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# A BILL FOR AN ACT

RELATING TO EDUCATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

- 1           SECTION 1. The purpose of this Act is to:
- 2           (1) Prohibit the use of seclusion and reduce and prevent
- 3           the use of restraint in public schools;
- 4           (2) Ensure the safety of all students and personnel in
- 5           public schools and promote a positive school culture
- 6           and climate;
- 7           (3) Protect students from:
- 8           (A) Physical and mental abuse;
- 9           (B) Aversive behavioral interventions that compromise
- 10           health and safety; and
- 11           (C) Any restraint imposed solely for purposes of
- 12           discipline or convenience;
- 13           (4) Ensure that restraint is imposed in public schools
- 14           only when a student's behavior poses an imminent
- 15           danger of property damage or physical injury to the
- 16           student, school personnel, or others and only for so
- 17           long as the danger persists; and
- 18           (5) Assist public schools by:



1 (A) Establishing policies and procedures to keep all  
2 students and school personnel safe, including  
3 students with the most complex and intense  
4 behavioral needs;

5 (B) Providing school personnel with the necessary  
6 tools, training, and support to ensure the safety  
7 of all students and all school personnel;

8 (C) Collecting and analyzing data on the use of  
9 restraint in schools; and

10 (D) Identifying and implementing effective evidence-  
11 based models to prevent and reduce restraint in  
12 schools.

13 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is  
14 amended by adding two new sections to be appropriately  
15 designated and to read as follows:

16 **§302A-A Use of seclusion, chemical restraint, or**  
17 **mechanical restraint prohibited.** The use of seclusion, chemical  
18 restraint, or mechanical restraint shall be prohibited in public  
19 schools regardless of any consent of the student, parents, or  
20 guardians.

21 **§302A-B Use of physical restraint limited; notification;**  
22 **policies and procedures; training; review.** (a) The use of



1 physical restraint shall be prohibited in public schools unless  
2 a student's behavior poses an imminent danger of property damage  
3 or physical injury to the student, school personnel, or others  
4 and only for so long as the danger persists; provided that other  
5 less intrusive interventions have failed or been determined to  
6 be inappropriate for the student.

7 (b) No physical restraint may be imposed that is life  
8 threatening, including physical restraint that may restrict  
9 breathing.

10 (c) The board shall establish a policy regarding the use  
11 of restraint in public schools. The department shall establish  
12 procedures to be followed after each incident involving the  
13 imposition of restraint upon a student, including procedures to  
14 provide to the parent or legal guardian of the student:

15 (1) An immediate verbal or electronic communication on the  
16 same day as each incident; and

17 (2) Written notification within twenty-four hours of each  
18 incident.

19 (d) All parents and legal guardians of students shall  
20 receive, upon the student's entry into public school, written  
21 information issued by the department about policies and



1 procedures for restraint. This written information shall  
2 include:  
3       (1) A brief summary describing the training received by  
4       public school staff in using restraint in facilities  
5       or programs;  
6       (2) Information describing board policy;  
7       (3) Information on the procedures for determining when  
8       restraint can and cannot be properly used in public  
9       school settings;  
10       (4) Definitions of restraint;  
11       (5) Information on the procedural safeguards that are in  
12       place to protect the rights of children and their  
13       parents or legal guardians;  
14       (6) A description of the alignment of policies and  
15       procedures on restraint with applicable state laws or  
16       department rules;  
17       (7) Information on the procedures for notifying parents  
18       and legal guardians when restraint has been used with  
19       their child; and  
20       (8) Information on the procedures for notifying parents  
21       and legal guardians about any changes to policies and  
22       procedures on restraint.



1       (e) The department shall make information relating to  
2 policies and procedures available on the department's website.

3       (f) If policy or procedural changes related to restraint  
4 are made during the school year, the department shall post the  
5 changes on its website immediately.

6       (g) All public schools shall ensure that staff who use  
7 restraint in facilities or programs are trained, recertified, or  
8 trained and recertified on a periodic basis no less frequently  
9 than annually. Training shall include:

10       (1) Evidence-based techniques shown to be effective in the  
11 prevention of restraint;

12       (2) Evidence-based techniques shown to be effective in  
13 keeping school personnel and students safe when  
14 imposing restraint;

15       (3) Evidence-based skills related to positive behavioral  
16 supports and interventions, safe physical escort,  
17 conflict prevention, understanding antecedents, de-  
18 escalation, and conflict management;

19       (4) A wide array of prevention and intervention  
20 modalities; and



1       (5) Information describing state policies and procedures  
2       that meet the minimum standards established by state  
3       statutes and administrative rules.

4       (h) No less than annually, there shall be a review of data  
5       on students at each public school who were restrained, which  
6       shall be conducted as directed by each complex area  
7       superintendent. The review shall determine whether:

8       (1) There are strategies in place to address the students  
9       with dangerous behaviors at issue;

10      (2) The strategies in place are effective in increasing  
11      appropriate behaviors of students with dangerous  
12      behaviors; and

13      (3) New strategies need to be developed or current  
14      strategies need to be revised or changed to prevent  
15      the reoccurrence of dangerous behaviors.

16      Patterns and trends in the data that are identified by the  
17      review shall be reported to the department.

18      (i) Each public school shall maintain records of its  
19      reviews of restraint data and any resulting decisions or actions  
20      regarding the use of restraint.

21      (j) The department shall review policies and procedures on  
22      the use of restraint, including by reviewing available data on



1 such use, outcomes, settings, individual staff involvement, and  
2 programs, and the frequency of use for student populations  
3 categorized by: individual students; groups of students; gender;  
4 race; national origin; disability status and type of disability;  
5 and limited English proficiency, for the purposes of  
6 determining:

7 (1) Whether policies for restraint are being applied  
8 consistently;

9 (2) The accuracy and consistency with which restraint data  
10 is being collected, as well as the extent to which  
11 this data is being used to plan behavioral  
12 interventions and staff training;

13 (3) Whether policies and procedures are being implemented  
14 with fidelity;

15 (4) Whether policies and procedures continue to protect  
16 students; and

17 (5) Whether policies and procedures remain properly  
18 aligned with applicable state statutes and  
19 administrative rules and consistent with privacy laws.

20 (k) As used in this section:

21 "Behavior intervention plan" means a proactive plan

22 designed to address problem behaviors exhibited by a student in



1 the educational setting through the use of positive behavioral  
2 supports and interventions.

3 "Chemical restraint" means a drug or medication used on a  
4 student to control behavior or restrict freedom of movement;  
5 provided that the term does not include a drug or medication  
6 that is:

7 (1) Prescribed by a licensed physician, or other qualified  
8 health professional acting under the scope of the  
9 professional's authority under state law, for the  
10 standard treatment of a student's medical or  
11 psychiatric condition; and

12 (2) Administered as prescribed by a licensed physician or  
13 other qualified health professional acting under the  
14 scope of the professional's authority under state law.

15 "Emergency situation" means a student's behavior that poses  
16 an imminent danger of property damage or physical injury to the  
17 student, school personnel, or others and only for so long as the  
18 danger persists.

19 "Mechanical restraint" means the use of devices as a means  
20 of restricting a student's freedom of movement or the ability to  
21 communicate in the student's primary language or mode of  
22 communication.





1       "Physical restraint" means a personal restriction, other  
2 than a chemical or mechanical restraint, that immobilizes or  
3 reduces the ability of a student to move the student's arms,  
4 legs, or head freely.

5       "Positive behavioral supports and interventions" means a  
6 systematic approach to embed evidence-based practices and data-  
7 driven decision making to improve public school climate and  
8 culture and includes a range of systemic and individualized  
9 strategies to reinforce desired behaviors and diminish the  
10 reoccurrence of problem behaviors in order to achieve improved  
11 academic and social outcomes and increase learning for all  
12 students, including students with the most complex and intense  
13 behavioral needs.

14       "Restraint" means:

- 15       (1) A mechanical restraint;  
16       (2) A chemical restraint; or  
17       (3) A physical restraint.

18       "Seclusion" means the confinement of a student alone in a  
19 room or structure from which the student is physically denied  
20 voluntary egress."

21       SECTION 3. Section 302A-1141, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "~~§302A-1141~~ **Punishment of pupils limited.** No  
2 physical punishment of any kind may be inflicted upon any pupil,  
3 ~~[but reasonable force may be used by a teacher in order to~~  
4 ~~restrain a pupil in attendance at school from hurting oneself or~~  
5 ~~any other person or property, and reasonable force may be used~~  
6 ~~as defined in section 703-309(2) by a principal or the~~  
7 ~~principal's agent only with another teacher present and out of~~  
8 ~~the presence of any other student but only for the purposes~~  
9 ~~outlined in section 703-309(2)(a).]~~ except as provided for under  
10 sections 302A-B and 703-309(2)."

11           SECTION 4. The department of education shall submit a  
12 report to the legislature no later than twenty days prior to the  
13 convening of the regular sessions of 2015 and 2016. The report  
14 shall include:

- 15           (1) The department of education's plan to phase in the
- 16                     implementation of sections 2 and 3 of this Act;
- 17           (2) Any budgetary needs of the department of education in
- 18                     implementing sections 2 and 3 of this Act; and
- 19           (3) Any proposed legislation necessary to implement
- 20                     sections 2 and 3 of this Act.

21           SECTION 5. The department of education shall update the  
22 senate committee on education and the house of representatives



1 committee on education no later than twenty days prior to the  
2 convening of the regular session of 2017 on the department of  
3 education's policy and procedures on the use of restraint in  
4 public schools.

5 SECTION 6. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$250,000 or so much  
7 thereof as may be necessary for fiscal year 2014-2015 to provide  
8 resources for training and data accountability to assist with  
9 the effective implementation of this Act.

10 The sum appropriated shall be expended by the department of  
11 education for the purposes of this Act.

12 SECTION 7. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval;  
19 provided that:

20 (1) Sections 2 and 3 shall take effect on August 1, 2016;

21 and

22 (2) Section 6 shall take effect on July 1, 2014.



**Report Title:**

Restraint and Seclusion; Public Schools; Appropriation

**Description:**

Prohibits the use of seclusion in public schools; establishes conditions and procedures for the use of restraint in public schools; and requires collection and review of data. Requires reports. Makes an appropriation. (HB1796 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

