

HB

210

<TARGET><BILL>HB 210</BILL><SUBJECT>HB
210</SUBJECT><COMM>SEDC28</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/8/14

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/11/14

Education Committee considered CS FOR HOUSE BILL NO. 210(FIN) am

HB 210-STUDENT RESTRAINT, SECLUSION, PSYC DRUGS

"An Act relating to crisis intervention training for school personnel; and relating to restraint and seclusion of students in public schools."

and recommends:

- be replaced with SCS _____ (_____) Same Title Technical Title Change New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

| Dept Abbr. | |
|------------|-----|
| ADM | LWF |
| CED | LAW |
| COR | LEG |
| CRT | MVA |
| EED | DNR |
| DEC | DPS |
| DFG | REV |
| GOV | DOT |
| DHS | UA |

| NEW FISCAL NOTE(S) | | | | |
|--------------------|--------|--------|------|------|
| Dept. | Fiscal | Indet. | Zero | FN # |
| | | | | |
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| PREVIOUS FISCAL NOTE(S) | | | | |
|-------------------------|--------|--------|------|------|
| Dept. | Fiscal | Indet. | Zero | FN # |
| EED | ✓ | | | 1 |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | PRINTED LAST NAME | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|-------------------|---------|-------------|--------|-------|
| <i>Berta Gardner</i> | Gardner | | | | X |
| <i>Steve Stigman</i> | Stigman | ✓ | | | |
| <i>Steve Huggins</i> | Huggins | ✓ | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>[Signature]</i> | STEVEN | | | | |

Alaska Legislature

Representative Charisse Millett

Session:

State Capitol Building, Room 403
Juneau, AK 99801
Phone (907) 465-3879
Fax (907) 465-2069
Toll free (888) 269-3879



Interim:

Anchorage LIO
716 W 4th Ave., Room 390
Anchorage, AK 99501
Phone (907) 269-0222
Fax (907) 269-0223

Sponsor Statement ***House Bill 210***

Alaska currently has no statewide policy regarding how children can be physically restrained and/or secluded in schools. Placing students in positions where they are immobilized or put into a room by themselves are emotionally charged subjects that require our attention. The conditions under which these actions are allowed are vague and require clarification. The three areas that require clarification include: what constitutes physical restraint and seclusion; under what conditions physical restraint and seclusion can be exercised; what actions are required of school personnel.

Students need to attend a school that is safe. Parents need to know if their child was involved in an incident of restraint or seclusion and the reasons for these actions need to be clearly defined. School personnel and administrator need to know that the actions they take to protect the safety of their students were justified and that they will not be held liable for carrying out their duties correctly.

HB 210 is a balance approach to ensure school safety. It requires that a school district's safety plan be made available to parents and the public. If an incident of restraint or seclusion occurs, the student's parents need to be informed within 24 hours of the incident. With the exception of emergency situations, only those who have undergone training approved by the Department of Education and Early Development can engage in physical restraint and seclusion. Each school district needs to report the number of times students were restrained and secluded on an annual basis.

HB 210 will protect students from the physical harm and the emotional trauma that comes from the improper use and frequency of techniques; keep parents abreast of what happens to their child, and support teachers and school personnel who have to make incredibly difficult decisions during crisis situations. By ensuring a statewide, consistent set of expectations, guidelines, and requirements, we make our schools safer for everyone. I would respectfully appreciate your support.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 210(EDC)
Fiscal Note Number: 1
(H) Publish Date: 3/18/14

Identifier: HB210-EED-SSA-2-7-14
Title: STUDENT RESTRAINT, SECLUSION, PSYC
DRUGS
Sponsor: MILLETT, AUSTERMAN
Requester: House Education Committee

Department: Department of Education and Early Development
Appropriation: Teaching and Learning Support
Allocation: Student and School Achievement
OMB Component Number: 2796

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|-------------|-------------|-------------|-------------|-------------|
| | | | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Services | 14.0 | | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 |
| Commodities | | | | | | | | |
| Capital Outlay | | | | | | | | |
| Grants & Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| Total Operating | 14.0 | 0.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 |

Fund Source (Operating Only)

| | | | | | | | | |
|---------------|-------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1004 Gen Fund | 14.0 | | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 |
| Total | 14.0 | 0.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 |

Positions

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

Change in Revenues

| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|
| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 09/30/14

Why this fiscal note differs from previous version:

| |
|-----------------|
| Initial version |
|-----------------|

Prepared By: Dr. Susan McCauley Phone: (907)465-8686
Division: Director, Teaching and Learning Support Date: 02/07/2014 06:15 PM
Approved By: Mike Hanley Date: 02/07/14
Agency: Commissioner

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 210(EDC)

Analysis

Section 14.33.125 (f)(1) (2) (3): requires school districts to report three new data elements to the department. This section does not require new duties of EED, other than collecting the data. This fiscal note is based on collection of reports only and does not provide for any analysis or cumulative and summary reporting by EED. The design of a data collection notebook and technical assistance to support districts in completing the data collection yearly at \$7.0.

Section 14.33.127 (a): requires EED to approve crisis intervention programs for schools. This fiscal note is based on EED's responsibility to identifying crisis intervention programs and build a webpage with a list of current evidence-based prevention and intervention programs for schools to choose from at \$7.0.

Alaska Legislature

Representative Charisse Millett

Session:

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Juneau, AK 99801
Phone (907) 465-3879
Fax (907) 465-2069



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Anchorage LIO, Room 620
716 West 4th Avenue,
Anchorage, AK 99501
Phone (907) 269-0222
Fax (907) 269-0223

HB 210 Sectional Summary for Version B

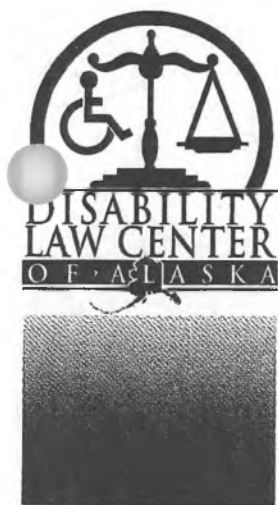
Section 1. Requires that the disciplinary and safety program adopted by a school district include standards for use of restraint and seclusion of students required under sec. 3 of the bill and be made available to students, parents, legal guardians, and the public.

Section 2. Requires that schools provide information about an incident involving restraint or seclusion of a student to the student's parent or legal guardian within the same day as the incident.

Section 3. Adds specific stands and prohibitions for restraining or secluding a student that apply to public schools. Defines terms used. Requires the department to approve crisis intervention training programs, as described, for schools and school districts to train a sufficient number of staff as necessary.

Section 4. Cross-references an exception for exempt private schools provided in sec. 5 of the bill.

Section 5. Expressly exempts exempt private schools from compliance with sections 2 and 3 of the bill.



February 11, 2014

The Honorable Charisse Millet
Alaska State House of Representatives
State Capitol, Room 403
Juneau, AK 99801

RE: HB 210: Student Restraint, Seclusion, Psyc

Via Electronic Mail

Dear Representative Millet:

The Disability Law Center (DLC) is writing to you in regard of the current version of HB 210, an act relating to student restraint, seclusion, and psychiatric medications and which has been referred to the House Education Committee.

As it is written, the current draft of HB 210 closes a major gap in protections for children who may be subjected to restraint and seclusion and would regulate the use of these serious methodologies in our schools. Currently, there are no state or federal laws which regulate or restrict the use of seclusion or restraint in public or private schools. Alaska is one of ten states (out of 51) that has nonbinding, suggested guidelines that have no legal force and that are easily changed. The result is a patchwork of inconsistent policies, or no policies at all, across local school districts. This puts students at risk for injury, abuse, and violation of their rights. As H.B. 210 continues through the legislative process, we would like to take this opportunity to provide you with information that you may find helpful.

Besides creating consistent, binding policies regarding restraint and seclusion across the state, H.B. 210 also provides a vital safeguard by allowing only trained school personnel physically restrain, physically escort or seclude a student when the student's behavior poses an imminent danger of physical injury to the student or another person. It also provides language describing when an intervention must cease. Seclusion and restraint are emergency interventions that should only be used in rare occasions when absolutely necessary to protect students from severe physical danger. From government studies to private sector and non-profit studies, many have recognized the inherent risks associated with the use of restraint or seclusion over the years. These studies have found that the use of restraint and seclusion can cause serious consequences, such as physical or psychological harm, loss of dignity, and even death.¹ Without clear, consistent

¹ Government agencies that have completed studies on restraint and seclusion include: The President's New Freedom Commission on Mental Health, Center for Mental Services, Substance Abuse and Mental Health Services Administration, Government Accountability office. National accreditation and member organizations that have done studies on restraint and seclusion include: The Joint Commission on Accreditation of Healthcare Organizations, American Psychological Association, American Psychiatric Nurses Association, and National Association of Psychiatric Health Systems.

ANCHORAGE

3330 Arctic Boulevard
Suite 103
Anchorage, AK 99503
(907) 565-1002
FAX (907) 565-1000
1-800-478-1234
www.dlcak.org

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guidelines, the potential to have students placed in restraint in seclusion in non-emergency situations is great. The need to have consistent language to all school districts across the state explaining when these emergency interventions can be used, and when they must end, is imperative. H.B. 210 would also require that a student be monitored by school personnel with face-to-face contact or by continued direct visual contact with the student. This language would ensure that all school districts across the state are held accountable for student's safety when they are placed in seclusion.

In addition, H.B. 210 requires that a parent or guardian will be promptly notified within 24 hours when their child experiences restraint or seclusion while at school. As DLC found in its investigation of the use of restraint and seclusion in schools, parents or guardians were informed much later, or never at all, that their child had been placed in restraint or seclusion. The possibility of needing to seek prompt medical attention makes the 24 hour notification important. Parents need to know so that they can watch for injuries and psychological trauma, and seek appropriate follow up care. Notification also enables parents to work with staff to prevent future incidents of restraint or seclusion and to ensure positive behavioral supports and de-escalations methods are in place.

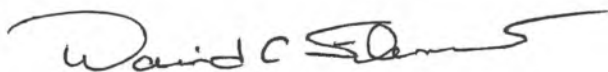
H.B.210 would also ensure that a report is written up following incidents of restraint or seclusion to be provided to the school administrator and the student's parents or guardians on request, as well as make certain that a review process is established and conducted for each incident. This process will mean that school personnel will look at what caused the event, how it could have been avoided, and by analyzing, planning for, and implementing positive interventions. This type of debriefing has been shown help reduce and eliminate restraint and seclusion.²

Finally, H.B. 210 would direct school districts to report to the department the total number of incidents involving restraint and seclusion of a student. The annual report would allow the state to be aware of potential trends in the use of restraint and seclusion across Alaska and address any problems when necessary.

Thank you for addressing this issue for allowing the Disability Law Center to be a part of this important discussion.

Sincerely,

DISABILITY LAW CENTER OF ALASKA



David C. Fleurant
Executive Director

² *Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Interim Final Rule*, 66 FED. REG. 7148, 7152 (Jan. 22, 2001). A systematic debriefing process also counters implementation drift—the tendency to go back to prior patterns of routinely using seclusion/restraint as a response. BethAnn Glew, *Reducing The Use Of Seclusion And Restraint In Segregated Special Education School Settings Through Implementation Of The Collaborative Problem Solving Model* (2012) (unpublished dissertation, Duquesne University).



Testimony of the Disability Law Center of Alaska
House Education Committee
March 17, 2014

Presented by: Ronald A. Cowan
Legal Rights Advocate II/
Investigator

Good morning Chairman Gattis and members of the House Education Committee,

My name is Ron Cowan, and I'd like to thank you for the opportunity to comment on this proposed legislation on behalf of the Disability Law Center of Alaska, the State's designated Protection & Advocacy system for people who experience a disability. I am the primary abuse and neglect investigator for our agency, and have previously served as the State's Long-Term Care Ombudsman and as a regulator.

As many of you already know, the use of restraint and seclusion in schools has become a much talked about issue over the past 10 or more years. The main reasons for this are the number of injuries and even deaths that have been linked to the use of restraint and seclusion in schools. So too, some studies and investigations have revealed the inappropriate or misuse of restraint and seclusion in schools. Legislation to address these concerns has been introduced in Congress and many states have adopted or are developing statutes and regulations to provide rules and conditions for the use of restraints and seclusion.

In our own State, we have received complaints about students as young as 3 years old being held in physical restraints by school staff or being picked up and carried to rooms they can't leave because the door is locked or someone holds the door handle or puts their foot or body against the door. In some schools, utility closets have been used that have no windows or means to monitor the student for safety. In other schools make-shift seclusion cubicles or large box-like devices have been built out of plywood. In yet other schools, padded mats like those used in physical education classes have been stood up and held by staff as they surround a student so that he or she is unable to leave. Frequently, these interventions might not be viewed by school staff as "seclusion" because a staff member is present. As a result, even though the student was subjected to the same potential risks for injury and trauma as if he or she had been in seclusion alone, the parents would not necessarily be notified. In these cases, the parents would not be alerted to observe for possible trauma, nor was there a requirement for school staff to conduct additional assessments of the behaviors, review interventions, or develop positive behavioral supports with the participation of the parents, that might preclude future unsafe behavior. Given the language and safeguards of HB210, the above scenario is less likely to occur and it would create consistent policies and practices throughout the State.

ANCHORAGE

3330 Arctic Boulevard
Suite 103
Anchorage, AK 99503
(907) 565-1002
FAX (907) 565-1000
1-800-478-1234
www.dlcak.org

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The current language of HB210 provides numerous protections to those students who may be subjected to the use of restraint or seclusion, a large percentage of whom experience a disability. These required safeguards include notice to parents; written reports; the use of restraint and seclusion only in emergent circumstances where other interventions are not successful; termination of the restraint or seclusion as soon as the unsafe behavior has subsided; staff training of an approved program; continuous monitoring of a student in seclusion; review and analysis of plans and assessments following the use of restraint and seclusion; and finally, annual reporting to the State.

Restraint and seclusion are not evidence-based educational, therapeutic or behavioral program interventions. The use of restraint and seclusion is indicative of the failure of other therapeutic interventions, not success and therefore should only be used in rare circumstances. Under the best of circumstances, restraint and seclusion are used only when a student is displaying behaviors that are unsafe for the student or others, or where those behaviors are deemed to be imminent, and where other interventions are not or have not been successful in ameliorating the behavior that is unsafe. The restraint and seclusion is terminated as soon as the unsafe behavior has stopped. The circumstances surrounding the unsafe behavior, the unsafe behavior itself, and the interventions attempted or considered are re-evaluated, with changes in the student's plan or additional staff training occurring as necessary.

Under the worst of circumstances, restraint and seclusion are used when less aggressive, less restrictive interventions may have been successful in preventing or mitigating the unsafe behavior or when they are used for convenience, punishment or to bring about compliance. As stated earlier, the use of restraint and seclusion may result in injury or death; they may also result in creating a traumatic experience, often to a child whose behavior stems from other traumatic experiences or a disability.

HB210 provides needed added protections to students, while ensuring parents are consistently made aware of circumstances that may be taking away students' opportunities for learning, placing their child at risk, and giving parents the opportunity to work with school staff to develop interventions that enhance rather than restrict student learning.

The Honorable Lynn Gattis, Chair
House Education Committee
Alaska State Legislature
State Capitol, Room 420
Juneau, AK 99801

Dear Representative Gattis,

Support the **Safe Students Act, HB 210**

My husband was called to school to witness a 250 pound principal lying on top of our 9 year old daughter, who was crying and screaming, "Get off of me, I can't breathe, you're breaking my arm."

This is not Education!

I am a parent of a child who was restrained multiple times in grades 1-8. My daughter experiences prenatal exposure to alcohol and is one of the few in rural areas to have received a diagnosis.

My daughter experienced high anxiety in school. She would self- accommodate by hiding under her desk or removing herself from the classroom situation which caused visual/ verbal overload.

Unfortunately, the teacher's reaction to this 'non- compliance' was usually to closer to her face, use more words and talk louder. Far from encouraging 'compliance', this caused increased anxiety and my daughter would attempt to leave the classroom.

When prevented from self- accommodating, i.e., boxed in a corner; my daughter would act out physically. Additionally harmful- staff restraining was untrained, non- certified and multiple. We had reports of two adults carrying my daughter down the hall held by arms and legs towards seclusion.

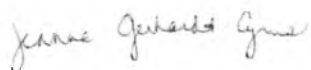
My daughter was subsequently diagnosed with PTSD.

This year, my daughter is on the honor roll as a freshman in high school. We are working with the Complex Behavioral Collaborative and the teachers allow her to self- accommodate. Her anxiety is much reduced and she is able to excel in school. Between her efforts, those of the CBC, staff, and parents in collaboration, everyone is safer, and she is reaching towards her potential.

This is Education!

Our students AND staff need training in approved de-escalation techniques. Inappropriate and unnecessary restraint and seclusion needs to stop. The physical and psychological damage is too high a price to pay.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanne Gerhardt-Cyrus".

Jeanne Gerhardt- Cyrus, Parent

Kiana, Alaska