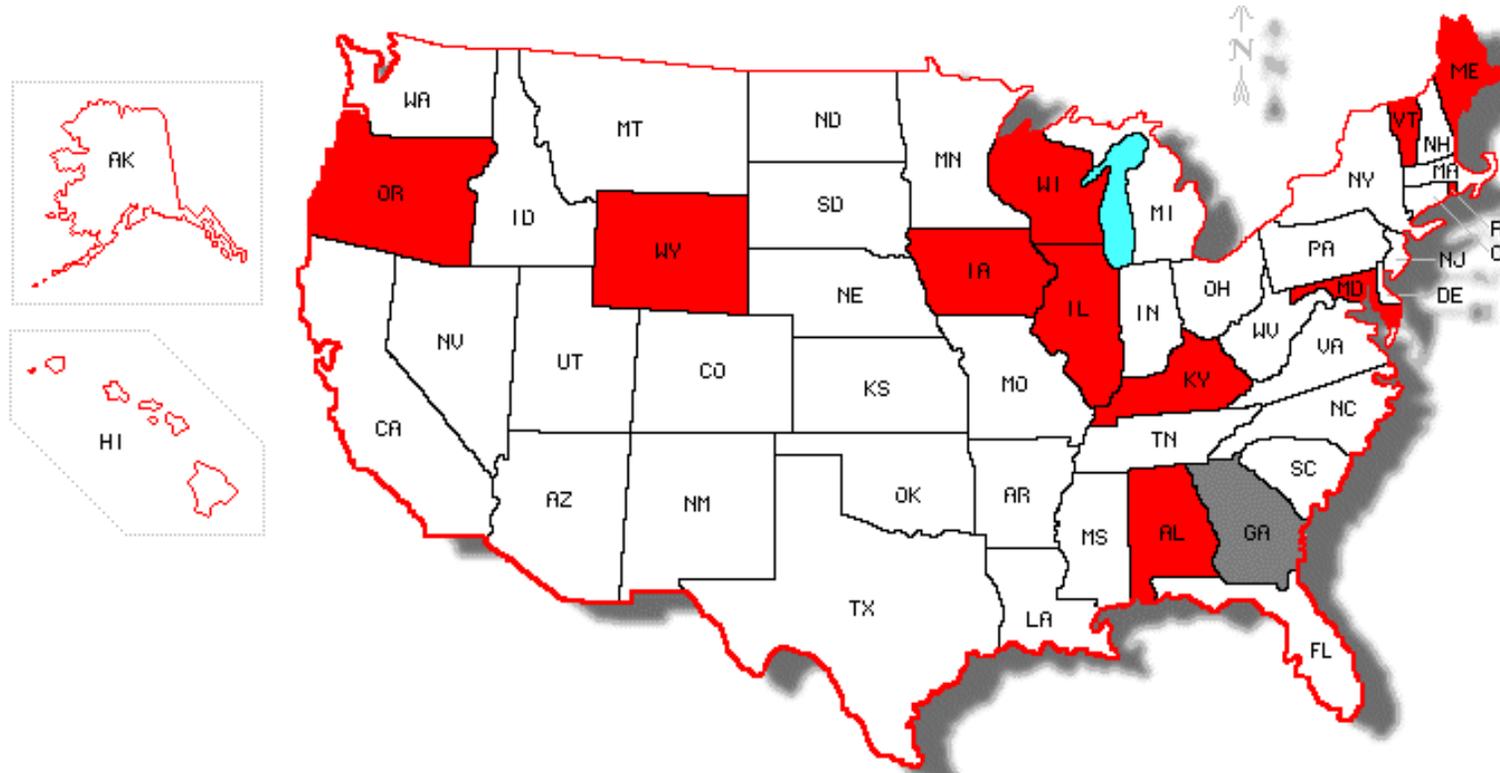
White: Seclusion of all children is not banned or limited to emergencies threatening danger to someone.

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**States that Ban Seclusion or Require  
Continuous Visual Monitoring of All Children (May 2013)**



Red (Dark): By law, Continual Visual Monitoring of seclusion of all children is required to prevent children from harming themselves. Children have died in seclusion when staff did not monitor or looked in occasionally.  
Grey (Medium): By law, seclusion is banned for all children.  
White: Seclusion of all children is not banned nor is continuous visual monitoring required by law.

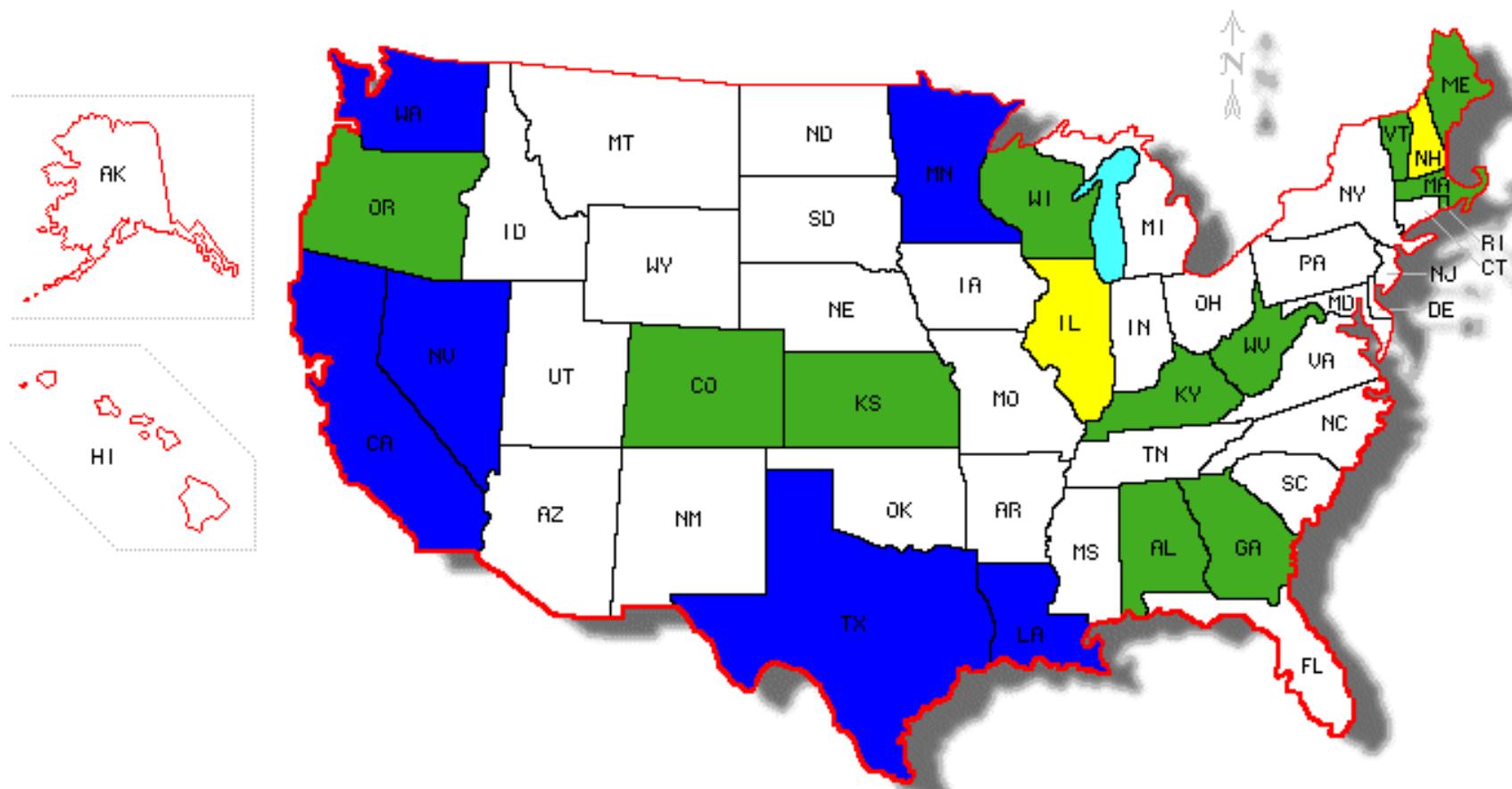
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## By Law, the Intervention Must End When the Emergency Ends (March 2013)



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.

**State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint (Updated March 2013)**

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

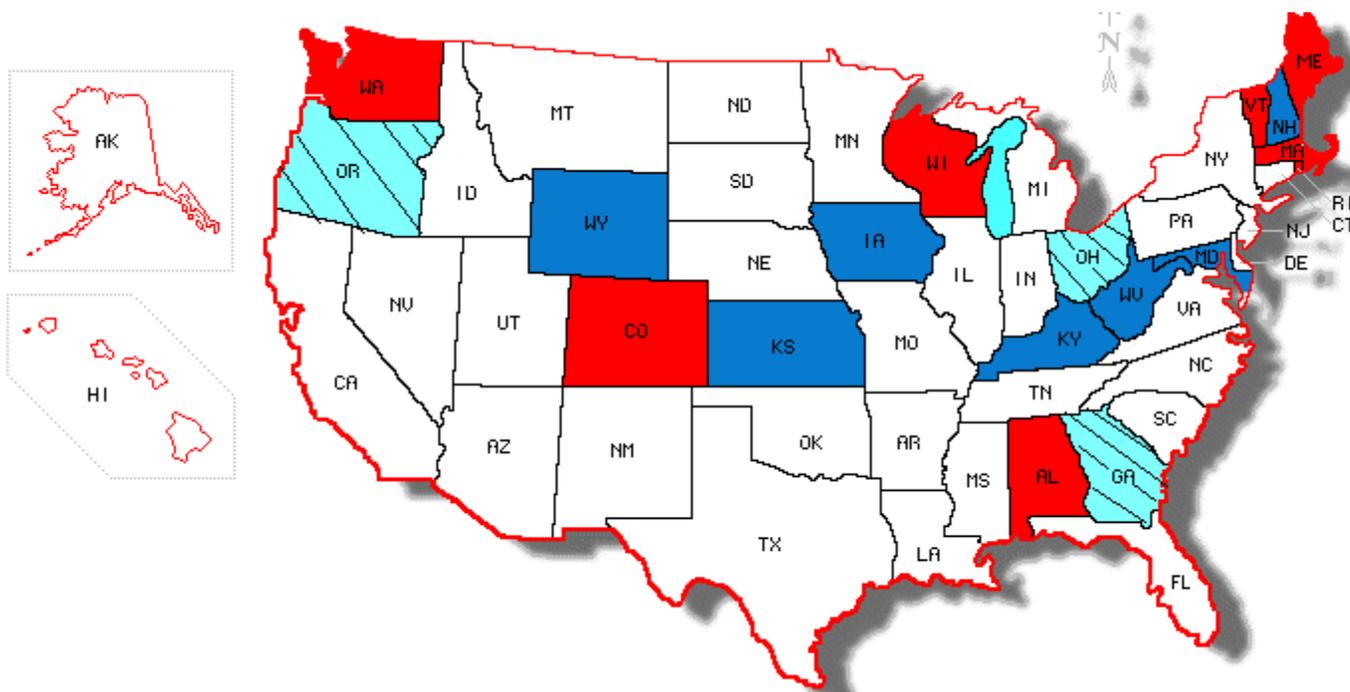
	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
<b>total by law</b>	15 ALL, 21D	3 ALL, 4D	14 ALL, 18D	13 ALL
AK				
AL	ALL-Ban		ALL-Ban	ALL-Ban
AR				
AZ				
CA				
CO	ALL-Ban		ALL-Ban	ALL-Ban
CT	D-Ban			D- banned unless otherwise in IEP
DE				
DC		<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				
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 (2012)		ALL-Ban	ALL-Ban
MI				
MN		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	Suggests ban in Nonbinding Guidance- not law - can change	ALL-Ban	Suggests ban in Nonbinding Guidance- not law - can change	
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				
UT				
VA				
VT	ALL-Ban	allowed in certain circumstances if less restrictive restraints would not be effective	ALL-Ban	ALL-Ban
WA	D-Ban		cannot bind limbs to object or each other, unless in IEP	
WI	ALL-Ban (2012)		ALL-Ban	ALL-Ban
WV	ALL-Ban	ALL-Ban	ALL-Ban	
WY		ALL-Ban	ALL-Ban	



**All Children: States Banning Restraints that Impair Breathing  
or Banning Prone Restraint (March 2013)**  
**THIS MAP IS FOR BLACK & WHITE PRINTERS**

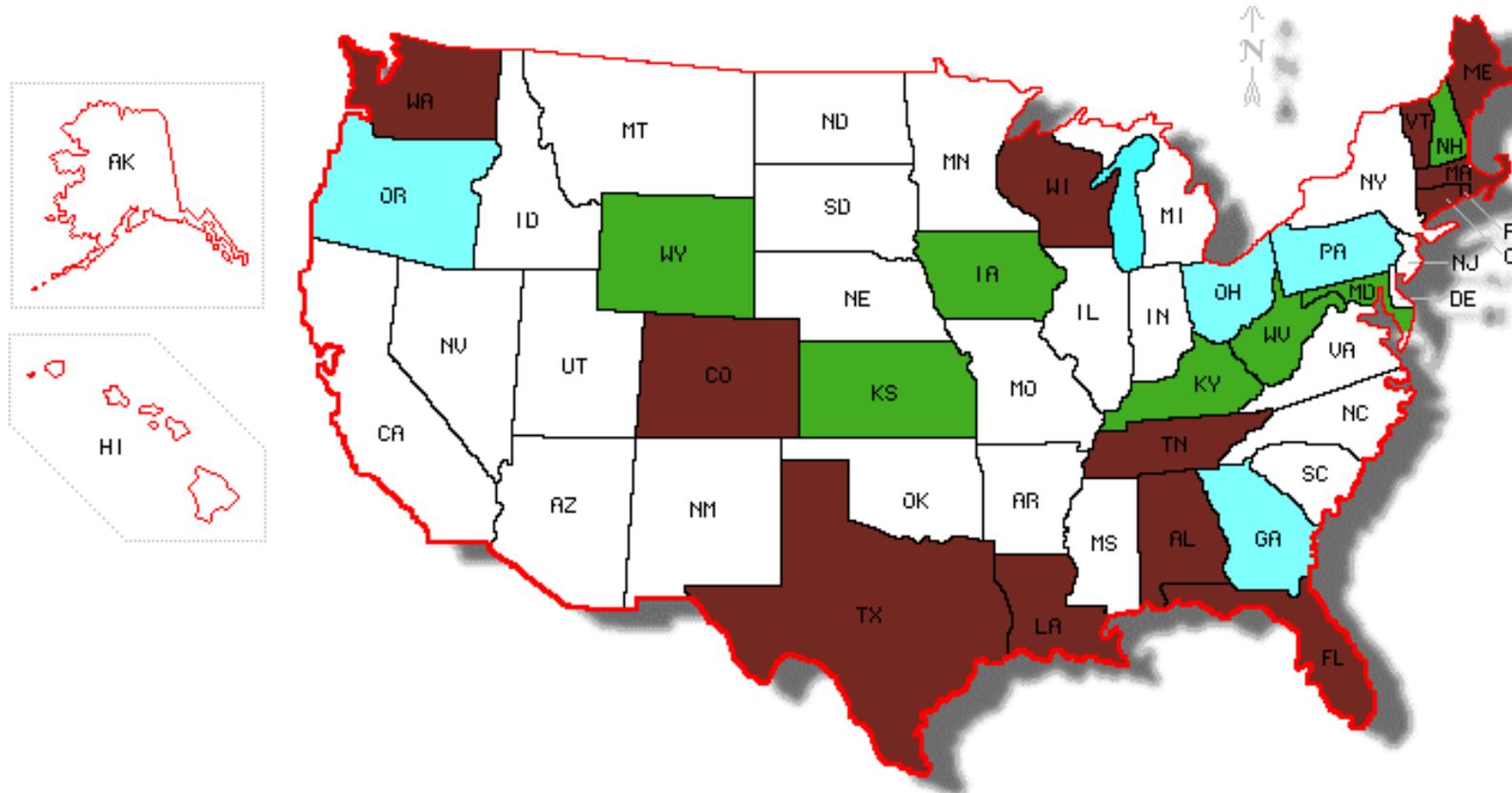


Red (dark): Law bans all restraints that impair breathing.  
Cyan (light, slashed): Law bans prone restraint only.  
Blue (medium): Law bans both.

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**Children with Disabilities: States Banning Restraints that Impair Breathing  
or Banning Prone Restraint (March 2013)**  
**THIS MAP IS FOR COLOR PRINTING**



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

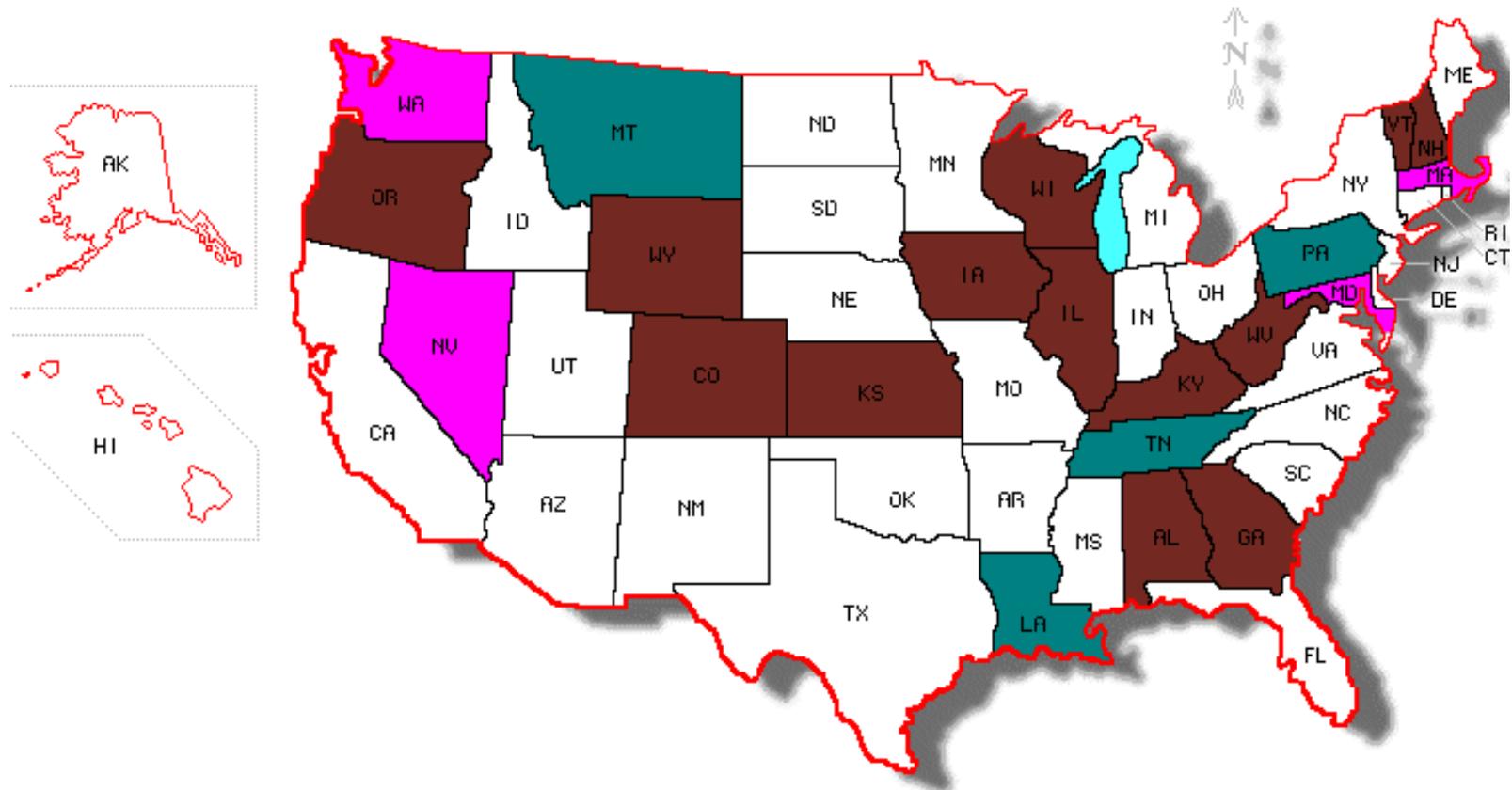
Cyan (light): Law bans prone restraint only.

Green (medium): Law bans both.

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



**Mechanical Restraints Are Banned By Law in 14 States (All Children)  
and 18 States (Children with Disabilities) (March 2013)**

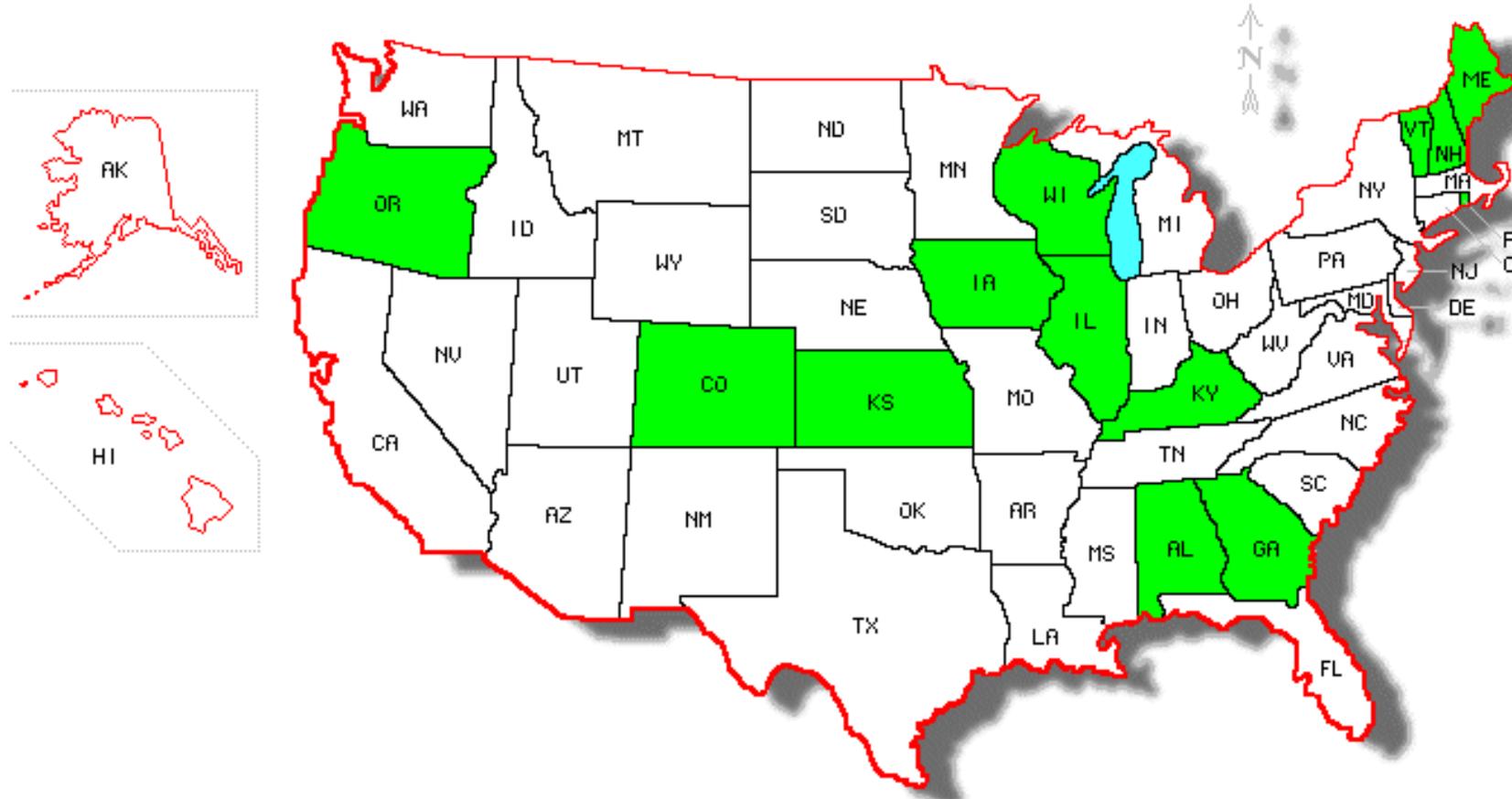


**Brown (dark):** By law, mechanical restraint is prohibited for all children.

**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).

**Chemical Restraint is Prohibited or Restricted By Law in 13 States (March 2013).**



**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. (Updated March 2013)**

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

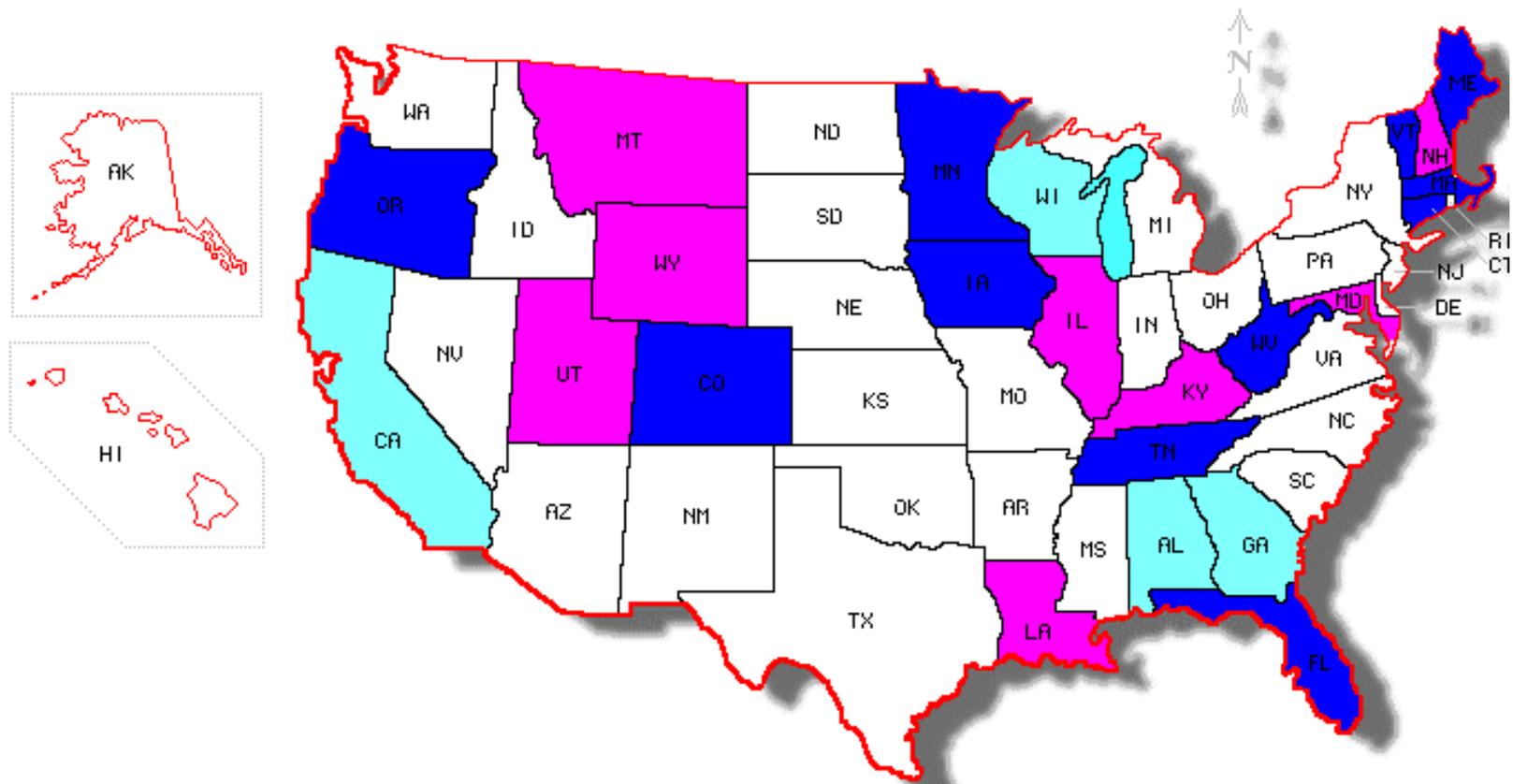
	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer deadline	Fuller written follow up required
AK				<i>Voluntary guidelines: "as soon as reasonably possible"</i>	
AL			ALL		
AR					
AZ					
CA			D		
CO	ALL				ALL
CT	D- attempted (other deadline can 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					
DC		<i>Nonbinding Guidance - not law, can change</i>			
FL	D				D
GA			ALL		
HI					
IA	ALL- attempted				ALL
ID					
IL		ALL			
IN				<i>Voluntary Guidelines- IEP team decides. Not law; can be changed.</i>	
KS				ALL- 2 School Days	
KY	ALL				All- if verbal/electronic communication first day fails

	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer deadline	Fuller written follow up required
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 (2012)				ALL (2012)
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	
ND					
NE		<i>Voluntary Guidance - not law, can change</i>			
NH		attempted (restraint only)			ALL (restraint only)
NJ					
NM					
NV		<i>Voluntary Guidance - not law, can change</i>			

	Notify Same Day	Notify w/i 1 calendar day or 24 hours	Notify w/i 1 school/ business day	Law sets longer deadline	Fuller written follow up required
NY				Must Notify - No Deadline Set	
OH		<i>Nonbinding Guidance - not law, can change</i>			<i>Nonbinding Guidance - not law, can change</i>
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					
WI			ALL (2012)		
WV	ALL- "good faith"				ALL
WY		ALL	unless parent agrees otherwise.		



**Children with Disabilities: 23 State Laws Requires Steps to Inform Parent on Same Day (11), within 24 hours/1 Calendar Day (8), or Within 1 School Day (4) (March 2013)**  
**FOR COLOR PRINTER**

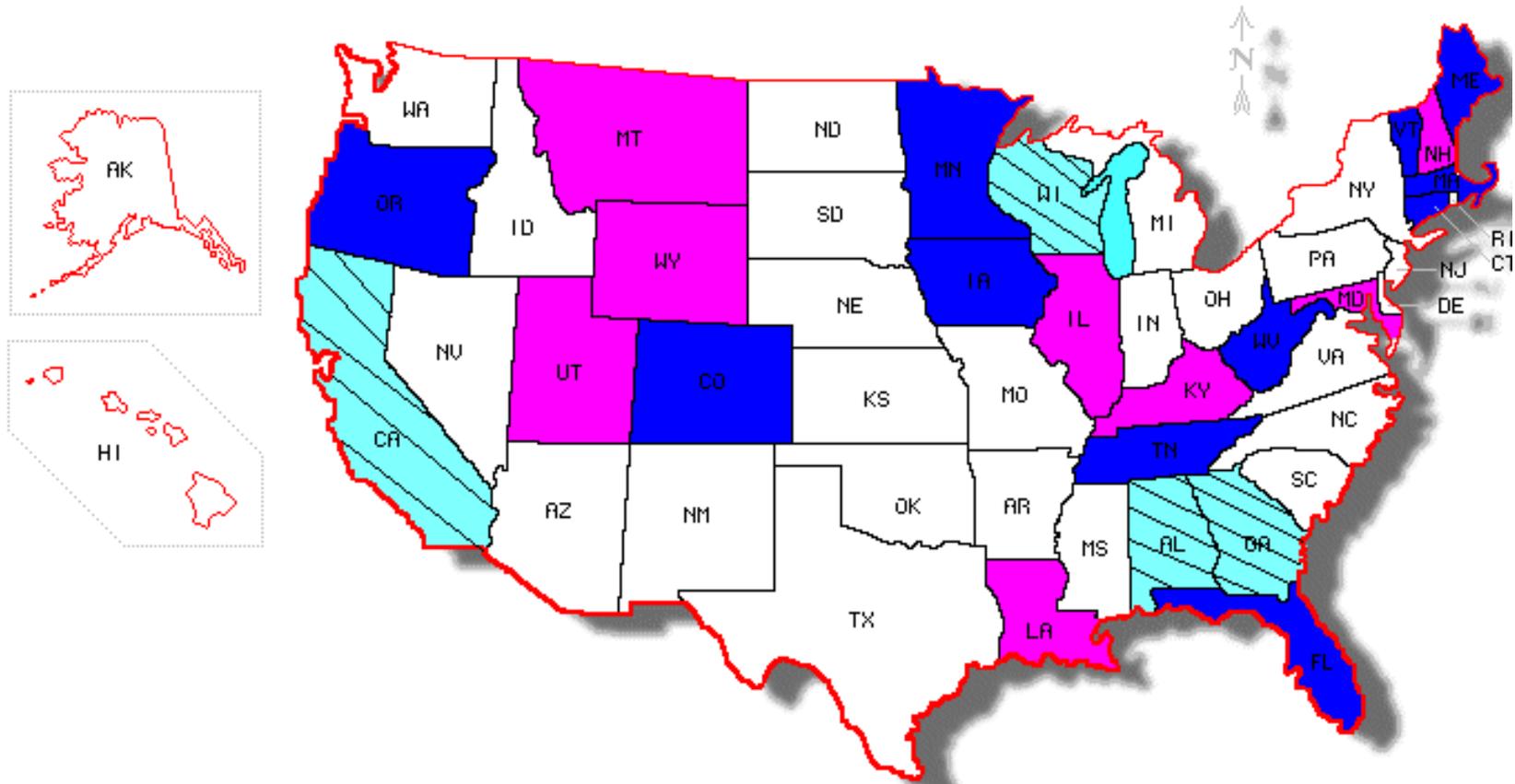


**Blue (dark):** Law requires school to take steps to inform parent on same day for children with disabilities. Note that in Connecticut, if seclusion is included in the IEP, then the IEP team selects the notification period, if any. Maryland allows the IEP team to pick another notification period, potentially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

**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.

**Children with Disabilities: 23 State Laws Requires Steps to Inform Parent on  
Same Day (11), within 24 hours/1 Calendar Day (8), or Within 1 School Day (4) (March 2013)  
FOR BLACK AND WHITE PRINTER**



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

**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.



**Training Requirements in State S/R Laws [1], Updated March 2013**

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

	Conflict De-escalation & Preventing S/R	PBS training included in S/R laws	Safe/ Appropriate Use S/R	Specifically require some medical training [2]	Specific training in s/r dangers	Training in State, LEA, School Pols & Procs	Periodic training or certif.
AK							
AL	ALL	ALL					
AR							
AZ							
CA		D					
CO	ALL		ALL		ALL		ALL
CT	D		D	D	D		
DE							
DC							
FL							
GA	ALL	ALL	ALL				
HI							
IA		ALL	ALL		ALL	ALL (school only)	ALL
ID							
IL	ALL		ALL	ALL	ALL		ALL
IN							
KS	ALL (2013)	ALL (2013)					
KY	ALL (2013)	ALL (2013)	ALL (2013)				
LA							
MA	ALL		ALL	ALL	ALL	ALL(school only)	
MD	ALL		ALL	ALL	ALL	ALL	ALL
ME	ALL		ALL		ALL (2012)		ALL (2012)
MI							
MN	D	D	D	D	D		
MO							
MS							
MT		D					
NC	ALL	ALL	ALL				
ND							

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

Please see notes on following page

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Notes to Training Chart:

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

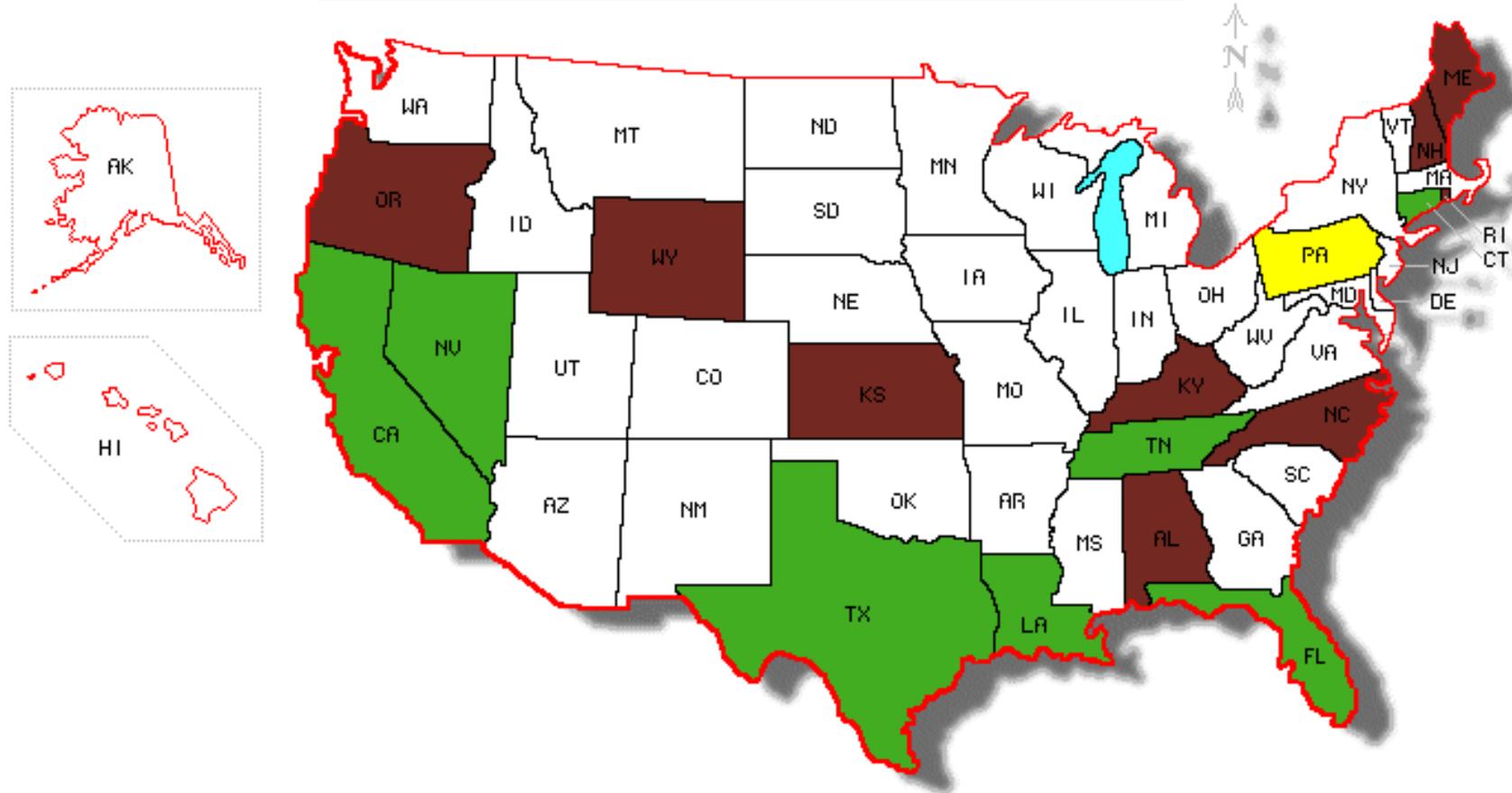
[2] It is possible that topics like medical training (first aid, identifying medical distress, CPR) and even the dangers of restraint may be covered in training about safe and appropriate use of seclusion/restraint. But when states do not define what "safe and appropriate use" training will cover, schools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

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

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

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

## Laws Require Data Collection and Report to State (March 2013)



**Brown (dark):** By law, data is reported to State Education Agency (SEA) for all children. New Hampshire requires data reporting only for restraint, which is governed by a new state statute. Seclusion is governed by much older special education regulations.

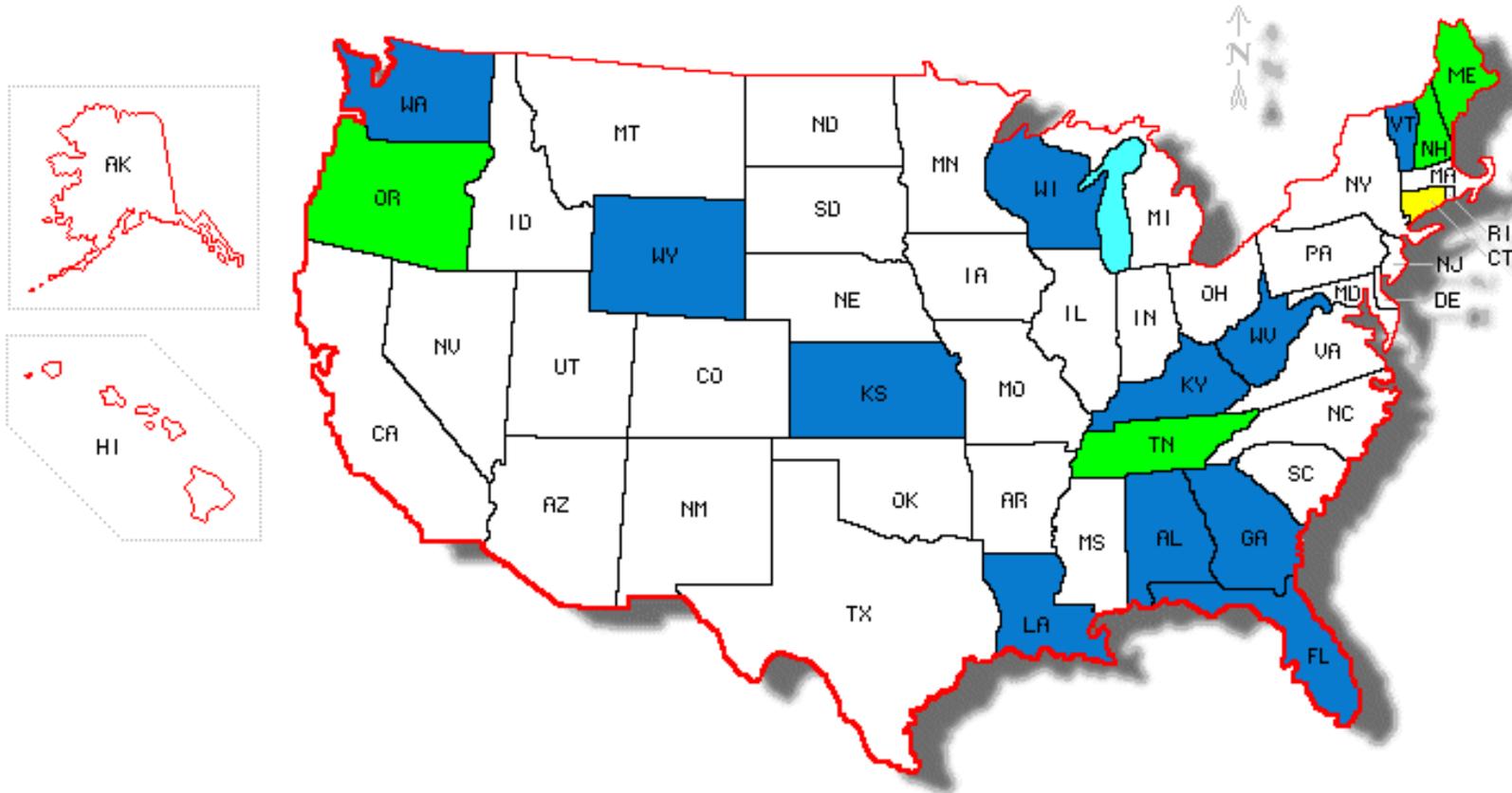
**Green (medium):** By law, data is reported to SEA for children with disabilities only.

**Yellow (lightest):** Pennsylvania requires collection of data, but it is not reported to the state. Rather, it is made available for inspection during monitoring visits.

In 2012, after finding that restraint and seclusion data often was not documented, Connecticut adopted a new statute requiring data collection.



**Congressional Impact: States Adopting/Overhauling Laws  
Since First Congressional Bill Introduced in 2009 (March 2013)**



**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.

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State by State Summaries  
Restraint and Seclusion  
Laws and Policies  
March 2013

## STATE BY STATE SUMMARY: RESTRAINT/SECLUSION LAWS (Updated March 2013)

Jessica Butler (jessica@jnba.net)

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

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### **AL. (All Children)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

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

Intervention must end when the emergency ends.

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

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

SEA collects data at least annually regarding use of interventions.

### **AK.**

Some very minimal protection in regulation. Restraint permitted for threats of physical harm, property destruction, or educational disruption. *Suggested nonbinding policy written for children with disabilities in 2012.*

*Restraint not limited to emergencies by law; nonbinding suggested policy encourages limiting restraint to emergency threats of physical danger.*

*No limit on restraints that interfere with breathing, mech., chem. restraints. Nonbinding suggested policy encourages this limit, however.*

*No limits or requirements for seclusion. Nonbinding suggested policy encourages limiting seclusion to emergency threats of physical danger.*

*No parental notification requirements and no data collection. Nonbinding suggested policy encourages notifying parents as soon as possible.*

### **AR. (Children with Disabilities)**

No law, regulation, or nonbinding guidance applicable to Restraint.

Regulation applies only to Seclusion.

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

Locked rooms forbidden.

Staff must continuously and directly watch children in seclusion.

Does not require monitoring of secluded child.

No parental notification requirements and no data collection.

**AZ.**

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

**CA. (Children with Disabilities)**

Statute or regulation with meaningful protections.

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

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

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

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

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

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

**CO. (All Children)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Bans mechanical restraint (except by armed security officers).

Bans chemical restraint.

Seclusion only for emergencies: immediate threats of physical harm.

“Reasonable” monitoring of seclusion required.

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

Intervention must end when the emergency ends.

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

**CT. (Children with Disabilities)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Ban restraint impeding breathing, chemical restraint, prone restraint.

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

IEP team determines frequency of monitoring of children in seclusion.

Same day attempted parent notification; written report required later.

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

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

Per 2012 statute, data about restraint/seclusion use must be collected and reported to

**DE.**

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

**DC.**

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

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

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

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

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

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

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

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

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

**FL. (Children with Disabilities)**

Statute or regulation with meaningful protections.

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

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

No limit on mechanical or chemical restraints.

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

Lock on door to seclusion room should automatically release.

Notify parents same day; full written report later.

SEA collects data at least annually regarding use of interventions.

**GA. (All Children)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans prone restraint; mechanical & chemical restraints.

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

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

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

**HI.**

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

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

Otherwise, Hawaii is silent and provides no protections.

**IA. (All Children)**

Statute or regulation with meaningful protections.

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

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

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

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

Less restrictive interventions must fail/be ineffective.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

**ID.**

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

**IL. (All Children)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing; mechanical; chemical.

Seclusion permitted for threats of physical harm or educational disruption.

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

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

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

**IN.**

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

*Suggests Restraint & Seclusion only for emergencies: imminent threat of physical harm.*

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

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

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

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

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

**KS. (All Children)**

**Regulation with meaningful protections. Adopted February 2013. Pending final promulgation but not subject to change.**

Restraint & Seclusion only for emergencies: imminent threat of physical harm. Includes "violent" destruction of property, but not other forms of property destruction.

Bans restraints that interfere with breathing; prone; mechanical; chemical.

Requires staff training and data collection.

Parents must be notified of S/R within 2 school days.

**KY. (All Children)**

**Regulation with meaningful protections. Adopted February 2013**

Restraint limited to emergencies threatening physical danger and certain criminal acts, such as criminal destruction of property.

Seclusion limited to emergencies threatening physical danger.

Bans restraints that interfere with breathing; prone; mechanical; chemical.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

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

Data must be collected and reported to State.

**LA. (Children with Disabilities)**

Statute with meaningful protections.

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

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

Bans mechanical restraint.

No limit on chemical restraints.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

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

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

**MA. (All Children)**

Statute or regulation with meaningful protections.

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

Bans restraint that interferes with breathing. (Prone restraint permitted by trained staff).

Mechanical & chemical: permitted with parental consent and physician instructions.

Bans all locked seclusion if there is no access to staff. Permits it without regulation if child has "access" to staff. The term "access" is undefined.

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Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

Requires same day notification of parents. School is only required to notify parents if the restraint lasts longer than 5 minutes. School can ask parents to waive notice. Waiver is forbidden if the restraint lasts longer than 20 minutes or if it restraint results in serious injury, but this term is not defined, giving schools broad discretion.

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

### **MD. (All Children)**

Statute or regulation with meaningful protections.

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

Bans restraint that interferes with breathing and/or prone restraint (and effectively bans prone restraint due to description of physical positioning).

Mechanical: banned with exceptions for schools with hospital accreditation.

No limit on chemical restraints.

Seclusion: immediate threats of physical harm or as stated in IEP/BIP.

Staff must continuously and directly watch children in seclusion.

Less restrictive interventions must fail/be ineffective.

Notify parents within 1 calendar day or 24 hours unless otherwise stated in IEP.

### **ME. (All Children)**

Statute and regulation with meaningful protections. Revised April 2012. Bill pending to revise again.

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

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

Bans locked seclusion. Permits unlocked seclusion (e.g.. door can be blocked by

Staff must continuously and directly watch children in seclusion.

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

Parent notification: same day.

SEA collects data annually.

### **MI.**

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

*Also has a weak statute with minimal protections.*

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

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

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

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

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

*Recommends parents be notified on the same day the event occurs.  
Suggests data be collected by SEA, but current status is unclear.*

**MN. (Children with Disabilities)**

Statute or regulation with meaningful protections.  
Restraint used for "physical holding." Refer to main document to see limitations on definition of physical holding.  
Bans restraint interfering with breathing; prone restraint allowed until Aug. 2013 with No limit on mechanical or chemical restraints.  
Lock on seclusion room door should automatically release.  
Seclusion for immediate threats of physical harm or serious property destruction.  
Staff must continuously and directly watch children in seclusion.  
Intervention must end when the emergency ends.  
Less restrictive interventions must fail/be deemed ineffective.  
Notify parents same day; full written report later.

**MS.**

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

**MO. (All Children)**

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

*Suggests restraint can be used for threats of physical harm, property destruction, educational disruption, or as stated in the IEP.  
Suggests ban on restraint that interferes with breathing and/or prone restraint, and on chemical restraint.  
Suggests that mechanical be permitted as stated in the IEP.  
Law bans locked, solitary seclusion except if awaiting law enforcement's arrival.  
Suggests permitting seclusion that is (a) unlocked or (b) locked but in which the child is  
Suggests staff have the ability to see/hear a secluded child at all times.  
Suggests intervention must end when the emergency ends.  
Suggest less restrictive interventions fail / be ineffective.  
Suggests school notify parents that S/R has happened on the same day.*

**MT. (Children with Disabilities)**

Statute or regulation with meaningful protections.  
Restraint for threats of physical harm, property destruction, or educ. disruption.  
Bans mechanical restraint.  
No limit on restraints that interfere with breathing or chemical restraints.  
Bans locked rooms.  
Seclusion permitted for threats of physical harm, property damage, & educational  
Staff must continuously and directly watch children in seclusion.  
Time limits on S/R as stated in IEP/BIP.  
Staff should try less restrictive interventions first, but there is no requirement that they fail or be ineffective before S/R is used.

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

**NC. (All Children)**

Statute or regulation with meaningful protections.

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

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

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

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

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

**ND.**

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

**NE. (All Children)**

Minor, very brief regulation adopted requiring school districts to adopt some restraint/seclusion policy as they choose. Regulation does not specify or suggest any requirements or elements.

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

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

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

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

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

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

*Suggests intervention must end when the emergency ends.*

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

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

**NJ.**

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

**NH. (Restraint: All Children; Seclusion: Children with Disabilities)**

Statute with meaningful protections from restraint for all children (2010) and older special education regulations control seclusion for children with disabilities.

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

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

Seclusion is governed by older regulations. NH prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP (after certain conditions are met). This has two large loopholes. First, it allows unobserved, locked seclusion for almost any reason when documented in the IEP. Second, it allows seclusion for any reason without any regulation as long as the child is observed. Observation could be by remote video camera, allowing children to languish in rooms for hours.

Restraint should end when the emergency ends.

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

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

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

#### **NM.**

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

*Suggests restraint be limited to emergencies: immediate threats of physical harm or*

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

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

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

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

*No parental notification recommendations.*

#### **NV. (Children with Disabilities)**

Statute or regulation with meaningful protections.

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

Permits mechanical restraints upon physician order.

No limit on mechanical or chemical restraints.

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

Intervention must end when the emergency ends.

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

SEA collects data at least annually regarding use of interventions.

#### **NY. (Mixed; Some All Children; More for Children with Disabilities)**

Statute or regulation with meaningful protections.

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

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

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

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

Less restrictive interventions must fail/ be ineffective.  
 Staff must continuously and directly watch children in seclusion.  
 Parental notification required; no deadline.

**OH. (All Children).**

**Exec. Order with meaningful protections for RESTRAINT only. Full S/R regulation pending. *Nonbinding policy adopted February 2013.***

Restraint only for emergencies: imminent threat of physical harm.  
 Bans restraint that interferes with breathing and/or prone restraint (prone).

*Nonbinding policy urges limiting seclusion to threats of physical harm.*  
*Nonbinding policy urges S/R end when emergency ends, and that less restrictive measures be ineffective before using.*  
*Nonbinding policy urges banning chemical and mechanical restraints.*  
*Nonbinding policy urges continuous visual monitoring of seclusion.*  
*Nonbinding policy urges same-day parental notification.*

**OK. (Children with Disabilities)**

***Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not***  
*Suggests restraint only for emergencies: imminent threat of serious/substantial physical harm.*

*Suggests ban on restraint that interferes with breathing and/or prone restraint.*  
*Suggests ban on mechanical restraint.*  
*Suggests seclusion only for emergencies: immediate threats of physical harm.*  
*Suggests intervention must end when the emergency ends.*  
*Suggests less restrictive interventions must fail/be ineffective.*  
*Suggests Staff must continuously and directly watch children in seclusion.*  
*Suggests parents be notified of S/R on the same day it occurs.*

**OR (All Children; revised effective July 2012).**

Statute or regulation with meaningful protections.  
 Restraint only for emergencies: imminent threat of serious physical harm.  
 Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.  
 Seclusion only emergencies: immediate threats of serious physical harm.  
 Staff must continuously and directly watch children in seclusion.  
 S/R must end when the emergency ends.  
 S/R cannot be used unless less restrictive interventions have failed/would be ineffective.  
 Requires same day notification of parents.  
 SEA collects data at least annually regarding use of interventions.

**PA. (Children with Disabilities)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

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

Bans mechanical restraint; no limits on chemical restraints.

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

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

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

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

**RI. (All Children)**

Statute or regulation with meaningful protections.

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

Bans restraint that interferes with breathing and chemical restraints

No limit on mechanical restraints.

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

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

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

Requires same day notification of parents and written report later.

SEA collects data at least annually regarding use of interventions.

**SC.**

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

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

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

*Suggests ban on mechanical restraint.*

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

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

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

*Recommends continuous visual monitoring of seclusion.*

*Recommends Intervention must end when the emergency ends.*

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

**SD.**

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

**TN. (Children with Disabilities)**

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints impeding breathing and/or prone. Bans mechanical & chemical restraints.

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

**TX. (Children with Disabilities)**

Statute or regulation with meaningful protections.

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

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

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

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

SEA collects data at least annually regarding use of interventions.

**UT.**

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

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

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

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

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

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

**VA.**

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

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

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

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

*Suggests school district determine parental notification schedule.*

**VT. (All Children)**

Statute or regulation with meaningful protections.

Both restraint and seclusion.

Restraint only for emergencies: imminent threat of physical harm.

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

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

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

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

**WA. (Mixed; Some All Children; Most Children with Disabilities)**

Statute or regulation with meaningful protections.

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

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

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

No limit on chemical restraints.

Seclusion is permitted for any reason.

A child may not be secluded in a room or other enclosure unless it is provided for in the

**WI. (All Children)**

**Statute adopted March 2012.**

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

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

Staff must continuously and directly visually monitor children in seclusion.

Imposes limits on seclusion room conditions; requires bathroom access.

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

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

Parent notification: 1 school day.

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

Statute or regulation with meaningful protections.

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

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

Bans mechanical restraints; does not ban chemical restraints.

Seclusion is prohibited; defined as removing child to unsupervised space.  
Intervention must end when the emergency ends.  
Requires "good faith" effort to verbally notify parents on same day.  
Written report to parents must be put in mail within 1 school day.

**WY. (All Children)**

Statute or regulation with meaningful protections.  
No limit on physical restraint.  
Bans restraint that interferes with breathing and/or prone restraint.  
Bans mechanical restraint.  
No limit on chemical restraints.  
Bans locked seclusion.  
Seclusion only for emergencies: immediate threats of physical harm (for rooms that are not locked, but child cannot exit. Called "isolation" in Wyoming to distinguish it from locked seclusion.)  
Staff must be able to see/hear child at all times in isolation, but does not require that staff  
Parents must be notified of S/R within 1 calendar day or 24 hours.  
SEA collects data at least annually regarding use of interventions.