

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs
From: Hillary Risler, Esq., Legislative Analyst
Date: May 11, 2021
Subj: [LD 1373, “An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools” \(Millett\)](#)

SUMMARY

This bill, in the special education provisions of the Maine Revised Statutes, prohibits the use of seclusion, chemical restraints, mechanical restraints and certain physical restraints of students by schools and other entities. The bill directs schools to make annual reports to the Department of Education regarding incidents of physical restraint and directs the Commissioner of Education to report biennially to the Governor and the Legislature on data regarding the use of physical restraint and seclusion. The bill also directs the Department of Education to develop and implement a performance review system to define and monitor the use of physical restraint by school administrative units and special purpose programs.

The sponsor proposed an amendment, which:

- Moves the provision regarding restraint and seclusion from the special education chapter of statute to the general provisions for all elementary and secondary school students
- Adds to the definition of unlawful seclusion or restraint “physical restraint that interferes with the student’s ability to communicate in the student’s primary language or primary mode of communication,” amends the provision regarding physical restraint that is contraindicated based on the student’s disability or health care needs or medical or psychiatric condition as documented in, among others, another relevant record made available to the covered entity
- Clarifies what is not included in the definition of unlawful restraint or seclusion, including:
 - A time out;
 - A physical escort;
 - A physical prompt;
 - The use of adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices; or
 - The use of a vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.
- Adds that a covered entity may only use physical restraint if:
 - The student’s behavior poses an imminent danger of serious physical injury to the student or others;

- Less restrictive interventions would be ineffective in stopping such imminent danger of serious physical injury;
- The physical restraint ends immediately upon the cessation of the imminent danger of serious physical injury to the student or others; and
- The least amount of force necessary is used to protect the student or others from the threatened injury.
- Requires the department to make the data on the incidents of physical restraint available to the public by placing it on the department's website.
- Removes the performance review system.
- Requires the department to provide technical assistance using existing resources and to amend the rules regarding restraint and seclusion, which are routine technical rules.

TESTIMONY

- **Proponents:** Rep. Millett (sponsor); Hon. Farnsworth; Atlee Reilly, DRM; Susan Quinn; Cathy Dionne, Autism Society of Maine; Nancy Cronin, MDDC; Ross Greene, Lives in the Balance; Carrie Woodcock, MPF; Crystal Davis; Alan Cobo-Lewis; Kristen Mango
 - Maine restrains more students per capita than any other state and secludes students at the second-highest rate in the country
 - The effects of restraint and seclusion include substantial and disproportionate physical and emotional injuries and disruptive exclusions from the educational process, have no pedagogical basis, discriminate against students with disabilities, and impairs the educational objectives of public schools with respect to children with disabilities
 - DOE has developed a strong technical assistance program and there are alternatives that are safer and more educationally appropriate for districts to utilize
 - This bill is a step toward the vast improvement in the quality, quantity and consistency of the data on which the department can better assess the needs and propose steps to meet those needs
 - The regulations adopted in 2012 were designed to regulate the use of restraint and seclusion and reduce the use of these dangerous and ineffective response to behavior, but has instead served to normalize them and are being used in the absence of any significant risk of injury or harm
 - Maine should join the growing number of states that have acted to eliminate the use of seclusion in schools
 - This bill will not eliminate the ability to restrain a child if there is a threat of serious injury to the child or others
- **Opponents:** Dr. Matthew Siegal, MaineHealth; Nicole Dennen, Laurie Marchewki, Collaborative School; Elizabeth Cameron, Margaret Murphy Centers for Children;

Michelle Hathaway; Nicholas Graham, Western Foothills Regional Program; Eileen King, MSMA; Mark Geren, Atlantic Academy

- With regard to special purpose private schools, the youth who have been placed there have been placed there because they have serious and often dangerous challenging behaviors and require an intensive school-based treatment program
 - Concern that this bill will make the risk of harm to a child engaging in aggression or self-injury greater, not lower
 - The bill is duplicative of the existing DOE Rule Chapter 33 governing use of restraint and seclusion
 - The primary difference with this bill versus the rule is the elimination of the option of using seclusion to safely manage dangerous behavior that puts a child or others at imminent risk; there are instances where seclusion is safer than utilizing the physical restraint approaches allowed by the bill
 - The bill may block access to medically necessary protective devices, allows the determination of allowable physical restraints to be based on non-medical documents and non-medical personnel; uses the term “danger” rather than “risk; and the requirement regarding prohibiting a restraint if it interferes with a child’s ability to communicate is unworkable
 - The data is high for Maine because of the stringent reporting requirements
 - Eliminating the use of supine restraint as a measure of last resort when other interventions have been unsuccessful will create unintended consequences
 - While eliminating the use of restraint is laudable and something that all mental health providers would undoubtedly support, in the absence of a systemic approach to meeting the needs of children and adolescents with severe mental illness, it may increase the problem it seeks to remediate
- **Neither For Nor Against:** Dr. Holly Couturier, MPA; Jill Adams, MADSEC; Kaitlyn Morse, Alliance for Addiction and Mental Health Services
 - While all measures are taken place to support students who may need support, there are times when a student’s actions are violent, and they potentially could cause physical harm to themselves or others – the amended language addresses this concern
 - Concern about the definition of “seclusion” – even if an adult is in the room with the student if the student “feels” they cannot leave this space, it could be considered seclusion, which would potentially limit the use of a cool-down or reflection room
 - Concern about the changes in definitions between what’s being proposed, current Rule Chapter 33 definitions, and federal definitions
 - Concern about the prohibition on seclusion can be used with children who have trauma backgrounds to avoid any hands on if they are in imminent danger to themselves or others
 - What’s really needed is additional Technical Assistance

BACKGROUND INFORMATION:

- [129th Legislature, LD 1376](#)
- Authority for DOE Rule chapter 33, Rule Governing Physical Restraint and Seclusion
 - Originally part of Rule Chapter 125, Basic School Approval
 - [20-A MRSA §4502, sub-§5, ¶M](#) (School approval requirements):

M. The use of time-out areas, administered in accordance with requirements adopted by the department and with this paragraph. The use of a time-out area is subject to the following:

 - (1) The time-out area must be well ventilated and sufficiently lighted. The time-out area may not be locked; and
 - (2) The time-out area must be designed to ensure the safety of the student so that the student is supervised by a professional staff member in the room or can be observed from outside of the time-out area and can be heard by a person supervising the time-out area;
 - However, Rule chapter 33 specifically states “**Timeout** is an intervention where a student requests, or complies with an adult request for, a break, and is not covered by this rule. Timeout is not seclusion.”
 - Removed from DOE Rule Chapter 125 in 2002 and established as new Rule Chapter 33, “Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools”
 - Amended and adopted as major substantive rule and retitled as “Rule Governing Physical Restraint and Seclusion”
 - Further amended in accordance with [Resolve 2013, ch. 8](#), as routine technical, but with a requirement that, “Beginning July 1, 2013, any changes to Rule Chapter 33 are major substantive”
- Drafting suggestion: To assist in clarity, it may make sense to remove “seclusion” from the definition of “unlawful seclusion and restraint,” and simply add a separate prohibition on seclusion. For example:

2. Prohibition on seclusion. A covered entity that receives state or federal assistance may not subject a student to seclusion.

3. Prohibition on unlawful restraint; conditions on use of physical restraint. A covered entity that receives state or federal assistance may not subject a student to unlawful restraint. A covered entity may only use physical restraint if...

COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- Maine Department of Education’s data on the use of restraint and seclusion (spreadsheet also attached): <https://www.maine.gov/doe/data-reporting/reporting/warehouse/behavior>

- Maine Department of Education data policies: <https://www.maine.gov/doe/data-reporting/privacy/policies>
- Federal data and required reporting can be found here:
 - <https://www2.ed.gov/about/offices/list/ocr/data.html>
 - <https://ocrdata.ed.gov/>
 - <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>
 - <https://crdc.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=37034>

PRELIMINARY FISCAL IMPACT STATEMENT

- Not yet determined