

HOUSE BILL 1166

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By: **Delegate Ebersole**

Introduced and read first time: February 8, 2021

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2021

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of ~~prohibiting a public agency or nonpublic school from using a physical~~
5 ~~restraint on a student as a behavioral health intervention, except under certain~~
6 ~~circumstances; prohibiting a public agency or nonpublic school from using seclusion~~
7 ~~as a behavioral health intervention for a student, except under certain~~
8 ~~circumstances; requiring a certain risk assessment to be completed at certain points~~
9 ~~for a student who has an individualized education plan and experiences a seclusion;~~
10 ~~requiring a public agency, nonpublic school, or individualized education plan team~~
11 ~~to hold certain meetings at the earliest opportunity, under certain circumstances;~~
12 requiring a certain report on the use of physical restraint or seclusion incidents to
13 include certain information; requiring the State Department of Education to seek
14 certain verification from a public agency or nonpublic school under certain
15 circumstances; requiring the Department to make certain recommendations to a
16 public agency or nonpublic school if the public agency or nonpublic school is unable
17 to verify certain data; altering the contents of a certain report that public agencies
18 and nonpublic schools are required to submit to the Department; requiring the
19 Department to develop an accountability system to measure compliance with
20 regulations adopted on physical restraint and seclusion; requiring the Department
21 to analyze certain data for trends and patterns; requiring that certain data be
22 reported by school for nonpublic schools in a certain report; requiring the
23 Department to publish a certain report on its website within a certain time period;
24 altering the content and recipients of certain training on positive behavioral health
25 interventions; requiring the State Superintendent of Schools to identify certain gaps

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



in behavioral interventions and issue certain guidance on positive behavioral health implementation plans; defining a certain term; making stylistic changes; and generally relating to reporting and training on physical restraints and seclusions by public agencies and nonpublic schools.

~~BY renumbering~~

~~Article – Education~~

~~Section 7–1102 through 7–1104, respectively~~

~~to be Section 7–1103 through 7–1105, respectively~~

~~Annotated Code of Maryland~~

~~(2018 Replacement Volume and 2020 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Education

Section 7–1101, 7–1102, and 7–1104

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

~~BY adding to~~

~~Article – Education~~

~~Section 7–1102~~

~~Annotated Code of Maryland~~

~~(2018 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,~~

~~Article – Education~~

~~Section 7–1103 and 7–1105~~

~~Annotated Code of Maryland~~

~~(2018 Replacement Volume and 2020 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) 7–1103 through 7–1105,~~
~~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.

(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.

(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.

(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 OR NONPUBLIC SCHOOL MAY NOT 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 BEEN DEMONSTRATED TO BE INEFFECTIVE.~~

~~(B) (1) A PUBLIC AGENCY OR 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 BEEN DEMONSTRATED TO BE INEFFECTIVE;~~

~~(III) ONE OF THE FOLLOWING HEALTH CARE PRACTITIONERS, WHO IS CLINICALLY FAMILIAR WITH THE STUDENT AND HAS RECEIVED TRAINING IN ALL TOPICS REQUIRED UNDER COMAR 13A.08.04.06, IS ON SITE, DIRECTLY OBSERVING THE STUDENT DURING THE SECLUSION:~~

~~1. A PHYSICIAN, LICENSED TO PRACTICE UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;~~

~~2. A PSYCHOLOGIST, LICENSED TO PRACTICE UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE; OR~~

~~3. A CLINICAL SOCIAL WORKER, LICENSED TO PRACTICE UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE;~~

~~(IV) THE HEALTH CARE PRACTITIONER DESCRIBED UNDER ITEM (III) OF THIS PARAGRAPH COMPLETES AN ASSESSMENT CONCLUDING 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 SECLUDED HAS A LOCKING MECHANISM, THE LOCKING MECHANISM MAY BE ENGAGED ONLY IF HELD IN PLACE BY AN INDIVIDUAL OR, IF OPERATED ELECTRONICALLY, MUST AUTOMATICALLY BE RELEASED, IN 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) FOR A STUDENT WHO HAS AN INDIVIDUALIZED EDUCATION PROGRAM AND IS PLACED IN SECLUSION, THE RISK ASSESSMENT DESCRIBED UNDER~~

~~PARAGRAPH (1)(IV) OF THIS SUBSECTION SHALL BE COMPLETED AT EACH ANNUAL REVIEW AND AT ANY TIME IN WHICH THE STUDENT'S PLACEMENT IS CHANGED.~~

~~(3) IF A STUDENT'S BEHAVIOR IS ADVERSELY AFFECTED AFTER BEING PLACED IN SECLUSION;~~

~~(I) IF THE STUDENT HAS AN INDIVIDUALIZED EDUCATION PROGRAM, AN EXPEDITED INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING SHALL BE CONVENED AT THE EARLIEST OPPORTUNITY TO DISCUSS ALTERNATIVE BEHAVIORAL HEALTH TREATMENTS; OR~~

~~(II) THE PUBLIC AGENCY OR NONPUBLIC SCHOOL SHALL CONVENE AN EXPEDITED PUPIL PERSONNEL MEETING AT THE EARLIEST OPPORTUNITY TO DISCUSS ALTERNATIVE BEHAVIORAL HEALTH TREATMENTS.~~

~~7-1103~~ 7-1102.

(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 number of physical restraint and seclusion incidents, disaggregated by the student's jurisdiction, disability, race, gender, age, and type of placement.

(2) THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, FOR THE PRIOR SCHOOL YEAR, THE NUMBER OF PHYSICAL RESTRAINT INCIDENTS AND THE NUMBER OF SECLUSION INCIDENTS FOR EACH STUDENT WHO HAD AT LEAST ONE PHYSICAL RESTRAINT OR SECLUSION INCIDENT, DISAGGREGATED BY THE STUDENT'S JURISDICTION, DISABILITY, RACE, GENDER, AGE, AND TYPE OF PLACEMENT.

(3) (I) THE DEPARTMENT SHALL SEEK VERIFICATION FROM ANY PUBLIC AGENCY OR NONPUBLIC SCHOOL THAT REPORTS NO PHYSICAL RESTRAINT OR SECLUSION INCIDENTS UNDER THIS SUBSECTION.

(II) THE DEPARTMENT SHALL MAKE RECOMMENDATIONS FOR IMPROVEMENTS IN DATA COLLECTION AND POSITIVE BEHAVIORAL INTERACTIONS TO ANY PUBLIC AGENCY OR NONPUBLIC SCHOOL THAT IS UNABLE TO ACCURATELY VERIFY REPORTED DATA IN COMPLIANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.

[(2)] (B) [Each] ON OR BEFORE DECEMBER 1 OF 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) SPECIFIC POLICY CHANGES MADE TO REDUCE THE USE OF PHYSICAL RESTRAINT OR SECLUSION INCIDENTS DURING THE PRIOR SCHOOL YEAR; AND

(3) PLANNED POLICY CHANGES OR NEW PROFESSIONAL DEVELOPMENT OPPORTUNITIES DESIGNED TO INCREASE POSITIVE BEHAVIORAL INTERACTIONS 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 INTERACTIONS; 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) IN THE REPORT REQUIRED UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION, CONSISTENT WITH STATE AND FEDERAL PRIVACY LAW, THE DEPARTMENT SHALL PROVIDE DATA FOR NONPUBLIC SCHOOLS BY SCHOOL.

(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.

~~7-1105~~ 7-1104.

(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 TRAINING REQUIREMENTS UNDER THIS SUBSECTION, THE STATE SUPERINTENDENT SHALL IDENTIFY GAPS IN BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS.

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

(1) ARE EVIDENCE-BASED;

(2) INCLUDE TRAUMA-INFORMED INTERVENTIONS;

(3) REMEDY THE 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 THIS SECTION SHALL FORM A PROGRAM OF PROFESSIONAL DEVELOPMENT THAT THE STATE SUPERINTENDENT SHALL SHARE WITH PUBLIC AGENCY AND NONPUBLIC SCHOOL STAFF.

(2) THE STATE SUPERINTENDENT SHALL ISSUE GUIDANCE ON BEST PRACTICES IN CONDUCTING POSITIVE BEHAVIORAL HEALTH IMPLEMENTATION PLANS THAT INFORM THE PROFESSIONAL DEVELOPMENT PROGRAM.

SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.