

1 H.409

2 Introduced by Representatives Wood of Waterbury, Bluemle of Burlington,  
3 Anthony of Barre City, Berbeco of Winooski, Black of Essex,  
4 Brumsted of Shelburne, Buss of Woodstock, Campbell of St.  
5 Johnsbury, Cina of Burlington, Cordes of Lincoln, Dodge of  
6 Essex, Donahue of Northfield, Elder of Starksboro, Garofano of  
7 Essex, Graning of Jericho, Headrick of Burlington, Hyman of  
8 South Burlington, Logan of Burlington, Masland of Thetford,  
9 McCann of Montpelier, McFaun of Barre Town, McGill of  
10 Bridport, Mulvaney-Stanak of Burlington, Noyes of Wolcott,  
11 Priestley of Bradford, Sheldon of Middlebury, Sims of  
12 Craftsbury, Small of Winooski, Stone of Burlington, Surprenant  
13 of Barnard, Toleno of Brattleboro, Troiano of Stannard, and  
14 Whitman of Bennington

15 Referred to Committee on

16 Date:

17 Subject: Education; seclusion and restraints

18 Statement of purpose of bill as introduced: This bill proposes to prohibit the  
19 use of physical restraints and seclusion in an entity that owns, operates, or  
20 controls a school or educational program that receives public funds from the  
21 State. If physical restraints or seclusions are used, this bill proposes to require

1 reporting and documentation as required by the State Board of Education. It  
2 also proposes to require the Agency of Education to develop and implement a  
3 performance review system to define and monitor the use of physical restraint  
4 or seclusions by covered entities, as well as provide technical assistance to  
5 covered entities by developing, implementing, and providing technical  
6 assistance to support evidence-based programs that reduce the likelihood of  
7 physical restraint or seclusion.

8 An act relating to keeping Vermont students safe by restricting the use of  
9 restraints and seclusion in schools

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 16 V.S.A. § 1168 is added to read:

12 § 1168. USE OF SECLUSION AND PHYSICAL RESTRAINT

13 (a) Definition. As used in this section:

14 (1) “Chemical restraint” means a drug or medication that is not  
15 prescribed as the standard treatment of a student’s medical or psychiatric  
16 condition by a licensed physician or other qualified health professional acting  
17 under the scope of the professional’s authority under State law that is used on a  
18 student to control behavior or restrict freedom of movement.

19 (2) “Covered entity” means an entity that owns, operates, or controls a  
20 school or educational program that receives public funds from the State,

1 including public schools, approved independent schools, tutorial programs,  
2 approved education programs, teen parent education programs, independent  
3 schools that limit enrollment to students who are on an individualized  
4 education program or a plan under Section 504 of the Rehabilitation Act of  
5 1973, 29 U.S.C. § 794, career technical education centers, public  
6 prekindergarten education programs, and prequalified private prekindergarten  
7 education providers.

8 (3) “Mechanical restraint” means the use of a device to restrict a  
9 student’s freedom of movement.

10 (4) “Physical escort” means the temporary or voluntary touching or  
11 holding of the hand, wrist, arm, shoulder, or back to induce a student to walk to  
12 a safe location.

13 (5) “Physical prompt” means a teaching technique that involves  
14 voluntary physical contact with the student that enables the student to learn or  
15 model the physical movement necessary for the development of a desired  
16 competency.

17 (6) “Physical restraint” means a personal restriction that immobilizes or  
18 reduces the ability of a student to move the arms, legs, torso, or head freely.

19 “Physical restraint” does not include a physical escort, mechanical restraint,  
20 physical prompt, or chemical restraint.

1           (7) “Seclusion” means the isolation or confinement of a student alone in  
2           a room or clearly defined area from which the student does not feel free to go  
3           or is physically denied exit.

4           (8) “Unlawful seclusion or restraint” means:

5           (A) seclusion;

6           (B) mechanical restraint;

7           (C) chemical restraint;

8           (D) physical restraint or physical escort that is life-threatening,  
9           restricts breathing, or restricts blood flow, including prone and supine restraint;

10          or

11          (E) physical restraint that is contraindicated based on the student’s  
12          disability, health care needs, or medical or psychiatric condition as  
13          documented in:

14                  (i) a health care directive or medical management plan;

15                  (ii) a behavior intervention plan;

16                  (iii) an individual education plan or an individual family service  
17          plan as defined in the Individuals with Disabilities Education Act, 20 U.S.C.

18          § 1401 et seq.;

19                  (iv) a plan developed pursuant to Section 504 of the Rehabilitation  
20          Act of 1973, 29 U.S.C. § 794 or Title II of the Americans with Disabilities Act  
21          of 1990, 42 U.S.C. § 12131 et seq.; or

1                   (v) another relevant record made available to the State or program  
2 involved.

3           (b) Prohibitions on restraint and seclusion. A covered entity that receives  
4 State or federal assistance shall not subject a student to unlawful seclusion or  
5 restraint.

6           (c) Reports and documentation. A covered entity shall comply with  
7 Agency of Education, Use of Restraint and Seclusion in Schools (CVR 22-  
8 000-036), Rules 4503 and 4504 regarding reporting and the documentation of  
9 the use of restraint and seclusion.

10           (d) Parental notification. Each covered entity shall adopt and implement  
11 procedures for parental notification following an incident involving imposition  
12 of physical restraint or seclusion on a student, which shall include:

13                   (1) an immediate verbal or electronic communication, as soon as is  
14 practicable and not later than the same day as the incident;

15                   (2) written notification, as soon as is practicable and not later than 24  
16 hours after the incident that shall include:

17                           (A) a description of the incident, including precipitating events;

18                           (B) positive interventions used prior to the use of restraint or  
19 seclusion; and

20                           (C) the length and time of restraint or seclusion; and

1           (3) a meeting between parents of the student and the covered entity, as  
2           soon as is practicable, and not later than 5 school days following the incident,  
3           the purpose of which shall be to discuss the incident, including:

4                   (A) a discussion of proactive strategies to prevent future need for the  
5                   use of physical restraint or seclusion;

6                   (B)(i) for a student identified as eligible to receive accommodations  
7                   under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 or title II  
8                   of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., or  
9                   accommodations or special education or related services under the Individuals  
10                  with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a discussion of the  
11                  need for a functional behavioral assessment and a behavior intervention plan;  
12                  or

13                   (ii) for a student not identified as eligible to receive  
14                   accommodations under the provisions of law described in subdivision  
15                   (d)(3)(B)(i) of this section, evidence of a referral for such accommodations or  
16                   special education or related services, or documentation of the basis for  
17                   declining to make such a referral for the student; and

18                   (C) providing to the parent, for use during the meeting, a written  
19                   statement from each adult witness who was in the proximity of the student  
20                   immediately before and during the time of the physical restraint but was not  
21                   directly involved in such restraint or seclusion.

1       (e) Performance review system. The Agency of Education shall develop  
2       and implement a performance review system to define and monitor the use of  
3       physical restraint and seclusion by covered entities. The performance review  
4       system must monitor compliance with this section and relevant State Board of  
5       Education and Agency rules, including the requirement of submitting data to  
6       the Agency. The performance review system must identify accountability  
7       standards and identify when a covered entity’s level of incidents of physical  
8       restraint or seclusion exceeds average levels. The performance review system  
9       must include a compliance plan to require the covered entity to reduce use of  
10       physical restraint and seclusions with specific targets and time frames.

11       (f) Technical assistance. The Agency shall provide technical assistance to  
12       covered entities by developing, implementing, and providing technical  
13       assistance to support evidence-based programs that reduce the likelihood of  
14       physical restraint and seclusion, and support students in reducing behavior that  
15       can result in physical restraint or seclusion, such as developmentally  
16       appropriate positive behavior interventions, functional behavioral  
17       interventions, mental health supports, restorative justice programs, trauma-  
18       informed care, and crisis and de-escalation interventions.

19       (g) The Agency shall adopt rules pursuant to 3 V.S.A. chapter 25 to carry  
20       out the purposes of this section.

1       Sec. 2. EFFECTIVE DATE

2       This act shall take effect on July 1, 2023.