



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5524

Introduced 2/15/2012, by Rep. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act

Creates the Use of Physical Restraint and Seclusion on Students Act. Provides that all covered entities (defined as an educational setting receiving public funds from the State Board of Education, including, but not limited to, public schools, public regional programs, charter schools, private schools, special purpose private schools, career and technical education schools, and public pre-kindergarten) shall have local policies regarding the use of physical restraint and seclusion. Sets forth provisions concerning a local complaint procedure, providing overview and awareness information to staff, and notice to parents. Provides that seclusion and physical restraint may be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate; sets forth requirements and prohibitions. Provides for notification of an incident, documentation and an incident report, a response to the use of physical restraint or seclusion, cumulative reporting, a complaint process, and staff training.

LRB097 19404 NHT 64657 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Use of
5 Physical Restraint and Seclusion on Students Act.

6 Section 5. Definitions. For the purposes of this Act:

7 "Aversive procedure" means the use of a substance or
8 stimulus, intended to modify behavior, that would cause
9 physical or emotional trauma to a student, even when the
10 substance or stimulus appears to be pleasant or neutral to
11 others. Such substances and stimuli include, but are not
12 limited to, infliction of bodily pain (e.g. hitting, pinching,
13 slapping), water spray, noxious fumes, extreme physical
14 exercise, costumes, or signs.

15 "Behavior intervention plan" or "BIP" means a
16 comprehensive plan for managing problem behavior by changing or
17 removing contextual factors that trigger or maintain it and by
18 strengthening replacement skills.

19 "Chemical restraint" means the use of medication,
20 including those administered pro re nata (as needed), given
21 involuntarily to control student behavior.

22 "Covered entity" means any educational setting receiving
23 public funds from the State Board of Education, including, but

1 not limited to public schools, public regional programs,
2 charter schools, private schools, special purpose private
3 schools, career and technical education schools, and public
4 pre-kindergarten.

5 "De-escalation" means the use of behavior management
6 techniques intended to cause a situation involving problem
7 behavior of a student to become more controlled, calm, and less
8 dangerous, thus reducing the risk for injury or harm.

9 "Dangerous behavior" means behavior that presents an
10 imminent risk of injury or harm to a student or others.

11 "Emergency" means a sudden, urgent occurrence, usually
12 unexpected but sometimes anticipated, that requires immediate
13 action.

14 "Functional behavioral assessment" or "FBA" means a
15 school-based process that includes the parent and, as
16 appropriate, the child to determine why a child engages in
17 challenging behaviors and how the behavior relates to the
18 child's environment. The term includes direct assessments,
19 indirect assessments, and data analysis designed to assist the
20 team to identify and define the problem behavior in concrete
21 terms, identify the contextual factors (including affective
22 and cognitive factors) that contribute to the behavior, and
23 formulate a hypothesis regarding the general conditions under
24 which a behavior usually occurs and the probable consequences
25 that maintain the behavior. Formal documentation of the
26 assessment by appropriately qualified individuals becomes part

1 of the child's educational record.

2 "Imminent risk of injury or harm" means a situation in
3 which a student has the means to cause harm or injury to
4 himself or herself or others and such injury or harm is likely
5 to occur at any moment such that a reasonable and prudent
6 person would take steps instantly to protect the student and
7 others against the risk of such injury or harm.

8 "Individualized education plan" or "IEP" is a term used
9 under special education law to reference the written document
10 that states goals, objectives and services for students
11 receiving special education.

12 "Individual health plan" or "IHP" means a plan of action
13 for a student with special health care needs, actual and
14 potential. It is an adaptation of the nursing care plans
15 commonly used in health care institutions.

16 "Mechanical restraint" means any item worn by or placed on
17 the student to limit behavior or movement and which cannot be
18 removed by the student.

19 "Parent" means a parent with legal custody of a minor
20 child, except that the parent of a child with disabilities
21 means a parent as defined in the federal Individuals with
22 Disabilities Education Act.

23 "Physical restraint" means an intervention that restricts
24 a student's freedom of movement or normal access to his or her
25 body and includes the forcible moving of a student against the
26 student's will. Physical restraint does not include the

1 temporary touching or holding of the hand, wrist, arm,
2 shoulder, hip, or back for the purpose of moving a student
3 voluntarily.

4 "Positive alternatives" means a set of instructional and
5 environmental supports to teach students pro-social
6 alternatives to problem behaviors with high rates of positive
7 feedback.

8 "School day" means a day in which a school or program is in
9 operation as an instructional day or a teacher in-service day.

10 "Seclusion" means the involuntary confinement of a student
11 alone in a room or area from which the student is physically
12 prevented from leaving. Seclusion is not timeout.

13 "Section 504 plan" refers to a written plan of
14 modifications and accommodations under Section 504 of the
15 federal Rehabilitation Act of 1973 and the Americans with
16 Disabilities Act of 1990.

17 "Serious bodily injury" means any bodily injury that
18 involves the following:

- 19 (1) a substantial risk of death;
20 (2) extreme physical pain;
21 (3) protracted and obvious disfigurement; or
22 (4) protracted loss or impairment of the function of a
23 bodily member, organ, or mental faculty.

24 "State-approved training program" means a nationally
25 recognized, evidenced-based, training program approved by this
26 State that includes the components outlined in Section 50 of

1 this Act.

2 "Student" means a child or adult aged 3 to 20 years
3 enrolled in a school or a program that is a covered entity as
4 defined in this Section.

5 "Timeout" means an intervention where a student requests or
6 complies with an adult request for a break. Timeout is not
7 seclusion.

8 "Transitional hold" means a brief physical restraint of an
9 individual, which may be on the ground, for the purpose of
10 quickly and effectively gaining physical control of an
11 individual who has met the criteria for physical restraint,
12 with the intent to transition that individual to a safer,
13 standing position as quickly as possible.

14 Section 10. Local policy; notice to parents.

15 (a) All covered entities shall have local policies,
16 consistent with this Act, regarding the use of physical
17 restraint and seclusion. Covered entities must also have a
18 procedure available by which parents may submit a complaint
19 regarding the use of physical restraint or seclusion on their
20 child, based upon which the covered entity shall investigate
21 the circumstances surrounding the incident complained of, make
22 written findings, and, where appropriate, determine to take
23 corrective action.

24 Covered entities shall revise existing policies or develop
25 policies consistent with this Act within 90 calendar days of

1 the effective date of this Act.

2 (b) Annually, each covered entity shall provide overview
3 and awareness information to all staff, including contracted
4 providers, regarding the contents of this Act and any local
5 policies or procedures related to the use of physical restraint
6 and seclusion.

7 Each covered entity shall provide an annual notice
8 informing parents of students enrolled at the covered entity of
9 this Act and any local policies or procedures related to the
10 use of physical restraint and seclusion, including the local
11 complaint process.

12 Section 15. Seclusion.

13 (a) Seclusion may be used only as an emergency intervention
14 when the behavior of a student presents imminent risk of injury
15 or harm to the student or others, and only after other less
16 intrusive interventions have failed or been deemed
17 inappropriate.

18 Seclusion must be implemented by staff certified in a
19 State-approved training program to the extent possible. If, due
20 to the nature of the emergency, untrained staff have intervened
21 and initiated a seclusion, trained personnel must be summoned
22 to the scene and assume control of the situation as rapidly as
23 possible.

24 (b) Seclusion may not be used for punitive purposes or
25 staff convenience or to control challenging behavior.

1 Seclusion may not be used to prevent property destruction
2 or disruption of the environment in the absence of imminent
3 risk of injury or harm.

4 Seclusion may not be used as a therapeutic or educational
5 intervention.

6 Seclusion may not take place in a locked room.

7 (c) At least one adult must be physically present to
8 monitor a student in seclusion at all times. Students must be
9 continuously monitored until the student no longer presents
10 imminent risk of injury or harm to himself or herself or
11 others.

12 In the event of an injury to the student or staff, the
13 local policy for emergency response must be initiated.

14 (d) The staff involved in the use of seclusion shall
15 continually assess for signs that the student is no longer
16 presenting imminent risk of injury or harm to himself or
17 herself or others, and the emergency intervention must be
18 discontinued as soon as possible.

19 Time must be recorded consistent with the requirements of
20 this Act and local policy.

21 The covered entity may request assistance from parents at
22 any time during the incident.

23 If attempts to release from seclusion have been
24 unsuccessful and a student is still presenting behaviors that
25 create an imminent risk of injury or harm to himself or herself
26 or others, then the covered entity may request assistance from

1 outside sources such as caregivers, case managers, crisis
2 intervention teams, local emergency medical service personnel,
3 or other community resources.

4 If seclusion continues for more than 10 minutes, an
5 administrator or his or her designee shall determine whether
6 continued seclusion is warranted and shall continue to monitor
7 the status of the seclusion every 10 minutes until the
8 seclusion is terminated.

9 (e) Seclusion can be achieved in any part of a school
10 building with adequate light, heat, and ventilation and of
11 normal room height. If a specific room is designated as a
12 seclusion room, it must be a minimum of 60 square feet with
13 adequate light, heat, and ventilation, be of normal room
14 height, and be free of hazardous material and objects with
15 which a student could self-inflict bodily injury.

16 Section 20. Physical restraint.

17 (a) Physical restraint may be used only as an emergency
18 intervention when the behavior of a student presents imminent
19 risk of injury or harm to the student or others, and only after
20 other less intrusive interventions have failed or been deemed
21 inappropriate.

22 Physical restraint must be implemented by staff certified
23 in a State-approved training program to the extent possible.
24 If, due to the nature of the emergency, untrained staff have
25 intervened and initiated a physical restraint, trained

1 personnel must be summoned to the scene and assume control of
2 the situation as rapidly as possible.

3 Physical restraint may be used to move a student only if
4 the need for movement outweighs the risks involved in such
5 movement.

6 If a student is demonstrating imminent risk while on the
7 ground or if during the process of physical restraint the
8 student directs the restraint to the ground, staff shall make
9 attempts to disengage or utilize a transitional hold to move
10 the student back to a safer restraint position.

11 Protective equipment or devices that are part of a
12 treatment plan as prescribed by a licensed health care provider
13 are not prohibited by this Act.

14 (b) Physical restraint may not be used for punitive
15 purposes or staff convenience or to control challenging
16 behavior.

17 Physical restraint may not be used to prevent property
18 destruction or disruption of the environment in the absence of
19 imminent risk of injury.

20 No physical restraint may be used that restricts the free
21 movement of the diaphragm or chest or that restricts the airway
22 so as to interrupt the normal breathing or speech
23 (restraint-related positional asphyxia) of a student.

24 No physical restraint may be used that involves taking the
25 student to the floor and forcibly holding him or her in a
26 prone, supine, seated, or side position.

1 No physical restraint may be used that relies on pain for
2 control, including, but not limited to, joint hyperextension,
3 excessive force, take-down (supported or unsupported), the use
4 of any physical structure (e.g. wall, railing, or post),
5 punching, and hitting.

6 Physical restraint may not be used as a therapeutic or
7 educational intervention.

8 Aversive procedures and mechanical and chemical restraints
9 may not be used under any circumstances. However, prescribed
10 assistive devices are not considered mechanical restraints
11 when used as prescribed. Their use must be supervised by
12 qualified and trained individuals in accordance with
13 professional standards. Prescribed medications administered by
14 a health care provider consistent with a student's health care
15 plan are permitted.

16 (c) At least 2 adults must be present at all times when
17 physical restraint is used, except when, for safety reasons,
18 waiting for a second adult is precluded.

19 A student in physical restraint must be continuously
20 monitored by an adult not directly involved in the restraint
21 until the student no longer presents imminent risk of injury or
22 harm to himself or herself or others.

23 In the event of an injury, local policy must be followed.

24 (d) The staff involved in the use of physical restraint
25 must continually assess for signs that the student is no longer
26 presenting imminent risk of injury or harm to himself or

1 herself or others, and the emergency intervention must be
2 discontinued as soon as possible or at the first sign of
3 distress.

4 Time must be recorded consistent with the requirements of
5 this Act and local policy.

6 The covered entity may request assistance from parents at
7 any time during the incident.

8 If attempts to release from physical restraint have been
9 unsuccessful and a student is still presenting behaviors that
10 create an imminent risk of injury or harm to himself or herself
11 or others, then the covered entity may request assistance from
12 outside sources such as caregivers, case managers, crisis
13 intervention teams, local emergency medical service personnel,
14 or other community resources.

15 If physical restraint continues for more than 10 minutes,
16 an administrator or his or her designee shall determine whether
17 continued physical restraint is warranted and shall continue to
18 monitor the status of the physical restraint every 10 minutes
19 until the physical restraint is terminated.

20 (e) Those restraints used by law enforcement officers or
21 school resource officers employed by a police department in the
22 course of their professional duties are not subject to this
23 Act.

24 Section 25. Notification of incident.

25 (a) After each incident of physical restraint or seclusion,

1 a staff member involved shall do the following:

2 (1) report to the administrator or his or her designee,
3 by oral notification, as soon as possible after each
4 incident, but in no event later than the end of the school
5 day of its occurrence; and

6 (2) if the student is receiving his or her education in
7 an out-of-district placement through a tuition agreement
8 or other agreement, report the incident to the entity
9 responsible for the student's education, by phone, within
10 24 hours.

11 (b) An administrator or his or her designee shall notify
12 the parent that physical restraint or seclusion and any related
13 first aid have occurred as soon as practical, but within the
14 school day in which the incident occurred, utilizing all
15 available phone numbers and other appropriate means. If the
16 parent is unavailable, a phone message must be left for the
17 parent to contact the school as soon as possible. If a parent
18 does not have access to a phone, the entity must use whatever
19 contact information is available for emergencies. The parent
20 must be informed that written documentation will be provided to
21 him or her within 7 calendar days.

22 If a restraint or seclusion has occurred outside the school
23 day, notification of the restraint or seclusion and any related
24 first aid must occur as soon as possible in compliance with the
25 entity's procedures for emergency situations.

26 (c) If serious bodily injury or death of a student occurs

1 during the implementation of restraint or seclusion, the
2 following apply:

3 (1) oral notification of the incident must follow local
4 health and safety procedures as outlined by the covered
5 entity's policies and procedures; and

6 (2) the administrator or his or her designee shall
7 notify the State Board of Education within 24 hours or the
8 next business day.

9 Section 30. Documentation; incident report.

10 (a) Each use of physical restraint or seclusion must be
11 documented in an incident report. The incident report must be
12 completed and provided to an administrator or his or her
13 designee as soon as practicable after the incident and in all
14 cases within 2 school days. At a minimum, the incident report
15 must include the following:

16 (1) Student name.

17 (2) Age, gender, grade.

18 (3) Location of the incident.

19 (4) Date of incident.

20 (5) Date of report.

21 (6) Person completing the report.

22 (7) Beginning and ending time of each physical
23 restraint or seclusion.

24 (8) Total time of incident.

25 (9) Description of prior events and circumstances.

1 (10) Less restrictive interventions tried prior to the
2 use of physical restraint or seclusion. If none used, an
3 explanation as to why.

4 (11) The student behavior that justified the use of
5 physical restraint or seclusion.

6 (12) A detailed description of the physical restraint
7 or seclusion used.

8 (13) The staff person or persons involved, their role
9 in the use of physical restraint or seclusion and their
10 certification in an approved training program.

11 (14) Description of the incident, including the
12 resolution and process of return to the program, if
13 appropriate.

14 (15) Whether the student has an IEP, 504 plan, behavior
15 plan, IHP, or other plan.

16 (16) If a student or staff sustained bodily injury, the
17 date and time of nurse or response personnel notification
18 and the treatment administered, if any.

19 (17) Date, time, and method of parent notification.

20 (18) Date and time of staff debriefing.

21 (b) A copy of the incident report must be provided, within
22 7 calendar days of the incident to the following:

23 (1) the parent; and

24 (2) if the student is receiving his or her education in
25 an out-of-district placement through a tuition agreement
26 or other agreement, the entity responsible for the

1 student's education.

2 Section 35. Response to the use of physical restraint or
3 seclusion.

4 (a) Following each incident of physical restraint or
5 seclusion, the covered entity shall ensure that, within 2
6 school days, an administrator or his or her designee reviews
7 the incident with all staff persons who implemented the use of
8 physical restraint or seclusion to discuss the following:

9 (1) whether the use of restraint or seclusion was
10 implemented in compliance with this Act and local policies;
11 and

12 (2) how to prevent or reduce the future need for
13 physical restraint or seclusion.

14 (b) Following each incident of physical restraint or
15 seclusion, the covered entity shall ensure that, as soon as
16 possible, but no later than 2 school days after the incident or
17 upon the return to school, an administrator or his or her
18 designee shall review the incident with the student involved to
19 discuss the following:

20 (1) details of the incident in an effort to assist the
21 student and staff in identifying patterns of behaviors,
22 triggers, or antecedents; and

23 (2) alternative positive behaviors or coping skills
24 the student can opt for in future incidents.

25 (c) When physical restraint or seclusion has resulted in

1 serious bodily injury to a student or staff member requiring
2 emergency medical treatment, the debriefing must take place as
3 soon as possible, but no later than the next school day.

4 (d) Following the debriefing, a written plan for response
5 and de-escalation must be developed (or, if a plan already
6 exists, the plan must be revised) and implemented for the
7 student.

8 (e) After the third incident of physical restraint or
9 seclusion in a school year of a student who has been found
10 eligible for special education or has a Section 504 plan, the
11 student's IEP or Section 504 team shall meet within 10 school
12 days after the third incident to discuss the incident and
13 consider the need to conduct an FBA or develop a BIP or amend
14 an existing one.

15 (f) For students not described in subsection (e) of this
16 Section, a team shall meet within 10 school days after the
17 third incident to discuss the incidents.

18 The team shall consist of the parent, an administrator or
19 his or her designee, a teacher for the student, a staff member
20 involved in the incident (if not the teacher or administrator
21 already invited), and other appropriate staff members.

22 The team shall consider the appropriateness of a referral
23 to special education and, regardless of whether a referral to
24 special education is to be made, the need to conduct an FBA, or
25 develop a BIP.

26 (g) Nothing in this Section is meant to prevent the

1 completion of an FBA or BIP for any student who might benefit
2 from these measures, but who has had fewer than 3 restraints or
3 seclusions.

4 (h) The covered entity shall make reasonable, documented
5 efforts to encourage parent participation in the meetings
6 required in subsections (e) and (f) of this Section and to
7 schedule them at times convenient for parents to attend.

8 A covered entity may not seek written permission from a
9 parent to provide restraint and seclusion to a student, nor may
10 a parent waive their right to notification of an incident of
11 restraint or seclusion.

12 Section 40. Cumulative reporting.

13 (a) A cumulative report by building must be made to the
14 superintendent or chief administrator on a quarterly and annual
15 basis and must include the following:

16 (1) the aggregate number of physical restraint
17 incidents;

18 (2) the aggregate number of students placed in physical
19 restraint;

20 (3) the aggregate number of seclusion incidents;

21 (4) the aggregate number of students placed in
22 seclusion;

23 (5) the aggregate number of serious bodily injuries to
24 students related to the use of restraint and seclusions;
25 and

1 (6) the aggregate number of serious bodily injuries to
2 staff related to physical restraint and seclusion.

3 The superintendent or chief administrator shall review
4 cumulative reports received as set forth in this subsection (a)
5 and identify those areas that can be addressed to reduce the
6 future use of physical restraint and seclusion. These
7 cumulative reports may be requested by the State Board
8 Education at any time.

9 (b) Each covered entity shall submit to the State Board of
10 Education an annual report of the incidence of physical
11 restraint and seclusion, which must include the following:

12 (1) the aggregate number of physical restraint
13 incidents;

14 (2) the aggregate number of students placed in physical
15 restraint;

16 (3) the aggregate number of seclusion incidents;

17 (4) the aggregate number of students placed in
18 seclusion;

19 (5) the aggregate number of serious bodily injuries to
20 students related to physical restraint and seclusion; and

21 (6) the aggregate number of serious bodily injuries to
22 staff related to physical restraint and seclusion.

23 Section 45. Complaint process.

24 (a) Parent complaints related to restraint and seclusion
25 must be submitted to the covered entity in accordance with

1 local policy and procedure.

2 (b) Any parent who is dissatisfied with the result of the
3 local complaint process may file a complaint with the State
4 Board of Education, which complaint is not considered an appeal
5 of that local process. The State Board shall review the results
6 of the local complaint process and may initiate its own
7 investigation of the complaint, and the State Board shall issue
8 to the complaining parent and the covered entity a written
9 report with specific findings within 60 days after receiving
10 the complaint. If a violation is found, the State Board shall
11 develop a corrective action plan by which the entity will
12 achieve compliance.

13 Section 50. Staff training; approved programs. The State
14 Board of Education shall maintain a directory of nationally
15 recognized, evidence-based, training programs approved for use
16 on its Internet website. These training programs must require
17 participants to demonstrate physical and written competency to
18 achieve certification and must include instruction in at least
19 the following core components:

20 (1) The use of non-physical interventions for
21 responding to potentially dangerous behaviors, including
22 de-escalation and the use of positive alternatives.

23 (2) Identification of dangerous behaviors that may
24 indicate the need for physical restraint or seclusion and
25 methods for evaluating the risk of harm to determine

1 whether such interventions are warranted.

2 (3) Instruction and simulated experience in
3 administering safe physical restraint techniques across a
4 range of increasingly restrictive interventions, including
5 the safe movement of a student, and in recognizing and
6 avoiding positions involving a high risk of
7 restraint-related positional asphyxia (restricting a
8 student's ability to breathe).

9 (4) The effects of physical restraint and seclusion on
10 a student, including monitoring physical and psychological
11 signs of distress and when to obtain medical assistance in
12 compliance with the covered entity's procedures for
13 emergency interventions.

14 (5) The risks and realities of physical restraint and
15 seclusion.

16 (6) A review of the process of student and staff
17 debriefing.

18 Each covered entity shall provide all staff with training
19 in the use of non-physical interventions for responding to
20 potentially dangerous behaviors, including de-escalation and
21 the use of positive alternatives and the process for student
22 and staff debriefing. Each covered entity shall ensure that a
23 sufficient number of staff have additional training in the
24 identification of dangerous behaviors that may indicate the
25 need for physical restraint, how to safely administer physical
26 restraint techniques across a range of increasingly

1 restrictive interventions, including the safe movement of a
2 student, recognizing and understanding the risks of the use of
3 physical restraint and seclusion, including monitoring for
4 signs of physical and psychological distress, and when to
5 obtain medical assistance in compliance with the covered
6 entity's procedures for emergency interventions. This training
7 shall occur at the time of hire and shall be formally refreshed
8 annually.