

# HOUSE BILL REPORT

## SHB 1240

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### As Passed Legislature

**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:**

##### **Committee Activity:**

Education: 1/26/15, 2/17/15 [DPS].

##### **Floor Activity:**

Passed House: 3/2/15, 68-29.

Senate Amended.

Passed Senate: 4/13/15, 43-3.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/21/15, 48-0.

House Concurred.

Passed House: 4/23/15, 71-27.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Makes the section on restraint or isolation of a student with an Individualized Education Program (IEP) or Section 504 plan applicable to all students.
- Provides that restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, and may not be used as planned behavioral interventions.
- Requires each school district to adopt a policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Provides that an IEP or Section 504 plan may refer to the district policy on restraint or isolation and must not include the use of restraint or isolation as a planned behavior intervention unless advanced educational planning is required.
- Modifies the school's restraint or isolation follow-up procedures and the reporting requirements for districts and the Office of the Superintendent of Public Instruction.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Santos, Chair; Ortiz-Self, Vice Chair; Reykdal, Vice Chair; Magendanz, Ranking Minority Member; Stambaugh, Assistant Ranking Minority Member; Bergquist, Caldier, Fagan, Gregory, Griffey, S. Hunt, Kilduff, Lytton, Orwall, Pollet and Springer.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Hargrove, Hayes, Klippert and McCaslin.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Muri, Assistant Ranking Minority Member.

**Staff:** Megan Wargacki (786-7194).

### **Background:**

#### Special Education.

Each school district is required to provide an appropriate educational opportunity to children with disabilities, meaning those children who have been determined eligible for special education due to a disability. Two federal laws require school districts to provide individualized education and support services to these children. The Individuals with Disabilities Education Improvement Act (IDEA) requires that districts provide to each public school child who receives special education an Individualized Education Program (IEP). An IEP guides the delivery of special education supports and services designed to meet the child's unique needs. The Rehabilitation Act of 1973, Section 504 Plan requires that districts provide to each qualified student with a disability regular or special education services and related services designed to meet the student's individual educational needs.

#### Restraint or Isolation Laws.

State law encourages parents and teachers to use methods of correction and restraint that are not dangerous to children. The physical discipline of a child is allowed when reasonable and moderate and 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 3;
- 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.

In 2013 the Legislature enacted Engrossed Substitute House Bill 1688. This bill placed certain requirements on the restraint or isolation (R or I) of students who have an IEP or Section 504 plan and who are participating in school-sponsored instruction or activities.

1. When school staff releases a student from R or I, the school must conduct follow-up procedures, including:
  - reviewing the incident with the student and the student's parent or guardian to address the student's behavior; and
  - reviewing the incident with the staff member involved to discuss whether proper procedures were followed.
2. School employees, resource officers, or school security officers who use chemical spray, mechanical restraint, or physical force on a student must inform the administrator and file a written report to the district office.
3. The principal must make a reasonable effort to verbally inform the parent or guardian about the R or I within 24 hours and provide written notification postmarked within five days. Schools must provide this notification in a language other than English if the school customarily provides school related information to parents in languages other than English.
4. Schools that are required to develop an IEP must include within the plan procedures for notification of a parent or guardian. Parents or guardians of children who have an IEP or Section 504 plan must be provided a copy of the district policy on the use of R or I.
5. The terms "isolation," "restraint," and "restraint device" are defined.

Conditions for the Use of Restraint or Isolation.

The Office of the Superintendent of Public Instruction (OSPI) is required to establish, in rule, eligibility criteria for special education programs for children with disabilities, including the use of aversive interventions.

By rule, the use of aversive interventions that involve "isolation," meaning excluding a student from his or her regular instructional area and isolating the student within a room or any other form of enclosure, are subject to the following conditions:

- The isolation, including the duration of its use, must be addressed in the student's aversive intervention plan.
- The enclosure must be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.
- The enclosure must permit continuous visual monitoring of the student from outside the enclosure.
- An adult responsible for supervising the student must remain in visual or auditory range of the student.
- Either the student must be capable of releasing himself or herself from the enclosure or the student must continuously remain within view of an adult responsible for supervising the student.

By rule, the use of aversive interventions that involve "physical restraint," meaning involving physically restraining or immobilizing a student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, are subject to the following conditions:

- The restraint must only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.
- The restraint, including the duration of its use, must be addressed in the student's aversive intervention plan.
- The restraint must not interfere with the student's breathing.
- An adult responsible for supervising the student must remain in visual or auditory range of the student.
- Either the student must be capable of releasing himself or herself from the restraint or the student must continuously remain within view of an adult responsible for supervising the student.

### **Summary of Substitute Bill:**

The provision related to restraint of students with IEPs or Section 504 plans is made applicable to all students. An IEP or Section 504 plan must not include the use of R or I as a planned behavior intervention, unless a student's individual needs require more specific advanced educational planning and the student's parent or guardian agrees. All other plans may refer to the district policy on R or I. It is provided that nothing in this section is intended to limit the provision of a free appropriate public education under Part B of the IDEA or Section 504 of the Rehabilitation Act.

The R or I of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, meaning:

- there is evidence of a substantial risk that the student will inflict physical harm upon his or her own person, upon another, or upon the property of others; or
- the student has threatened the physical safety of another and has a history of one or more violent acts.

When a student is placed in R or I, the student must be closely monitored to prevent harm to the student, and the R or I must be discontinued as soon as the likelihood of serious harm has dissipated. Each school district must adopt a policy providing for the least amount of R or I appropriate to protect the safety of students and staff under such circumstances.

Schools are required to follow-up after incidents of R or I:

- with the student and the parent or guardian, to review the appropriateness of the response; and
- with the staff member who administered the R or I, to review what training or support the staff member needs to help the student avoid similar incidents.

Schools are required to report incidents of isolation, in addition to incidents of restraint, and reports must include any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid further incidents. Beginning January 1, 2016, and by January 1 annually, each district must summarize the written reports received by the schools and submit the summaries to the OSPI. For each school, the district summary must include the number of individual incidents of R or I, the number of students

involved in the incidents, the number of injuries to students and staff, and the types of R or I used. No later than 90 days after receipt, the OSPI must publish the data to its website. The OSPI may use the data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of R or I.

The definition of "isolation" is modified by removing the statement that it means excluding a student from his or her regular instructional area, and adding that it does not include a voluntary use by a student of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan. The definition of "restraint" is modified to provide that restraint includes the use of devices to restrict a student's freedom of movement, but does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to safely participate in activities. The definition of "restraint device" is modified by adding that it does not mean a seat harness used to safely transport students and the term must not be construed as encouraging the use of these devices.

In the statute that requires the OSPI to establish in rule special education eligibility criteria, the term "aversive interventions" is changed to "positive behavior interventions."

Technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Legislature passed a bill that was supposed to end the problem of R or I abuse. The Legislature thought it was making its intent clear when it required reporting the use of chemical spray and mechanical restraints. However, some districts thought this language authorized the use of these restraints. Imminent likelihood of serious harm does not require an assault that rises to the level of a misdemeanor or felony. This standard means that if you saw that a student was about to bite someone, you could do something. The Legislature now needs to be clearer. The key is that the bill does not permit planned use of R or I in an IEP. The inappropriate use of R or I warrants national attention. There are successful programs that prohibit the use of aversive interventions and show that positive behavior supports are very effective. Staff are trained to intervene when a student is going to hurt themselves or someone else; intervention is done when necessary to prevent injury. Staff are trained how to do this without hurting the child and their training focuses on de-escalation, so that physical contact is never required. The bill leads to responsible reform and continues to allow R or I to guarantee safety when there is real risk. The bill also promotes staff training on techniques that work.

Some students are isolated from their peers while at school by being placed in a windowless closet multiple times per day for weeks. Children that struggle to communicate and have sensory perception barriers, who should be in a place that encourages them, are put in isolation where their emotions are diminished and they become suicidal. Some children never pose a threat, use pinching as a communication technique, and are put in R or I for it. Even when communication specialists are consulted, but the school has not implemented the expert's suggestions. Behavior, even bad behavior, is a form of communication and there is a science for behavior change. Teachers need to be taught these techniques. Without the proper support teachers will burn out.

Some students are serially restrained in public school. Some students are placed in R or I multiple times, even students who are gifted and have high cognitive abilities. Some parents have reported that their children have been restrained by adults laying on them. There are over 150 deaths from the use of school restraints. The practice has been called abusive. The use of R or I is indiscriminant, rampant, even with different principals and teachers it is still happening. It harms students' mental health and has no positive results. Restraints actually impedes students from seeking help. The use of restraint techniques are often used on elementary students get to high school, and by the time these students, they have been dealing with being restrained for most of their lives. Many of these students suffer depression and stress disorders due to their treatment. The use of physical restrain has a harmful effect and is counterproductive. Students often refuse to attend school after being restrained, which results in loss of educational time.

There is a need to keep all staff and children safe. The stories heard today are common, rather than unique. Often times, R or I is the default response from school officials, especially when students are a flight or fight risk. This is happening regularly and pervasively for minor issues. Intentional work must be done to track and regulate this use. Behaviors need to be addressed, but not with R or I. There are positive behavioral supports that work. There are evidence-based interventions that do not include R or I and that work. Aversive intervention plans are not a response to physical danger, but allow R or I for students with disabilities for the purpose of discouraging certain behavior. The OSPI does not have a study showing that R or I are beneficial; however, there is a report showing that these techniques should only be used where there is evidence of serious harm.

Some parents are not notified when R or I is used on their students, even though the use of these techniques should be reported per the student's IEP. Some parents are required to sign an aversive intervention plan without being given time to read it.

Not everyone is honest and teachers might misunderstand a student. A teacher could take advantage of the new language in the bill and a student could be intimidated by the policy because they are scared that the staff will control them according to this rule. Teachers should not put hands on students. They often go overboard and are not respectful of students. They do not take time to find out what is happening; they just react.

(In support with amendment(s)) The data collection aspects are great, but the definition of positive behavior intervention should be added.

(In support with concerns) There are some circumstances when restraint might be needed, like when a weapon is involved, but most of the time when a teacher puts their hands on a child, the child reacts badly. A rule that using force as a last resort might not really be the last resort. Restraint is used more on minorities.

(With concerns) There are young kids who have bitten or pinched someone enough times that the behavior leading to the biting or pinching becomes predictable. If bad behavior is predictable, it should be addressed ahead of time. The bill removes any reference to aversive interventions, this could have unintended consequences. There is still a need to identify adequate protocols for dealing with spontaneous behaviors. A student's parents and the IEP team are in the best position to do this.

(Opposed) State law prohibits corporal punishment. Thus, certain disciplinary techniques, including R or I, must be banned. Prisons have banned isolation for juveniles. The use of R or I should be banned completely and positive behavior should be used. Change the bill to something that will be useful and that will stop morally reprehensible acts.

**Persons Testifying:** (In support) Representative Pollet, prime sponsor; David Paul, Relife School; Adam Burns; Eric Warwick; Janis White; Katherine George, and Arzu Forough, Washington Autism Alliance and Advocacy; Heidi Stuber; Kasey Moan; Sarah Butcher, Bellevue Special Needs Parent Teacher Association; Mary Griffin; John Kerr; Gerald Tolentino; Taziana Davis; Martha Bennett; Calyn Holdaway, The Ducere Group; Nicole Khouw; Brittany Stadden, Self Advocates in Motion; and Diana Stadden, The Arc of Washington State.

(In support with amendment(s)) David Lord, Disability Rights Washington.

(In support with concerns) Airick Hollingsworth.

(With concerns) Jerry Bender, Association of Washington School Principals; and Doug Gill, Office of Superintendent of Public Instruction.

(Opposed) Judith da Silva.

**Persons Signed In To Testify But Not Testifying:** None.