

SENATE BILL 705

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By: **Senators Zucker, Hester, and Hough**

Introduced and read first time: February 4, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Physical Restraint and Seclusion – Limitations, Reporting, and**
3 **Training**

4 FOR the purpose of prohibiting a public agency from using seclusion as a behavioral health
5 intervention for a student; prohibiting a public agency from using physical restraint
6 and a nonpublic school from using physical restraint or seclusion as a behavioral
7 health intervention for a student, except under certain circumstances; requiring the
8 State Department of Education to develop an accountability system to measure
9 compliance with regulations adopted on the use of physical restraint and seclusion;
10 altering the content and participants of certain training on positive behavioral
11 interventions; and generally relating to the physical restraint and seclusion of
12 students by public agencies and nonpublic schools.

13 BY renumbering

14 Article – Education
15 Section 7–1102 through 7–1104, respectively
16 to be Section 7–1104 through 7–1106, respectively
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Education
21 Section 7–1101
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2021 Supplement)

24 BY adding to

25 Article – Education
26 Section 7–1102 and 7–1103
27 Annotated Code of Maryland
28 (2018 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Education
Section 7–1104 and 7–1106
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)
(As enacted by Section 1 of this Act)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That Section(s) 7–1102 through 7–1104, respectively, of Article – Education of the
Annotated Code of Maryland be renumbered to be Section(s) 7–1104 through 7–1106,
respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
as follows:

Article – Education

7–1101.

(a) In this subtitle the following terms have the meanings indicated.

(b) “Behavior intervention plan” means a proactive plan designed to address
problem behavior exhibited by a student in the educational setting through the use of
positive behavioral interventions, strategies, and supports.

(c) “Nonpublic school” means a school that receives funds from the Department
for the purpose of providing special education and related services to students with
disabilities.

(d) (1) “Physical restraint” means the use of physical force, without the use of
any device or material, to restrict the free movement of all or a portion of a student’s body
DURING SCHOOL HOURS.

(2) “Physical restraint” does not include:

(i) Briefly holding a student in order to calm or comfort the student;

(ii) Holding a student’s hand or arm to escort the student safely from
one area to another;

(iii) Moving a disruptive student who is unwilling to leave the area
when other methods such as counseling have been unsuccessful; or

(iv) Breaking up a fight in the school building or on school grounds.

(e) “Public agency” means the Department, a local school system, the Maryland School for the Deaf, [or] the Maryland School for the Blind, **OR THE JUVENILE SERVICES EDUCATION PROGRAM.**

(f) “Seclusion” means the confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving **DURING SCHOOL HOURS.**

(G) “TRAUMA-INFORMED INTERVENTION” MEANS AN APPROACH TO BEHAVIOR INTERVENTION THAT IS INFORMED BY THE RECOGNITION THAT THE EXPERIENCE OF TRAUMA, INCLUDING THE EXPERIENCE OF VIOLENCE, ABUSE, NEGLECT, DISASTER, TERRORISM, AND WAR, MAY HAVE A SIGNIFICANT IMPACT ON AN INDIVIDUAL’S PHYSICAL AND EMOTIONAL HEALTH AND ABILITY TO FUNCTION.

7-1102.

(A) A PUBLIC AGENCY MAY NOT USE SECLUSION AS A BEHAVIORAL HEALTH INTERVENTION FOR A STUDENT.

(B) NEITHER A PUBLIC AGENCY NOR A NONPUBLIC SCHOOL MAY USE PHYSICAL RESTRAINT ON A STUDENT AS A BEHAVIORAL HEALTH INTERVENTION UNLESS:

(1) PHYSICAL RESTRAINT IS NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM; AND

(2) OTHER, LESS INTRUSIVE, NONPHYSICAL INTERVENTIONS HAVE FAILED OR BEEN DEMONSTRATED TO BE INAPPROPRIATE FOR THE STUDENT.

(C) (1) A NONPUBLIC SCHOOL MAY NOT USE SECLUSION AS A BEHAVIORAL HEALTH INTERVENTION FOR A STUDENT UNLESS:

(I) SECLUSION IS NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM;

(II) OTHER, LESS INTRUSIVE INTERVENTIONS HAVE FAILED OR BEEN DEMONSTRATED TO BE INAPPROPRIATE FOR THE STUDENT;

(III) A HEALTH CARE PRACTITIONER WHO QUALIFIES UNDER SUBSECTION (D) OF THIS SECTION IS ON SITE AND IS DIRECTLY OBSERVING THE STUDENT DURING THE SECLUSION;

(IV) THE HEALTH CARE PRACTITIONER CONCLUDES THAT SECLUSION IS NOT CONTRAINDICATED FOR THE PHYSICAL, PSYCHOLOGICAL, OR PSYCHOSOCIAL HEALTH OF THE STUDENT;

(V) IF THE DOOR TO THE ROOM IN WHICH THE STUDENT IS BEING SECLUDED HAS A LOCKING MECHANISM, THE LOCKING MECHANISM IS ENGAGED ONLY IF HELD IN PLACE BY AN INDIVIDUAL OR, IF OPERATED ELECTRONICALLY, AUTOMATICALLY RELEASES IN THE CASE OF AN ACTIVE FIRE ALARM; AND

(VI) THE PERIOD OF SECLUSION LASTS THE LESSER OF:

1. 30 MINUTES; OR

2. A POINT IN TIME DURING WHICH THE STUDENT NO LONGER POSES A THREAT OF IMMINENT SERIOUS PHYSICAL HARM.

(2) (I) FOR A STUDENT WHO HAS AN INDIVIDUALIZED EDUCATION PROGRAM AND IS PLACED IN SECLUSION, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM, IN CONSULTATION WITH THE HEALTH CARE PRACTITIONER WHO OBSERVED THE SECLUSION, SHALL REVIEW THE STUDENT'S PHYSICAL, PSYCHOLOGICAL, AND PSYCHOSOCIAL HEALTH HISTORY TO DETERMINE WHETHER SECLUSION IS CONTRAINDICATED FOR THE STUDENT.

(II) A DETERMINATION UNDER THIS PARAGRAPH SHALL BE MADE:

1. AT EACH ANNUAL REVIEW OF THE STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM; AND

2. WITHIN 10 DAYS OF A STUDENT'S PLACEMENT BEING CHANGED.

(3) (I) IF A STUDENT'S BEHAVIOR IS ADVERSELY AFFECTED AFTER BEING PLACED IN SECLUSION, THE NONPUBLIC SCHOOL SHALL CONVENE A PUPIL PERSONNEL MEETING ON AN EXPEDITED BASIS OR AT THE EARLIEST OPPORTUNITY TO DISCUSS ALTERNATIVE BEHAVIORAL HEALTH TREATMENTS.

(II) IF THE BEHAVIOR OF A STUDENT WITH AN INDIVIDUALIZED EDUCATION PROGRAM IS ADVERSELY AFFECTED AFTER BEING PLACED IN SECLUSION, THE STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL CONVENE A MEETING ON AN EXPEDITED BASIS OR AT THE EARLIEST OPPORTUNITY TO DISCUSS ALTERNATIVE BEHAVIORAL HEALTH TREATMENTS.

(D) BEFORE A HEALTH CARE PRACTITIONER MAY USE SECLUSION AS A BEHAVIORAL HEALTH INTERVENTION FOR A STUDENT IN A NONPUBLIC SCHOOL, THE HEALTH CARE PRACTITIONER SHALL:

(1) (I) BE A PHYSICIAN, LICENSED TO PRACTICE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;

(II) BE A PSYCHOLOGIST, LICENSED TO PRACTICE UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE;

(III) BE A CLINICAL SOCIAL WORKER, LICENSED TO PRACTICE UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE;

(IV) BE A REGISTERED NURSE, LICENSED TO PRACTICE UNDER TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE; OR

(V) BE A CLINICAL PROFESSIONAL COUNSELOR, LICENSED UNDER THE HEALTH OCCUPATIONS ARTICLE;

(2) HAVE RECEIVED TRAINING IN ALL TOPICS REQUIRED UNDER COMAR 13A.08.04.06; AND

(3) BE CLINICALLY FAMILIAR WITH A STUDENT.

7-1103.

(A) IN THIS SECTION, EACH INCIDENT DURING A BEHAVIORAL HEALTH INTERVENTION IN WHICH A STUDENT IS ENCLOSED IN A ROOM, ENCLOSURE, OR OTHER SPACE AND PREVENTED FROM LEAVING, SHALL BE COUNTED AS A SEPARATE INCIDENT OF SECLUSION REGARDLESS OF THE DURATION OF THE INCIDENT.

(B) (1) IF A STUDENT ENROLLED IN A PUBLIC SCHOOL IS PHYSICALLY RESTRAINED 10 TIMES OR MORE IN A SCHOOL YEAR, THE PUBLIC SCHOOL SHALL PROVIDE NOTICE TO THE DEPARTMENT AND THE LOCAL SCHOOL SYSTEM AT THE EARLIEST OPPORTUNITY.

(2) IF A STUDENT PLACED IN A NONPUBLIC SCHOOL BY THE LOCAL SCHOOL SYSTEM IS PHYSICALLY RESTRAINED OR PLACED IN SECLUSION 10 TIMES OR MORE IN A SCHOOL YEAR, THE NONPUBLIC SCHOOL SHALL PROVIDE NOTICE TO THE DEPARTMENT AND THE LOCAL SCHOOL SYSTEM AT THE EARLIEST OPPORTUNITY.

(C) ON RECEIPT OF NOTICE FROM A PUBLIC SCHOOL OR NONPUBLIC SCHOOL UNDER SUBSECTION (B) OF THIS SECTION, THE LOCAL SCHOOL SYSTEM SHALL:

(1) REVIEW THE STUDENT'S CASE, INCLUDING THE CIRCUMSTANCES OF EACH INCIDENT OF PHYSICAL RESTRAINT OR SECLUSION;

(2) ASSESS THE PUBLIC SCHOOL'S OR NONPUBLIC SCHOOL'S PATTERN OF BEHAVIORAL HEALTH INTERVENTIONS TO EVALUATE WHETHER THE PUBLIC AGENCY OR NONPUBLIC SCHOOL COULD USE LESS RESTRICTIVE BEHAVIORAL HEALTH INTERVENTIONS; AND

(3) SHARE THE LOCAL SCHOOL SYSTEM'S RECOMMENDATIONS WITH THE DEPARTMENT AND THE PUBLIC SCHOOL OR NONPUBLIC SCHOOL.

(D) IF A STUDENT ENROLLED IN A PUBLIC AGENCY THAT IS NOT A PUBLIC SCHOOL IS PHYSICALLY RESTRAINED 10 TIMES OR MORE IN A SCHOOL YEAR, THE PUBLIC AGENCY SHALL PROVIDE NOTICE TO THE DEPARTMENT AT THE EARLIEST OPPORTUNITY.

(E) ON RECEIPT OF NOTICE FROM A PUBLIC AGENCY UNDER SUBSECTION (D) OF THIS SECTION, THE DEPARTMENT SHALL:

(1) REVIEW THE STUDENT'S CASE, INCLUDING THE CIRCUMSTANCES OF EACH INCIDENT OF PHYSICAL RESTRAINT;

(2) ASSESS THE PUBLIC AGENCY'S PATTERN OF BEHAVIORAL HEALTH INTERVENTIONS TO EVALUATE WHETHER THE PUBLIC AGENCY COULD USE LESS RESTRICTIVE BEHAVIORAL HEALTH INTERVENTIONS; AND

(3) SHARE THE DEPARTMENT'S RECOMMENDATIONS WITH THE PUBLIC AGENCY.

7-1104.

(A) (1) [Beginning with the 2018-2019 school year, on] ON or before December 1 each year[:

(1) Each], EACH public agency and nonpublic school shall submit to the Department a report for the prior school year on [the]:

(I) THE number of physical restraint [and seclusion] incidents, disaggregated by the student's jurisdiction, disability, race, gender, age, and type of placement;

(II) THE NUMBER OF PHYSICAL RESTRAINT INCIDENTS EACH STUDENT WHO HAD AT LEAST ONE PHYSICAL RESTRAINT OR SECLUSION INCIDENT, DISAGGREGATED BY JURISDICTION, DISABILITY, RACE, GENDER, AGE, AND TYPE OF PLACEMENT;

(III) FOR NONPUBLIC SCHOOLS, THE NUMBER OF SECLUSION INCIDENTS, DISAGGREGATED BY THE STUDENT'S JURISDICTION, DISABILITY, RACE, GENDER, AND AGE; AND

(IV) FOR NONPUBLIC SCHOOLS, THE NUMBER OF SECLUSION INCIDENTS FOR EACH STUDENT WHO HAD AT LEAST ONE PHYSICAL RESTRAINT OR SECLUSION INCIDENT, DISAGGREGATED BY JURISDICTION, DISABILITY, RACE, GENDER, AND AGE.

(2) TO DETERMINE THE NUMBER OF INCIDENTS FOR THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) A SECLUSION INCIDENT SHALL BE CONSIDERED ENDED IF AT ANY POINT DURING THE INCIDENT THE STUDENT IS NO LONGER PREVENTED FROM LEAVING OR IS REMOVED FROM A ROOM, AN ENCLOSURE, OR OTHER SPACE; AND

(II) IF AFTER A SECLUSION INCIDENT HAS ENDED IN ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH, THE PUBLIC AGENCY OR NONPUBLIC SCHOOL DETERMINES THAT IT IS NECESSARY TO PLACE THE STUDENT IN SECLUSION AGAIN, THE SUBSEQUENT CONFINEMENT OF THE STUDENT IN A ROOM, ENCLOSURE, OR OTHER SPACE SHALL BE CONSIDERED A SEPARATE SECLUSION INCIDENT.

(3) (I) THE DEPARTMENT SHALL VERIFY THE ACCURACY OF A REPORT FROM ANY PUBLIC AGENCY OR NONPUBLIC SCHOOL THAT REPORTS NO PHYSICAL RESTRAINT OR SECLUSION INCIDENTS UNDER THIS SUBSECTION.

(II) IF THE DEPARTMENT IS UNABLE TO VERIFY THE ACCURACY OF A REPORT SUBMITTED BY A PUBLIC AGENCY OR NONPUBLIC SCHOOL, THE DEPARTMENT SHALL MAKE RECOMMENDATIONS FOR IMPROVEMENTS IN DATA COLLECTION AND POSITIVE BEHAVIORAL INTERVENTIONS AT THE PUBLIC AGENCY OR NONPUBLIC SCHOOL.

[(2)] (B) [Each] ON OR BEFORE DECEMBER 1 EACH YEAR, EACH public agency and nonpublic school shall submit to the Department a report [for the prior school year] on [the] STEPS TAKEN TO ENCOURAGE POSITIVE BEHAVIORAL INTERVENTIONS, INCLUDING:

(1) THE professional development provided to designated school personnel related to positive behavioral interventions, strategies, and supports and trauma-informed interventions **FOR THE PRIOR SCHOOL YEAR;**

(2) **FOR NONPUBLIC SCHOOLS, THE POLICY CHANGES MADE TO FURTHER REDUCE THE USE OF SECLUSION INCIDENTS DURING THE PRIOR SCHOOL YEAR; AND**

(3) THE POLICY CHANGES OR NEW PROFESSIONAL DEVELOPMENT OPPORTUNITIES DESIGNED TO FURTHER INCREASE POSITIVE BEHAVIORAL INTERVENTIONS AND REDUCE PHYSICAL RESTRAINT OR SECLUSION INCIDENTS IN THE UPCOMING SCHOOL YEAR.

[(3)] (C) Each [public agency and] nonpublic school shall:

[(i)] (1) Personally observe and review seclusion rooms;

[(ii)] (2) Review training plans for the use of seclusion; and

[(iii)] (3) Report to the Department regarding findings made under items [(i)] (1) and [(ii)] (2) of this [paragraph] SUBSECTION.

[(4)] (D) (1) The Department shall:

(i) Provide guidance to [public agencies and] nonpublic schools regarding the requirements of the use of seclusion and rooms for seclusion;

(II) **DEVELOP AN ACCOUNTABILITY SYSTEM TO MEASURE COMPLIANCE BY PUBLIC AGENCIES AND NONPUBLIC SCHOOLS WITH COMAR 13A.08.04 AND ANY OTHER REGULATIONS ADOPTED TO IMPLEMENT THIS SUBTITLE;**

(III) **ANALYZE THE DATA AND INFORMATION COLLECTED UNDER THIS SECTION TO DETERMINE TRENDS AND PATTERNS IN BEHAVIORAL INTERVENTIONS; and**

[(ii)] (IV) Report to the General Assembly, in accordance with § 2–1257 of the State Government Article, regarding findings and recommendations reported to the Department under this section.

(2) (I) **IN THE REPORT REQUIRED UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION, THE DEPARTMENT SHALL PROVIDE DATA FOR PUBLIC AGENCIES AND NONPUBLIC SCHOOLS BY SCHOOL, SUBJECT TO STATE AND FEDERAL PRIVACY LAWS.**

(II) THE DATA PROVIDED UNDER THIS PARAGRAPH SHALL BE PRESENTED IN A MANNER THAT ACCOUNTS FOR VARIATION IN ENROLLMENT BETWEEN SCHOOLS.

(3) WITHIN 30 DAYS OF SUBMITTING THE REPORT REQUIRED UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION, THE DEPARTMENT SHALL PUBLISH THE REPORT ON ITS WEBSITE.

7-1106.

(A) [The] SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE State Superintendent shall [consult], IN CONSULTATION with representatives of institutions of higher education and the Professional Standards and Teacher Education Board under Title 6, Subtitle 7 of this article [with respect to the], ADOPT POSITIVE BEHAVIORAL INTERVENTION training requirements for teachers [and], administrators [to ensure that sufficient training is available regarding evidence-based], BEHAVIORAL HEALTH SPECIALISTS, PARAPROFESSIONALS, AIDES, AND ANY OTHER EMPLOYEES WHO INTERACT ROUTINELY WITH STUDENTS.

(B) BEFORE ADOPTING THE TRAINING REQUIREMENTS UNDER SUBSECTION (A) OF THIS SECTION, THE STATE SUPERINTENDENT SHALL IDENTIFY ANY GAPS IN BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS.

(C) THE TRAINING REQUIREMENTS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE positive behavioral interventions, strategies, and supports THAT:

(1) ARE EVIDENCE-BASED;

(2) INCLUDE TRAUMA-INFORMED INTERVENTIONS AND STRATEGIES FOR DE-ESCALATION;

(3) REMEDY ANY GAPS IDENTIFIED UNDER SUBSECTION (B) OF THIS SECTION; AND

(4) ARE consistent with professionally accepted practices and standards for persons entering the field of education.

(D) (1) THE TRAINING REQUIREMENTS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE THE BASIS OF A PROGRAM OF PROFESSIONAL DEVELOPMENT THAT THE STATE SUPERINTENDENT SHALL SHARE WITH SCHOOL EMPLOYEES FROM PUBLIC AGENCIES AND NONPUBLIC SCHOOLS.

1 **(2) THE STATE SUPERINTENDENT SHALL ISSUE GUIDANCE ON BEST**
2 **PRACTICES IN IMPLEMENTING POSITIVE BEHAVIOR INTERVENTION PLANS THAT**
3 **ARE THE BASIS FOR THE PROFESSIONAL DEVELOPMENT PROGRAM.**

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
5 1, 2022.