Who is Held Accountable? An Analysis of State Restraint and Seclusion Laws
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Overview
Restraint and seclusion of students in schools is not necessarily a new issue, but it is one that has certainly become more prominent in education in recent years. Many reasons have been hypothesized as to the impetus for the increase in restraint and seclusion use in schools. Some scholars have pointed to the inclusion for all student populations as a huge catalyst in the rise of use, particularly students with disabilities such as autism that may have significant behavioral issues stemming from their disability (Arivett, 2015; Balluch, 2016; Barnard-Brak, 2014; Trader et al., 2017). Indeed, news reports have similarly highlighted the fact that the vast majority of uses of restraint or seclusion occur on students with disabilities (Lydon, 2017). For example, one news article reported that an international study found that because of inclusion, teachers were spending less time on instruction and more time dealing with behavioral issues, which is something that these teachers are commonly not properly trained for or prepared to handle (Samuels, 2017a).

Other research has indicated that use of restraint and/or seclusion occurs more frequently with certain minority student populations, particularly black male students. That article posited that issues such as inadequate teacher training, or discriminatory cultural bias can cause disparate use of restraint or seclusion (Diament; Jimenez, McDaniels, & Shapiro, 2018). Regardless of the reason or reasons, excessive use or misuse of restraint and seclusion has resulted in many serious injuries and deaths. In its 2009 report, the Government Accountability Office found hundreds of allegations of abuse, injuries, and deaths that occurred between 1990 and 2009 in schools due to use of physical restraints or seclusions (p. 5). Zirkel (2016) similarly found that a study of judicial decisions on use of restraint and seclusion—commonly brought because of injuries alleged to result from the practices—revealed over 300 legal claims brought in 111 court cases.
since 1980.

As a result of the reports and subsequent public attention given to student injuries and deaths caused by inappropriate or excessive uses of restraint or seclusion, debate has raged as to if, when, and how the government should regulate school use of these practices. In particular, heavy debate has emerged about whether states should retain control over deciding when and how to regulate restraint and seclusion use, or whether the federal government should take the lead in promulgating national standards for the entire nation to follow (see, e.g., Cope-Kasten, 2013; Goodmark, 2009; Hoffman, 2011; Kaplan, 2010; Marquez, 2009; Miller, 2011). Other research has focused on evaluating when and under what conditions restraint and seclusion is or should be used in schools (Balluch, 2016; Barnard-Brak et al., 2014; Bon & Zirkel, 2014; Connolly, 2014; LeBel et al., 2012; Tidwell, 2013; Vigil, 2010; Westling et al., 2010).

As of 2017, successful passage of legislation regulating restraint and seclusion use has occurred exclusively at the state-level. Federal legislation was initially proposed in 2009 and has been reintroduced in subsequent years, but no bill presented has been passed into law. States, on the other hand, have been quite proactive in passing new legislation or modifying previous laws or rules regulating the use of restraint and seclusion practices. Indeed, as of 2016, 43 of the 50 states have some sort of statute or regulation on restraint, seclusion, or both (Butler, 2016, pp. 21–23). As such, it is necessary to evaluate those laws to understand what is being required by states in those laws, what is left to the discretion of schools, and the extent to which these laws are holding schools accountable for following these newly imposed rules.

This paper assesses if and how states have been incorporating means of enforcement and/or accountability to best ensure those laws will be followed. This is a critical consideration to be studied, because these laws were put in place to achieve a reduction in the dangerous and sometimes fatal misuse of these practices on children. As will be discussed in more detail below, laws that lack effective enforcement and accountability provisions are much less likely to achieve their intended purpose.

**Background on Restraint and Seclusion**

Restraint or seclusion of individuals has been utilized in various settings, such as medical, mental health, correctional, and educational facilities, as a way to address unruly and sometimes dangerous behaviors or aggressive actions (Springer et al., 2012; Sturmey, 2015). It
must be noted at this point that definitions of restraint and seclusion do differ among states and organizations. As such, I have chosen to define the terms as they are used in this study using the definitions adopted by the federal government in its policy documents on restraint and seclusion in schools. “Restraint” is defined as some form of mechanical or physical restriction that immobilizes or reduces the ability of a person to move his or her arms, legs, or head freely; “Seclusion” is defined as the placing of a person in an isolated room, from which the individual is not able to leave voluntarily (U.S. Department of Education Resource Document, 2012).

The issue of restraint and seclusion in schools has been in the national spotlight for over a decade, and has resulted in more and more pieces of state legislation passed each year. For example, in 2009, the Government Accountability Office (GAO) published a report detailing the current state of law regarding restraint and seclusion in schools. The report found that almost 40% of states (19) had no statute or regulation governing the use of restraint and seclusion in schools. Education law researchers and disability rights advocates have also sought to document these legislative efforts. Luckily, those numbers have improved over the years. This is important because it indicates that both the public and policymakers are recognizing that the issue is one that will not be “fixed” on its own, and requires a concerted effort from as many stakeholders as possible to help reduce the harm caused to students and staff from misuse of these practices.

Jessica Butler, an attorney as well as the parent of a child with a disability, has been a leading advocate on regulating and reducing the use of restraint and seclusion in schools. Starting in 2012, she has published an annual report documenting state and federal efforts to legislate when and how schools can utilize restraint and seclusion methods. In her 2016 report, Butler found that 7 states had no laws or regulations on the issue—Florida, Idaho, New Jersey, Oklahoma, South Carolina, South Dakota, and Virginia (pp. 21–23). These numbers are telling in how states viewed the pressing nature of the issue and the need to install rules to regulate and reduce its use. Also of encouragement, states are continuing to introduce bills seeking to address the issue. South Dakota, for example, is attempting to introduce and vote on restraint and seclusion legislation in 2018; same for Oklahoma (Raposa, 2018; Palmer, 2017). New Mexico just passed a law limiting the use of restraint in April of 2017 (Miller, 2017).

As states have begun to take the lead in enacting restraint and seclusion legislation, a few scholars have begun to assess those laws. The two main researchers analyzing state legislation are Butler (2016) and Stewart (2010). Additionally, two other recent studies have sought to
analyze state restraint and seclusion laws. Marx and Baker (2017) conducted a study to assess the extent to which state laws were adhering to the recommended guidelines for appropriate restraint and seclusion practices published by the U.S. Department of Education in 2012. Knackstedt (2017) also analyzed the state laws but paid less attention to the specific language of the laws, instead focusing more on the extent to which they had affected school and educator practices.

Unfortunately, despite this encouraging increase in state legislation addressing the issue, whether those laws are in fact improving practices and reducing misuse remains uncertain. For example, the news organization Education Week analyzed data collected by the U.S. Department of Education's Office for Civil Rights on the 2013–2014 school year, and reported that over 70,000 special education students were restrained or secluded over 200,000 times in that one academic year (Samuels, 2017b). The University of New Hampshire’s Carsey Research Center similarly found that although numerous states adopted or changed their restraint or seclusion policies between 2009–2012, data indicated that the use of restraint and seclusion remained constant (Gagnon, Mattingly, & Connelly, 2013).

In 2016, the Seattle Times reported that despite a Washington in place for years limiting the circumstances when restraint and seclusion can be used, almost half of Washington school districts missed the deadline for reporting restraint and seclusion data to the state. Of the data that was actually collected, there were 20,115 documented incidents of restraint or seclusion used across the state in just a six-month period. In addition, just one special education student was placed in a seclusion room 617 times in a six-month period—an average of 5 times per 7-hour school day (Silverman, 2016). Also in 2016, an Alaska mother sued her child’s school district for failing to notify her when it would restrain her child, who had a disability, in violation of state law (Hanlon, 2016). The following year, an Indiana family similarly accused its school district of violating Indiana restraint and seclusion laws by using a wooden structure to restrain their daughter, who has autism, for more than 2 weeks without notifying or obtaining consent from the parents to do so (Sheckler, 2017).

Since 2015, a number of state newspapers reported on the continued issues relate to restraint and seclusion use in states that had laws already in place. An Indiana news station, for example, reported that state data collected during the 2015–2016 year identified 5,917 uses of restraints and 6,322 uses of seclusions. However, it also found that almost 54% of school districts reported 0 restraints or seclusions the entire school year—some of which were the
largest school districts in the state—calling into question the accuracy of district reporting data (Kenney, 2016). In Maine, statewide data collected showed that students were subjected to restraints or seclusion an average of 13,000 times per year since 2013 (Feinberg, 2017). A 2016 Children’s Law Center report from Kentucky showed that while uses of seclusion in schools appeared to shrink—1,844 in 2013–14 to 1,395 in 2015-2016—the number of restraints not only rose—4,885 to 6,489—but the majority of students (at least 60%) restrained were in third grade or younger (Honeycutt-Spears, 2016). The Madison Metro School District in Wisconsin reported that about 8.8% of special education students were physically restrained during the 2016-17 academic year, which was an increase from 5.6% in the 2015–16 year (Walker, 2017).

Statewide, reporters also found that almost 10% of school districts in Wisconsin refused or failed to submit reporting data for the 2013–14 school year (Johnson, 2016). A 2016 Ohio news report found that the Ohio Board of Education reported over 14,000 instances of restraint and seclusion in just one academic year (“14,000 Restraint & Seclusion Reports in 1 Year”, 2016).

A 2016 study conducted in Connecticut found that a random sample of just 70 students with disabilities were restrained 1,065 times and placed in seclusion 703 times during one school year (Connecticut State Department of Education, 2016). In addition, there was apparently no documentation showing that the children had received behavioral evaluations, or that school officials had monitored and reviewed cases of repeated seclusions, as required by law. The report also noted that the state department of education reported over 30,000 instances of restraint and seclusion performed in each of the previous 3 academic years, causing over 1,300 injuries to students, despite state laws restricting use to emergency circumstances only (Chedekel, 2015). Also, in 2017, Iowa newspaper reported numerous discrepancies and issues related to school district reporting of restraint and seclusion use (Hines, 2017). In addition, the data that was collected and available indicated that seclusion was used disproportionately on black students and students with disabilities.

In January 2018, a New Hampshire mother testified before the state board of education that she felt the New Hampshire restraint and seclusion law did not adequately protect her son, who has autism, from inappropriate and harmful uses of the practice. She testified that her son was being restrained up to 12 times a day, placed in a seclusion room for up to five hours at a time, and would come home with bruises all over his body (Stucker, 2018). Her recommendation was for the state to add a law that allowed a third-party hearing for parents who claim their child
was improperly restrained or secluded (Stucker, 2018). A mother in Alabama filed a lawsuit in 2018 as well, alleging that despite a state law limiting the use of seclusion rooms to “extreme circumstances” and placing requirements on the size and structure of those rooms, her son was locked in a concrete room—one criminal defense attorney remarked, “I’ve seen jails that are in better shape than that place”—for hours at a time (Johnson, 2018).

These myriad news reports indicate that there are potential issues with ensuring that the state restraint and seclusion laws are being followed and carried out safely and effectively. In addition, it appears that a number of different issues arise from state to state. Some states have issues with schools inappropriately using restraint or seclusion despite clear statutory definitions and standards for situations that warrant them. Others have problems with schools accurately and comprehensively reporting all instances of restraint or seclusion. Still other states have been pressed in recent months by parents and advocates to create additional regulations or requirements above and beyond what is already in place. For example, in the New Hampshire case referenced earlier, the mother argued that the state still needed to add a law that would allow a third-party hearing for parents who claim their child was improperly restrained or secluded (Stucker, 2018). A review by the Seattle Times of the Washington state law on restraint and seclusion found that school district compliance with submitting the legally required information and data regarding restraint or seclusion incidents was so inconsistent that it was close to impossible to judge whether or not the legislation was actually effective (Silverman, 2016).

As can be seen, although states have certainly been making strides to reduce the prevalence of restraint and seclusion misuse at the state level, reports indicate that legal and practical issues are still prevalent and widespread. In other words, schools and school leaders may have a prescribed set of rules passed down from the state level to implement, but research and data seem to question whether those rules are being followed. As Knackstedt (2017) pointed out, research and policies both currently fail to discern and include mandates for mechanisms that can serve to encourage (or coerce if necessary) school-level practices to reflect the symbolic and overarching impetus for restraint and seclusion legislation—to reduce its use and instead utilize more beneficial positive interventions. Indeed, research on the passage of legislation on issues such as bullying, sports-related concussions, and other social and health-related concerns posit similar conclusions about the need for effective mechanisms in legislation in order to spur practical behavioral and cultural changes.
Enforcement and Accountability Provisions in Legislation

Both politicians and the public alike frequently champion passage of a law on a particular issue as an important step in “solving” that problem. In other words, the belief is that enactment of a law will effectively spur change in behavior and practice by individuals and result in achievement of the goals of the law (McCabe & Cohen, 2006). Legislation can outline mandates for action or inaction by specific individuals or entities, provide procedures and protocols that should or must be followed, as well as can provide either conditions to ensure that a law is being followed, or could potentially impose consequences for failure to adhere to the requirements of a law. These latter elements of a piece of legislation, often referred to as enforcement or accountability provisions, have been identified by many scholars as critical to the “effectiveness” of a law. For example, Zaremski (2003) discussed the importance of legal accountability in his analysis of the ERISA healthcare law. Zaremski outlined the ERISA law and court cases brought from patients who believed their rights were violated through decisions made by medical professionals. After describing the haphazard and unclear outcomes of those cases across Circuit courts, he determined that the crux of the issues was in the legislation’s failure to include legal provisions to explicitly hold medical professionals accountable for irresponsible health plan decisions regarding care and treatment of a patient. As he put it,

- a health plan is not a health plan, i.e., whatever process or person is used to treat and care for patients, if it provides rights without remedies.

Simply put, rights without fair and just remedies is the sine qua non of no accountability within any patient rights initiatives at all (p. 450).

These voices championing enforcement of legislation have also been raised in issues such as tobacco bans, as well as bans on tanning bed use, for individuals under 18 years of age. Regarding tobacco use, Congress passed the Synar Amendment to the Alcohol, Drug Abuse, and Mental Health Administration Act in 1992. Through that amendment, states were required to enact and enforce laws aimed at prohibit the sale and distribution of tobacco to minors younger than 18 years. As a result, states passed laws that included provisions specifically designed to hold tobacco retailers accountable for following the laws. Aspects of those enforcement and accountability provisions included: requiring tobacco retailers to obtain licenses to operate; conducting random, unannounced inspections of retailers; and including civil or criminal
penalties for retailers that violate the laws (DiFranza, 2005; Substance Abuse and Mental Health Services Administration, 2013).

Inspired by the effectiveness of these tobacco ban laws, researchers concerned with skin cancer risks for minors using tanning beds assessed the 6 state laws that had been passed banning tanning bed use for minors under 18, comparing those statutes to the tobacco bans statutes in terms of language aimed at enforcement those tobacco laws (Bulger et al., 2015). The researchers found that the tanning laws varied greatly in their inclusion of enforcement provisions. As a result, they expressed concern with the potential lack of clear means of ensuring compliance with the laws, noting that “the potential reduction of youth indoor tanning and risk of skin cancer cannot be fully realized without proper enforcement” (p. e11).

Other scholars have discussed the issues of enforcement and accountability in terms of the behavioral impact such provisions can have on those individuals or organizations for which the law is intended. For example, McLaughlin (1987) posits that there are two general factors that are critical to the success of any law or policy: capacity and will. Capacity can be defined as “the perceived abilities, skills, and expertise of” an individual or set of individuals tasked with carrying out legislative mandates (as cited by Brown, 2014, p. 6). Developing proper capacity can be addressed through things like training or professional development. However, McLaughlin stated that the more critical component for effective policy implementation is will: in other words, the “attitude, motivation and beliefs of the implementers will ultimately determine the outcome of a given law or policy” (McLaughlin, p. 172).

Because of the need to alter and encourage a change in both capacity and will, legislation needs to incorporate means by which both skills and motivations or beliefs can in fact be addressed. As a result, “successful implementation generally requires a combination of pressure and support from policy” (McLaughlin, p. 173, citing Elmore & McLaughlin, 1982; Fullen, 1986; Montjoy & O’Toole, 1979; Zald & Jacobs, 1978).

This belief is all the more true in the field of education policy. Buy-in from school districts, administrators, and teachers, are critical for any new policy or law to be implemented with fidelity, as individuals are naturally and generally averse to practical changes they see as faulty, unnecessary, or devoid of any value (e.g., Brown, 2014; Dowell, 2014; Gagnon, D. J., Mattingly, M., & Connelly, V. J., 2013; Vigil, 2010). As a result, whether education legislation is truly effective at achieving its purported goals may depend largely on its ability to positively
change both capacity and will of those in charge of implementation. Scholars researching and analyzing recent additions to or creations of school laws have indeed looked at this very issue.

An Illustration: Enforcement and Accountability of School Anti-Bullying and Harassment Laws

Two current school-specific examples include the influx of state laws concerning concussions that occur during school sports or other school-sponsored activities, as well as peer-to-peer bullying and harassment. Advances in medical technology and assessments have illuminated the dangers and consequences of concussions experienced by children in school athletic competitions that can result in brain damage or death. The rise of social media use among school-age children has contributed to more pervasive instances of student-to-student bullying, some of which have resulted in students that self-harm or committing suicide. These injuries have caused parents and the public to cry out for laws and policies to force schools to take measures to combat these horrible incidents and keep students safe. States have largely responded to this outcry, with the vast majority of states passing anti-bullying legislation as well as statutes, regulations, and policies defining protocols for suspected concussions during school sports. As such, research articles have focused on the implementation of those laws and their efficacy in achieving the intended results. For example, according to Maines and Robinson (2010), in order for any anti-bullying policy to truly achieve its goals, it must contain strong language indicating the policy must be taken seriously, will be enforced, and will be managed effectively.

Brown (2014) researched the implementation of the Connecticut anti-bullying legislation by interviewing education leaders regarding their perceptions of the law as well as their experiences in interpreting and implementing its mandates. Brown also focused his interviews on ascertaining if and how school climates and cultures were altered as a result of the new law. Part of Brown’s findings assessed the fidelity to which school leaders were implementing the law. She found that education leaders were largely self-assessing this fidelity, and more often than not interpreting data and school practices to contend that their schools and districts were already following the new legal requirements.

Brown found that while the data reported by education leaders may be valid in terms of when, where, or how many instances of bullying occurred, that data—especially because it was
self-reported—did not reflect substantive changes in adult and student behaviors as some districts contended. As a result, Brown cast serious doubts regarding the effectiveness of the legislation at changing the actual practices used by schools. She determined that the data showed that “districts continued doing what they already had in place with the exception of filling out the paperwork as required” (p. 91). These findings echo those found by Bonk (2012) in a similar analysis of anti-bullying policy implementation in a New York state school district. Using data obtained through interviews of school and district level leaders, she found they agreed that the most important step to effective implementation of an anti-bullying policy is to “ensure consistent enforcement of the policy among schools and/or staff” (p. 68). Part of that enforcement in the bullying context has been to include in legislation and policy specific consequences for students that engage in bullying behavior, as well as consequences for educators that fail to adequately respond to claims of bullying.

Farblish (2011) emphasized this need to hold persons accountable as a means to ensure compliance with and implementation of legislation designed to protect students. In his law review article, he posits that cyberbullying issues are not adequately addressed through current legislation; in particular, he contends that is because current enforcement mechanisms with bullying legislation do not do enough to compel educators to take affirmative steps to stop the bullying behavior. By including provisions to allow for criminal liability for educators who know about cyberbullying but do not take affirmative steps to stop the incident, he believes it would provide significant impetus to alter practices and behaviors to better protect students. While Farblish’s proclamations potentially may not be well-received by educators nor lawmakers—he raises substantial legal and practical concerns about the appropriate scope of duty educators can and should have in dealing with issues in student’s lives—he does raise an important point: if legislation is intended to alter educator’s practices or behaviors, the most effective way to ensure that occurs is to include within those laws some way to make sure people will be likely to follow those rules.

Weaver et al.’s (2013) content analysis of anti-bullying policies similarly revealed some interesting trends regarding the content of state anti-bullying laws. The authors found that many states lacked measures to ensure accountability or enforcement of the laws. In particular, despite 47 of the 50 states having some sort of law in effect, a majority of the states had no clear requirements regarding reporting of bullying incidents, and only 12% require parental
notification of a bullying incident (p. 168). As a result, they opined that the laws lacked effective measures to ensure those laws were in fact being followed or implemented as designed. The authors also reported a great lack of clarity in the way the laws were written. As they put it, “although state lawmakers may craft legislation that appears clear to lawmakers, the translation for school officials can be ambiguous. Indistinctness in any state’s anti-bullying law can lead to individual discretion of interpretation and implementation” (p. 167).

In fact, Keuny and Zirkel (2012) found that even though although 20% of the states require reporting of bullying incidents to the district, state, and/or parents, and even more encouraged the practice, not a single state law imposed any consequences on schools that failed to report bullying incidents. Four states (Delaware, Georgia, Florida, Utah) raise the possibility of a consequence such as withholding of funding or a disciplinary sanction, but does not mandate such an action. As a result, the authors contend that “although the number of anti-bullying laws has increased in recent years, they generally lack sanctions or incentives, thus leaving implementation and enforcement in question” (p. 29).

**An Illustration: Enforcement and Accountability of School Sports Concussion Prevention Legislation**

Similar issues have been raised in regard to statutes enacted to address concussions in school athletics. For example, Amberg (2012) illustrated how recently enacted concussion statutes attempt to delineate proper procedures and protocols that school staff supervising athletics must follow to hopefully reduce the dangerous short and long-term effects of concussions. As is the case with bullying behavior and issues of student discipline, concussion statutes are aimed at altering school official’s behavior and practices regarding certain types of conduct (or omission of conduct). For example, including provision that if a concussion is suspected, the child is removed from competition and medically evaluated before being allowed to return to play. While Amberg commended many of the state statutes for requiring education and training for school officials, Amberg also bemoaned the fact that these statutes currently are not as effective as many would hope because they lacked ways states could enforce those laws. According to the author:

the effectiveness of a statute is questionable when no enforcement mechanism or consequence for noncompliance exists. Moreover, the youth concussion laws present
issues of liability for coaches and medical professionals. A youth concussion statute cannot meet its potential if it is not effective or if it has no enforcement procedures. (p. 182).

As Amberg found, most state concussion statutes impose no criminal or civil penalties on individuals that failure to adhere to the statutory mandates. Some states, such as Wisconsin, have even gone so far as to explicitly state that the statute is not to impose or provide any cause of action against an individual (p. 183). If a law lacks a means to enforce it or compel those to adhere to its mandates, it can hardly be said that such law is effective in achieving its intended goals.

Kim et al. (2017) similarly assessed concussion statutes from all 50 states, identifying similarities and differences among them. The authors noted that reports from states following enactment of the laws have resulted in positive outcomes. Namely, wider dissemination of educational and training materials to school staff, as well as increased reporting of incidents, and utilization of health and medical services following suspected concussions. In their review of state laws, the authors found that of the states that included provisions related to enforcement or liability, the law tended to explicitly relieve actors from liability for “acting in good faith” to comply with the law, rather than impose liability for noncompliance (p. 175). Indeed, of the 50 states and District of Columbia, only three—Connecticut, Massachusetts, and Pennsylvania—specifically included penalties on actors for noncompliance. Of those three, Connecticut and Massachusetts provided only that noncompliance could result in suspension or revocation of a person’s coaching license; Pennsylvania vaguely states that the Department of Health could impose penalties for noncompliance (p. 179).

The authors bemoaned this lack of punitive measures, acknowledging that such measures—as was researched and illustrated in seat other safety-centric laws such as belt and bicycle helmet legislation—were shown to increase compliance with legal mandates (Ji, Gilchick, & Bender, 2006; Rivara, Thompson, & Cummings, 1999). Thus, while excluding liability for acting in good faith while carrying out legal mandates is important for school officials so they are not unfairly punished for trying their best to follow the law, it is equally important to include mechanisms to compel individuals to proactively work towards altering behaviors and practices to ensure that the goals of legislation are carried out, especially those who would otherwise be unwilling or actively prefer to use them in harmful ways. If the former
is considered compelling but not the latter, the law merely supports those who take it upon
themselves to protect the students—those whom the legislation is not ultimately aimed at altering
behavior—and does little to nothing to compel those averse or unwilling to change their
practices to ensure the health and safety of children.

Given these identified needs in restraint and seclusion research, this study is guided by
the following research question:

- What does the text of each state’s statute and regulations include regarding
  enforcement for violations of those laws?

By providing an evaluation of enforcement and accountability provisions present in state
restraint and seclusion laws, this research seeks to incorporate previous publications on
enforcement and accountability of legislation to provide recommendations for states on potential
ways to achieve greater compliance from schools and districts.

**Procedure for Study**

For this study, every state was researched to determine if the possessed statutes and/or
regulations regarding the use of restraint and/or seclusion in schools. 43 states were identified as
having some sort of law regulating restraint and/or seclusion. States that only had policy
guidance, which is not a legally binding source of law, were not deemed to have “laws” on
restraint and seclusion, and any policy guidance was therefore not analyzed. Once the data was
compiled, a content analysis was conducted utilizing an instrument developed by the researcher.
In particular, the instrument separated the topics of enforcement and into 3 subsections (civil
penalties, criminal penalties, funding withheld), as well as with accountability (immunity,
oversight of practices, process for parental complaint), and analyzed whether language pertaining
to each subtopic was mentioned, as well as included the relevant legally operative text for such
subtopic. The text was then analyzed to ascertain the legal scope, specificity, and force of the
text to better understand its potential practical effects as well as to observe trends that arose from
the data.

**Preliminary Results**

1. **Enforcement**
   a. **Civil Penalties**
Of the 23 states analyzed, only 3 (Alaska, Iowa, Michigan) contained any language providing for some form of civil liability on an individual for wrongful use of restraint or seclusion. However, even just those three states varied widely in the language or its impositions. Alaska’s statute acted as both a provision for immunity, as well as liability, stating that an educator “is not liable for civil damage... unless the act or omission constitutes gross negligence or reckless or intentional misconduct.” In Iowa, the law utilizes rather broad language in establishing liability:

“An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more of the provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action.”

Michigan goes even more vague and limited in its expression regarding any civil liability for violating the law. It simply says that “a person who fails to comply with this section or who fails to comply with any of the requirements of the state policy developed under this section is considered to have failed to comply with and to have violated this act.” It gives no additional explanation or further clarity.

b. Criminal Penalties

None of the 23 states analyzed had language that expressly or implicitly established any criminal liability for educators for violations of the laws. Alabama, on the other hand, expressly indicated the contrary, stating explicitly that “Nothing in this rule shall be construed to create a criminal offense or a private cause of action against any local board of education or program or its agents or employees.”

c. Funding Withheld

Of the 23 states analyzed, only 1 (California) had language related to withholding of funding as a consequence of violating part of the law. It states rather generally, and in discretionary (i.e., legally non-binding) terms that “the superintendent may monitor local educational agency compliance with this chapter and may take appropriate action, including
fiscal repercussions” if noncompliance with the law is found (bold added).

2. Accountability
   a. Immunity from Liability
      Of the 23 states analyzed, 3 had provisions that mentioned immunity from lawsuit or criminal offense for acting in accordance with these laws. Alaska and Indiana had explicit provisions indicating that immunity would be granted to educators for actions taken under these laws. Alaska provided such immunity as long as the action taken was not gross negligence, or reckless or intentional conduct. Indiana’s law expressly stated that the law should not be read to give any civil or criminal liability to the school or district, and educators also had immunity “if the action is taken in good faith and is reasonable.” In addition, Alabama expressly mentioned that the law should not be read as providing any civil or criminal cause of action against the school, district, or one of its employees.

   b. Oversight of Practices
      Of the 23 states analyzed, 8 of them (Alabama, Alaska, California, Colorado, Connecticut, Illinois, Indiana, Maryland) had provisions requiring that a form of oversight regarding general practices, reports, policies, and regulatory compliance is conducted by an authoritative agency or specified team is established. These provisions generally amounted to requirements that districts or state agencies conduct annual reviews of the reports, policies, and data to determine if changes moving forward are to be made. Nonetheless, states still varied in their descriptiveness and breadth of requirements.

      For example, Alabama provided very little in terms of detail and clarity on legal requirements: “The written policies must include the following provisions...The documentation described in paragraph (2.)(vii)(III) (monthly summary reports) and any prohibited use of seclusion and chemical, mechanical, or physical restraint is to be submitted to the Alabama Department of Education annually.” Illinois, on the other hand, requires establishment of a new “parent teacher advisory committee” tasked with working with the school board to annually review policies and implementation procedures and reports. Maryland appeared to have one of the only laws to emphasize monitoring compliance as a key aspect of oversight: “The department may monitor and request any information regarding any matter related to exclusion, restraint, or
seclusion implemented by a public agency or nonpublic school.” This language also differed from the others in that it was directed at how specific incidents were being handled, rather than broad reviews of reports and data to consider general modifications.

c. Process for Parent Complaints

Of the 23 states analyzed, 5 (Iowa, Kansas, Kentucky, Maine, and Maryland) included provisions requiring or outlining a method for addressing parent complaints regarding use of restraint or seclusion. Maryland’s law was incredibly vague, stating only that “Each public agency and nonpublic school shall develop policies and procedures on... Receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.”

Discussion

As the preliminary results indicate, provisions attempting to establish means of enforcement or accountability in statutes and regulations on restraint and seclusion use appear to be few and far between. In terms of holding schools or employees legally responsible for violating the law, barely more than 10% (3 out of 23) provide any kind of civil liability, and even the ones that do are limited in scope. None of the states provided any criminal liability. In fact, the same amount of states (3) that had some provision establishing the possibility of civil liability also provided language absolving schools or personnel of legal liability for violating the laws.

While it was encouraging that a number of states included language outlining requirements for oversight/review of school practices and requiring procedures for addressing complaints of misuse or legal violations (eight and five, respectively), those numbers still fell well short of 50% of the states analyzed.

Taken together, the results indicate that ensuring accountability and compliance with the laws on appropriate use and procedures for restraint and seclusion is either a neglected or intentionally omitted consideration in restraint and seclusion policy. Considering the research on the importance of legislative compliance as a means of effective policy and practical change, this is an aspect of restraint and seclusion legislation that must be given greater assessment. As restraint and seclusion use are behaviors (and beliefs regarding use of those behaviors) that must change in order for the physical, emotional, and psychological injuries to be reduced and practices improved, the legislation must be equipped to effectuate such a behavioral and cultural
shift in practice. Based on these preliminary results, legislation is being grossly underutilized in providing legal mechanisms to potentially encourage (or even compel) such practical changes.

**Conclusion**

This study is one of the first to assess the extent to which state laws on restraint and seclusion are including provisions to ensure enforcement of and compliance with those laws. Results suggest that legislatures are neglecting to include such provisions in the laws, resulting in a lack of legal “force” by which those laws can actually compel behavioral and cultural changes within schools and districts. Future research should look into potential relationships between legal language/mandates and educational practices. If substantive means by which to enforce and compel compliance with the laws can play a role in reducing harm caused by restraint and seclusion practices, effort should be made to ensure those laws are written in ways that can achieve such objectives.

**References**


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