

# MAINE STATE LEGISLATURE

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L.D. 1373

Date: 6/10/21

(Filing No. H-545)

Majority  
EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1007, L.D. 1373, "An Act To Keep All  
Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools"

Amend the bill by striking out everything after the enacting clause and inserting the  
following:

Sec. 1. 20-A MRS A §4014 is enacted to read:

**§4014. Use of seclusion and physical restraint**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the  
following terms have the following meanings:

A. "Chemical restraint" means a drug or medication that is not prescribed as the  
standard treatment of a student's medical or psychiatric condition by a licensed  
physician or other qualified health professional acting under the scope of the  
professional's authority under state law that is used on a student to control behavior or  
restrict freedom of movement.

B. "Covered entity" means an entity that owns, operates or controls a school or  
educational program that receives public funds from the department, including, but not  
limited to, public schools, public regional programs, public charter schools, private  
schools, private schools approved for tuition purposes, special purpose private schools,  
career and technical education programs, public prekindergarten programs and  
providers of services pursuant to the provisions of the federal Individuals with  
Disabilities Education Act, Parts B and C, 20 United States Code, Section 1401 et seq.  
(2015).

C. "Mechanical restraint" means the use of a device to restrict a student's freedom of  
movement.

D. "Physical escort" means the temporary, voluntary touching or holding of the hand,  
wrist, arm, shoulder or back to induce a student to walk to a safe location.

1        E. "Physical prompt" means a teaching technique that involves voluntary physical  
2        contact with a student that enables the student to learn or model the physical movement  
3        necessary for the development of a desired competency.

4        F. "Physical restraint" means a personal restriction that immobilizes or reduces the  
5        ability of a student to move the arms, legs or head freely. "Physical restraint" does not  
6        include a physical escort, mechanical restraint, physical prompt or chemical restraint.

7        G. "Seclusion" means the involuntary isolation or confinement of a student alone in a  
8        room or clearly defined area from which the student does not feel free to go or is  
9        physically denied exit. "Seclusion" does not include a timeout.

10       H. "Unlawful restraint" means:

11                (1) Mechanical restraint;

12                (2) Chemical restraint;

13                (3) Physical restraint or physical escort that is life-threatening, restricts breathing  
14                or restricts blood flow to the brain, including prone restraint; or

15                (4) Physical restraint that is contraindicated based on Title 34-B, section 3003 or  
16                section 15002 or the student's disability or health care needs or medical or  
17                psychiatric condition as documented in:

18                        (a) A health care directive or medical management plan;

19                        (b) A behavior intervention plan;

20                        (c) An individual education plan or an individual family service plan as  
21                        defined in the federal Individuals with Disabilities Education Act, 20 United  
22                        States Code, Section 1401 et seq. (2015); or

23                        (d) A plan developed pursuant to the federal Rehabilitation Act of 1973, 29  
24                        United States Code, Section 794 (2015) or the federal Americans with  
25                        Disabilities Act of 1990, Title II, 42 United States Code, Section 12131 et seq.  
26                        (2009).

27        "Unlawful restraint" does not include a physical escort except as provided in  
28        subparagraph (3), a physical prompt, the use of adaptive devices or mechanical  
29        supports to achieve proper body position, balance or alignment to allow greater  
30        freedom of movement than would be possible without the use of such devices or  
31        supports or the use of vehicle safety restraints when used as intended during the  
32        transport of a student in a moving vehicle.

33        2. Prohibition on seclusion. Beginning September 1, 2023, a covered entity that  
34        receives state or federal assistance may not subject a student to seclusion.

35        3. Prohibition on unlawful restraint; restriction on use of physical restraint. A  
36        covered entity that receives state or federal assistance may not subject a student to unlawful  
37        restraint. A covered entity may use physical restraint only if:

38                A. The student's behavior poses an imminent danger of serious physical injury to the  
39                student or another person;

40                B. Less restrictive interventions would be ineffective in stopping imminent danger of  
41                serious physical injury to the student or another person;

1 C. The physical restraint ends immediately upon the cessation of imminent danger of  
2 serious physical injury to the student or another person; and

3 D. The least amount of force necessary is used to protect the student or another person  
4 from imminent danger of serious physical injury.

5 **4. Report on data regarding the use of physical restraint.** Each covered entity shall  
6 submit to the department an annual report on incidents of physical restraint of students of  
7 that covered entity that includes:

8 A. The aggregate number of uses of physical restraint;

9 B. The aggregate number of students placed in physical restraint;

10 C. The aggregate number of students with disabilities and an individualized education  
11 program under the federal Individuals with Disabilities Education Act, 20 United States  
12 Code, Section 1401 et seq. (2015) or a plan pursuant to the federal Rehabilitation Act  
13 of 1973, 29 United States Code, Section 701 et seq. placed in physical restraint;

14 D. The aggregate number of serious physical injuries to students related to physical  
15 restraint; and

16 E. The aggregate number of serious physical injuries to staff related to physical  
17 restraint.

18 **5. Technical assistance.** The department shall, using existing resources, provide  
19 technical assistance to covered entities by developing, implementing and providing  
20 technical assistance to support evidence-based programs that reduce the likelihood of  
21 physical restraint, and support students in reducing behavior that can result in physical  
22 restraint, such as developmentally appropriate, positive behavior interventions, functional  
23 behavioral interventions, mental health supports, restorative justice programs, trauma-  
24 informed care and crisis and de-escalation interventions.

25 **6. Rules.** The department shall adopt or amend rules to carry out the purposes of this  
26 section. Rules adopted pursuant to this subsection are major substantive rules as defined  
27 in Title 5, chapter 375, subchapter 2-A.'

28 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
29 number to read consecutively.

30 **SUMMARY**

31 This amendment, which is the majority report of the committee, does the following:

32 1. Delays the prohibition on seclusion until September 1, 2023 and provides that  
33 seclusion does not include a timeout;

34 2. Provides that unlawful restraint does not include a physical escort unless the  
35 physical escort is life-threatening, restricts breathing or restricts blood flow to the brain, a  
36 physical prompt, the use of adaptive devices or mechanical supports to achieve proper body  
37 position, balance or alignment to allow greater freedom of movement than would be  
38 possible without the use of such devices or supports or the use of vehicle safety restraints  
39 when used as intended during the transport of a student in a moving vehicle;

40 3. Provides that a covered entity may use physical restraint only if the student's  
41 behavior poses an imminent danger of serious physical injury to the student or another

- 1 person; less restrictive interventions would be ineffective in stopping such imminent  
2 danger; the physical restraint ends immediately upon the cessation of the imminent danger;  
3 and the least amount of force necessary is used to protect the student or other person from  
4 the imminent danger;
- 5 4. Removes the requirement that the Commissioner of Education submit a report on  
6 data regarding the use of physical restraint;
- 7 5. Removes the development and implementation of a performance review system and  
8 guide for information regarding the rule;
- 9 6. Requires the Department of Education to provide technical assistance using existing  
10 resources; and
- 11 7. Designates the Department of Education's rule on restraint and seclusion as a major  
12 substantive rule.

**FISCAL NOTE REQUIRED**  
**(See attached)**



# 130th MAINE LEGISLATURE

LD 1373

LR 828(02)

An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools

Fiscal Note for Bill as Amended by Committee Amendment *A<sup>n</sup> (H-545)*  
Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Department of Education associated with the rule-making process and providing technical assistance can be absorbed within existing budgeted resources.