

SENATE BILL REPORT

SHB 1240

As Reported by Senate Committee On:
Early Learning & K-12 Education, March 31, 2015

Title: An act relating to restraint or isolation of students, including students with disabilities, in public schools.

Brief Description: Concerning restraint or isolation of students, including students with disabilities, in public schools.

Sponsors: House Committee on Education (originally sponsored by Representatives Pollet, Santos, S. Hunt, Orwall, Senn, Lytton, Robinson, Walsh, Griffey, Goodman, Buys and Tarleton).

Brief History: Passed House: 3/02/15, 68-29.

Committee Activity: Early Learning & K-12 Education: 3/19/15, 3/31/15 [DP-WM].

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Litzow, Chair; Dammeier, Vice Chair; McAuliffe, Ranking Member; Billig, Fain, Hill, Mullet, Rivers and Rolfes.

Staff: Ailey Kato (786-7434)

Background: Special Education. Federal law requires each school district to provide special education for students who need it due to a disability. Under federal law an Individualized Education Program (IEP) or a section 504 plan guides the delivery of the special education supports and services designed to meet the child's unique needs.

Aversive Interventions. Current law requires the Superintendent of Public Instruction to establish criteria for the use of aversive interventions for children who receive special education due to a disability. The Office of Superintendent of Public Instruction (OSPI) rules provide that aversive interventions mean the use of isolation or restraint practices for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior that poses one of the following dangers:

- a clear and present danger of serious harm to the student or another person;
- a clear and present danger of serious harm to property; or

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- a clear and present danger of seriously disrupting the educational process.

Definitions. Current law that places limits on the restraint or isolation of students who have an IEP or section 504 plan includes the following definitions:

- Isolation means excluding a student from the student's regular instructional area and restricting the student alone within a room or any other form of enclosure, from which the student may not leave;
- Restraint means physical intervention or force used to control a student, including the use of a restraint device; and
- Restraint device means a device used to assist in controlling a student, including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons.

Use of Restraint or Isolation. Current law states that it is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. The physical discipline of a child is allowed when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. The following actions are presumed unreasonable when used to correct or restrain a child:

- throwing, kicking, burning, or cutting a child;
- striking a child with a closed fist;
- shaking a child under age three;
- interfering with a child's breathing;
- threatening a child with a deadly weapon; or
- doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.

Imminent Likelihood of Serious Harm. Under law regarding integrated crisis response and involuntary treatment, imminent means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. Likelihood of serious harm means a substantial risk that:

- physical harm will be inflicted by a person upon himself or herself, by a person upon another, or by a person upon the property of others; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Follow-Up Procedures. For students who have an IEP or section 504 plan, the school must implement follow-up procedures following the release of a student from the use of restraint or isolation. These procedures must include the following:

- reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation, and
- reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed.

For students who have an IEP or section 504 plan, any school employee, resource officer, or school security officer who uses any chemical spray, mechanical restraint, or physical force on a student during school-sponsored instruction or activities must:

- inform the building administrator as soon as possible, and
- submit a written report with specific information about the incident to the district office.

Summary of Bill: Aversive Interventions. Instead of OSPI establishing criteria for the use of aversive interventions for students with disabilities, OSPI must establish criteria for the use of positive behavior interventions.

Definitions. The following changes are made to the definitions in current law that places limits on the restraint or isolation of students who have an IEP or section 504 plan:

- The definition of isolation removes excluding a student from the student's regular instructional area. Isolation does not include a student's voluntary use of a quiet space for self-calming;
- The definition of restraint specifies that a restraint device restricts a student's freedom of movement; and
- The definition of restraint device states that it does not mean a seat harness used to safely transport students. It also states that it should not be construed as encouraging the use of these devices.

Use of Restraint and Isolation. The provisions regarding restraint and isolation of students who have IEPs or section 504 plans are made applicable to all students.

Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm as defined by law regarding integrated crisis response and involuntary treatment. Restraint or isolation must be closely monitored to prevent harm to the student and must be discontinued as soon as the likelihood of serious harm has dissipated.

School District Policy. Each school district must adopt a policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances.

IEPs and Section 504 Plans. An IEP or section 504 plan must not include the use of restraint or isolation as a planned behavior intervention but may refer to the district policy. Nothing is intended to limit the provision of a free appropriate public education under federal law.

Follow-Up Procedures. The procedures following the use of restraint or isolation must include reviewing the appropriateness of the response with the student and the parent or guardian. It must also include discussion with the staff member who administered the restraint or isolation about what training or support the staff member needs to help the student avoid similar incidents.

Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must include in the written report any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The use of chemical spray, mechanical restraint, or physical force is removed from current law, so that the follow-up procedures apply to all incidents of isolation or restraint. Technical changes are made.

Written Reports. Beginning January 1, 2016, and by January 1 annually thereafter, each school district must summarize the written reports regarding the use of isolation or restraint and submit the summaries to OSPI. For each school, the school district must include the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used.

OSPI must publish to its website the data received by the school districts within 90 days after receipt. OSPI may use this data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Current law requires schools to report and track when they use restraint or isolation. Some schools have replaced restraint or isolation with positive behavior intervention and reduced the number of incidents where restraint or isolation are used. However, other schools have continued to regularly use restraint and isolation. Restraint and isolation are being used when students are not acting dangerously and are often demonstrating symptoms of a disability. Improper use of restraint or isolation can lead to injury or death. The use of restraint and isolation often escalates the situation and negatively impacts students. It makes students feel like second-class citizens and robs students of their dignity and self-esteem. The goal of this bill is to restrict the use of restraint or isolation to behavior that is unforeseen and puts the child, others, and property at risk. IEPs should not plan for the use of aversive interventions. Instead, IEPs should include positive behavior interventions. This bill would provide clarity as to when restraint or isolation can be used and that it should be used for safety purposes. The bill allows students to voluntarily use isolation as a means for self-calming. It also allows the use of physical therapy equipment. The bill promotes staff training and positive behavior interventions.

OTHER: Professional development and training is needed to support the use of positive behavior intervention. Principals, special education teachers, and paraeducators should receive this training first.

Persons Testifying: PRO: Representative Pollet, prime sponsor; Carrie Tellefson, Makenzie Ehrhardt, Peninsula High School AP Government Class via TVW Capitol Classroom Program; Diana Stadden, The Arc of WA State; Donna Patrick, Developmental Disabilities Council; Arzu Forough, WA Autism Alliance and Advocacy; Diana Lafornera, Lake WA School District PTSA Special Needs Group Representative; Heather Hebdon, PAVE; Nyree Krikorian, Mike Luckevich, Katherine George, citizens.

OTHER: Lucinda Young, WA Education Assn.

Persons Signed in to Testify But Not Testifying: No one.