



2011 SENATE BILL 353

December 28, 2011 - Introduced by Senators OLSEN, LASSA and SCHULTZ, cosponsored by Representatives KESTELL, ENDSLEY, PASCH, POCAN, POPE-ROBERTS, RIPP, SINICKI and SPANBAUER. Referred to Committee on Education.

- 1 **AN ACT to create** 115.787 (2) (i) and 118.305 of the statutes; **relating to:** the use
2 of seclusion and physical restraint on pupils in public schools.

Analysis by the Legislative Reference Bureau

Effective September 1, 2012, this bill prohibits an employee of a public school (including a charter school) and certain other individuals who provide services for the benefit of a public school from using seclusion or physical restraint on a pupil at a public school except under certain conditions. Seclusion is the involuntary confinement of a pupil, apart from other pupils, in a room or area from which the pupil is physically prevented from leaving. Physical restraint is a restriction that immobilizes or reduces the ability of a pupil to freely move his or her torso, arms, legs, or head.

An individual covered by the bill may use seclusion on a pupil only if all of the following apply:

1. The pupil's behavior presents a clear, present, and immediate risk to the physical safety of the pupil or others and it is the least restrictive intervention available.
2. The seclusion lasts only as long as necessary to resolve the risk to physical safety.
3. A covered individual maintains constant supervision of the pupil.
4. The seclusion room or area is free of objects or fixtures that may injure the pupil.
5. The pupil has adequate access to bathroom facilities, drinking water, necessary medication, and meals.

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6. No door connecting the seclusion room or area to other rooms or areas is capable of being locked.

A covered individual may use physical restraint on a pupil only if all of the following apply:

1. The pupil's behavior presents a clear, present, and immediate risk to the physical safety of the pupil or others and it is the least restrictive intervention available.

2. The degree of force used and the duration of the physical restraint do not exceed the degree and duration that are reasonable and necessary to resolve the risk.

3. There are no medical contraindications to the use of physical restraint.

4. None of the following maneuvers or techniques are used:

a. Those that do not give adequate attention and care to protecting the pupil's head.

b. Those that cause chest compression.

c. Those that place pressure or weight on the pupil's neck or throat

5. It does not constitute corporal punishment.

6. Neither mechanical nor chemical restraints are used.

Whenever seclusion or physical restraint is used on a pupil, the school principal must notify the pupil's parent and prepare a written report.

The bill generally prohibits a covered individual from using physical restraint on a pupil at school unless he or she has received training in the use of physical restraint that includes a number of specified components. A covered individual who has not received such training may use physical restraint on a pupil at school only in an emergency and only if a trained covered individual is not immediately available. The governing body of a public school in which physical restraint is used must ensure that at least one covered individual has been trained in its use.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.787 (2) (i) of the statutes is created to read:

2 115.787 (2) (i) If the individualized education program team determines that
3 the use of seclusion, as defined in s. 118.305 (1) (i), or physical restraint, as defined
4 in s. 118.305 (1) (g), may reasonably be anticipated for the child, appropriate positive
5 interventions and supports and other strategies that address the behavior of concern
6 and that comply with all of the following:

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1 1. The interventions, supports, and other strategies are based upon a
2 functional behavior assessment of the behavior of concern.

3 2. The interventions, supports, and other strategies incorporate the use of the
4 term “seclusion” or “physical restraint.”

5 3. The interventions, supports, and other strategies include positive behavioral
6 supports.

7 **SECTION 2.** 118.305 of the statutes is created to read:

8 **118.305 Use of seclusion and physical restraint. (1) DEFINITIONS.** In this
9 section:

10 (a) “Child” has the meaning given in s. 115.76 (3).

11 (b) “Child with a disability” has the meaning given in s. 115.76 (5).

12 (c) 1. “Covered individual” means all of the following, except as provided in
13 subd. 2.:

14 a. An individual who is employed by a governing body, or under contract with
15 a governing body as an independent contractor, to provide services for the benefit of
16 the school governed by the governing body.

17 b. An individual who is employed by a person under contract with a governing
18 body to provide services for the benefit of the school governed by the governing body.

19 c. An individual who is engaged in student teaching under the supervision of
20 an individual described in subd. 1. a.

21 2. “Covered individual” does not include any of the following:

22 a. A member of a governing body.

23 b. A law enforcement officer who is authorized or designated by a governing
24 body to perform any duty under s. 118.125 (1) (bL) 1. or 2. in a school governed by the
25 governing body.

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1 (d) "Governing body" means the governing body in charge of a school.

2 (e) "Individualized education program" has the meaning given in s. 115.76 (9).

3 (f) "Parent" has the meaning given in s. 115.76 (12).

4 (g) "Physical restraint" means a restriction that immobilizes or reduces the
5 ability of a pupil to freely move his or her torso, arms, legs, or head.

6 (h) "School" means a public school, including a charter school.

7 (i) "Seclusion" means the involuntary confinement of a pupil, apart from other
8 pupils, in a room or area from which the pupil is physically prevented from leaving.

9 **(2) SECLUSION; CONDITIONS FOR USE.** A covered individual may use seclusion on
10 a pupil at school only if all of the following apply:

11 (a) The pupil's behavior presents a clear, present, and imminent risk to the
12 physical safety of the pupil or others and it is the least restrictive intervention
13 feasible.

14 (b) A covered individual maintains constant supervision of the pupil, either by
15 remaining in the room or area with the pupil or by observing the pupil through a
16 window that allows the covered individual to see the pupil at all times.

17 (c) The room or area in which the pupil is secluded is free of objects or fixtures
18 that may injure the pupil.

19 (d) The pupil has adequate access to bathroom facilities, drinking water,
20 necessary medication, and regularly scheduled meals.

21 (e) The duration of the seclusion is only as long as necessary to resolve the clear,
22 present, and imminent risk to the physical safety of the pupil or others.

23 (f) No door connecting the room or area in which the pupil is secluded to other
24 rooms or areas is capable of being locked.

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1 **(3) PHYSICAL RESTRAINT; CONDITIONS FOR USE.** A covered individual may use
2 physical restraint on a pupil at school only if all of the following apply:

3 (a) The pupil's behavior presents a clear, present, and imminent risk to the
4 physical safety of the pupil or others and it is the least restrictive intervention
5 feasible.

6 (b) There are no medical contraindications to its use.

7 (c) The degree of force used and the duration of the physical restraint do not
8 exceed the degree and duration that are reasonable and necessary to resolve the
9 clear, present, and imminent risk to the physical safety of the pupil or others.

10 (d) None of the following maneuvers or techniques are used:

11 1. Those that do not give adequate attention and care to protecting the pupil's
12 head.

13 2. Those that cause chest compression by placing pressure or weight on the
14 pupil's chest, lungs, sternum, diaphragm, back, or abdomen.

15 3. Those that place pressure or weight on the pupil's neck or throat, on an
16 artery, or on the back of the pupil's head or neck, or that otherwise obstruct the pupil's
17 circulation or breathing.

18 (e) It does not constitute corporal punishment, as defined in s. 118.31 (1).

19 (f) The covered individual does not use a mechanical or chemical restraint on
20 the pupil. The use of supportive equipment to properly align a pupil's body, assist
21 a pupil to maintain balance, or assist a pupil's mobility, under the direction and
22 oversight of appropriate medical or therapeutic staff, does not constitute the use of
23 a mechanical restraint.

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1 **(4) NOTIFICATION AND REPORTING FOLLOWING USE OF SECLUSION OR PHYSICAL**
2 RESTRAINT. (a) Whenever seclusion or physical restraint is used on a pupil at school,
3 the school principal or his or her designee shall do all of the following:

4 1. As soon as practicable, but no later than one business day after the incident,
5 notify the pupil's parent of the incident and of the availability of the written report
6 under subd. 2.

7 2. Within 2 business days after the incident and after consulting with the
8 covered individuals present during the incident, prepare a written report containing
9 all of the following information:

10 a. The pupil's name.

11 b. The date, time, and duration of the use of seclusion or physical restraint.

12 c. A description of the incident, including a description of the actions of the
13 pupil before, during, and after the incident.

14 d. The names and titles of the covered individuals present during the incident.

15 (b) Each report prepared under par. (a) 2. shall be retained by the school and
16 made available for review by the pupil's parent within 3 business days of the
17 incident.

18 (c) Annually by September 1, the principal of each school or his or her designee
19 shall submit to the governing body a report containing all of the following:

20 1. The number of incidents of seclusion and of physical restraint in the school
21 during the previous school year.

22 2. The total number of pupils who were involved in the incidents and the
23 number of children with disabilities who were involved in the incidents.

24 **(5) CHILD WITH A DISABILITY.** The first time that seclusion or physical restraint
25 is used on a child with a disability, the child's individualized education program team

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1 shall convene in the manner provided in s. 115.787 (4) as soon as possible after the
2 incident. The child's individualized education program team shall review the child's
3 individualized education program to ensure that it contains appropriate positive
4 behavioral interventions and supports and other strategies to address the behavior
5 of concern, as provided in s. 115.787 (2) (i), and revise it if necessary.

6 **(6) PHYSICAL RESTRAINT; TRAINING.** (a) Except as provided in par. (c), no covered
7 individual may use physical restraint on a pupil at school unless he or she has
8 received training in the use of physical restraint that includes all of the following
9 components:

10 1. Methods of preventing the need for physical restraint.

11 2. An identification and description of dangerous behavior that may indicate
12 the need for physical restraint and methods of evaluating risk of harm in order to
13 determine whether physical restraint is warranted.

14 3. Experience in administering and receiving various types of physical
15 restraint.

16 4. Instruction regarding the effects of physical restraint on the person
17 restrained, in monitoring signs of physical distress, and in obtaining medical
18 assistance.

19 5. Instruction in documenting and reporting incidents of physical restraint.

20 6. A requirement that the trainee demonstrate proficiency in administering
21 physical restraint.

22 (b) The governing body shall ensure that all of the following apply in each school
23 that it operates in which physical restraint is used:

24 1. At least one covered individual has received training in the use of physical
25 restraint under par. (a).

