

## An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA ~~§40147008~~ is enacted to read:

### ~~§70084014.~~ Use of seclusion and physical restraint

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chemical restraint" means a drug or medication that is not prescribed as the standard treatment of a student's medical or psychiatric condition by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law that is used on a student to control behavior or restrict freedom of movement.

B. "Covered entity" means an entity that owns, operates or controls a school or educational program that receives public funds from the department, including, but not limited to, public schools, public regional programs, public charter schools, private schools, private schools approved for tuition purposes, special purpose private schools, career and technical education programs, public prekindergarten programs and providers of services pursuant to the provisions of the federal Individuals with Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq. (2015).

C. "Mechanical restraint" means the use of a device to restrict a student's freedom of movement.

D. "Physical escort" means the temporary, voluntary, touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location.

E. "Physical prompt" means a teaching technique that involves voluntary physical contact with the student that enables the student to learn or model the physical movement necessary for the development of a desired competency.

F. "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move the arms, legs or head freely. "Physical restraint" does not include a physical escort, mechanical restraint, physical prompt or chemical restraint.

G. "Seclusion" means the involuntary isolation or confinement of a student alone in a room or clearly defined area from which the student does not feel free to go or is physically denied exit.

H. "Unlawful seclusion or restraint" means:

(1) Seclusion;

(2) Mechanical restraint;

(3) Chemical restraint;

(4) Physical restraint or physical escort that is life-threatening, restricts breathing or restricts blood flow to the brain, including prone and supine restraint;

(5) Physical restraint that interferes with the student's ability to communicate in the student's primary language or primary mode of communication; or

(6) Physical restraint that is contraindicated based on ~~Title 34-B, section 3003 or section 15002~~ or the student's disability or health care needs or medical or psychiatric condition as documented in:

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- (a) A health care directive or medical management plan;
- (b) A behavior intervention plan;
- (c) An individual education plan or an individual family service plan as defined in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 et seq. (2015);  
~~or~~
- (d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29 United States Code, Section 794 (2015) or the federal Americans with Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq. (2009); or
- (e) another relevant record made available to the covered entity.

I. Not included. The term “unlawful seclusion or restraint” shall not include:-

- (1) A time out;
- (2) A physical escort;
- (3) A physical prompt;
- (4) 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
- (5) The use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

**2. Prohibitions on restraint and seclusion.** A covered entity that receives state or federal assistance may not subject a student to unlawful seclusion or restraint. A covered entity may only use physical restraint if: a) The student’s behavior poses an imminent danger of serious physical injury to the student or others b) less restrictive interventions would be ineffective in stopping such imminent danger of serious physical injury; c) the physical restraint ends immediately upon the cessation of the imminent danger of serious physical injury to the student or others; and d) the least amount of force necessary is used to protect the student or others from the threatened injury.

**3. Report on data regarding the use of physical restraint.** ~~The commissioner shall submit a report on data regarding the use of physical restraint collected pursuant to the department's rules governing physical restraint and special education.~~ Each covered entity shall submit to the department an annual report on incidents of physical restraint of students of that covered entity that includes:

- A. The aggregate number of uses of physical restraint;
- B. The aggregate number of students placed in physical restraint;
- C. The aggregate number of students who have disabilities and an individualized education program under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1401 et seq. (2015) or a plan pursuant to the federal Rehabilitation Act of 1973, 29 United States Code, Section 701 et seq. placed in physical restraint;
- D. The aggregate number of serious bodily injuries to students related to physical restraint; and
- E. The aggregate number of serious bodily injuries to staff related to physical restraint.

The department shall make this data available to the public by placing it on the department’s website. The commissioner’s report must also include aggregate data gathered through a performance review system and

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~~subsequent compliance plans under subsection 4 and any use of unlawful seclusion or restraint. The report must be submitted to the Governor and the joint standing committee of the Legislature having jurisdiction over education and cultural affairs no later than January 15th of every odd-numbered year.~~

~~**4. Performance review system.** The department shall 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 performance review system must monitor compliance with this section and relevant department rules, including the requirement of submitting data to the department. The performance review system must identify accountability standards and identify when a school administrative unit's or special purpose program's level of incidents of physical restraint exceeds average levels. The performance review system must include a compliance plan to require the school administrative unit or special purpose program to reduce use of physical restraint with specific targets and time frames. Rules adopted pursuant to this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A and must be submitted for legislative review no later than December 5, 2022.~~

~~**5. Guide for information regarding rule.** The commissioner shall develop and provide information about rules adopted under subsection 4, including a guide that includes a template for a school administrative unit or special purpose program to use to explain any additional local policies or local complaint processes.~~

~~**6. Technical assistance.** The department shall, utilizing existing resources, provide technical assistance to covered entities by developing, implementing and providing technical assistance to support evidence-based programs that reduce the likelihood of physical restraint, and support students in reducing behavior that can result in physical restraint, such as developmentally appropriate, positive behavior interventions, functional behavioral interventions, mental health supports, restorative justice programs, trauma-informed care and crisis and de-escalation interventions.~~

~~**7. Rules.** The department shall adopt or amend rules to carry out the purposes of this chapter. Except for rules adopted under subsection 4, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

## 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 ~~make the data available to the public, 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.