

Chapter 611

(Senate Bill 786)

AN ACT concerning

**Education – ~~Behavior Intervention Plans – Physical Restraint and Seclusion –~~
Consideration and Reporting**

FOR the purpose of ~~prohibiting a public agency and a nonpublic school from using physical restraint except under certain circumstances; prohibiting a public agency and a nonpublic school from using seclusion except under certain circumstances; requiring a public agency or a nonpublic school that uses seclusion to document the completion of a certain assessment, observe the student at all times, limit the period of seclusion to a certain amount of time, discontinue the seclusion after a certain time, and consider alternative behavior interventions under certain circumstances~~ requiring the State Superintendent of Schools to convene a certain task force; providing for the composition of the task force; requiring the task force to consider certain issues; requiring the task force to review certain regulations and make certain recommendations to the State Board of Education and certain committees of the General Assembly on or before a certain date; requiring the State Department of Education to submit certain regulations to the State Board on or before a certain date; requiring certain public agencies and certain nonpublic schools to report to the State Department of Education on or before a certain date each year certain information relating to physical restraint and seclusion incidents; requiring the Department to adopt certain regulations; requiring certain public agencies and certain nonpublic schools to observe and review certain seclusion rooms and certain training plans; requiring the Department to provide certain guidance and report certain information to the General Assembly on or before a certain date each year; requiring the State Superintendent of Schools to consult with certain individuals relating to training requirements for teachers and administrators regarding evidence-based positive behavioral interventions, strategies, and supports, and trauma-informed interventions; requiring the Department to coordinate with public agencies and nonpublic schools to ensure that certain individuals who work directly with students receive certain initial and periodic professional development; altering a certain definition; repealing certain definitions; defining a certain term; repealing certain obsolete provisions of law term; subjecting a certain provision of law to a certain termination date; and generally relating to behavior intervention plans restraint and seclusion in public agencies and nonpublic schools.

BY repealing and reenacting, with amendments,

Article – Education

Section ~~7-1101, 7-1103, and 7-1104~~ 7-1101 through 7-1104

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

~~BY repealing~~

~~Article – Education
Section 7–1102
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)~~

BY adding to

Article – Education
Section ~~7–1102~~ 7–1102.1
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing

Article – Education
Section 7–1102
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)
(As enacted by Section 1 of this Act)

BY renumbering

Article – Education
Section 7–1102.1
to be Section 7–1102
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)
(As enacted by Section 1 of this Act)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
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~~ **CHALLENGING** behavior exhibited by a student in the educational setting through the use of ~~positive~~ **;**

~~(1) POSITIVE~~ behavioral interventions, strategies, and supports; ~~AND~~

~~(2) TRAUMA-INFORMED INTERVENTIONS.~~

[(c) “Exclusionary time out” means the circumstance in which a student is removed to a designated time-out room or other area for a fixed period not to exceed 30 minutes.

(d) “Functional behavior assessment” means the systematic process of:

(1) Describing problematic behavior exhibited in the educational setting, including identification of environmental and other factors and settings that contribute to or predict:

- (i) The occurrence or nonoccurrence of the behavior; and
- (ii) The maintenance of the behavior over time; and

(2) Using the information gathered to guide the development of an effective and efficient behavior intervention plan.

(e) (1) “Mechanical restraint” means the use of any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove.

(2) “Mechanical restraint” does not include a protective or stabilizing device ordered by a physician when it is used as prescribed.]

[(f)] (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.

[(g)] (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 ~~ANY STATE AGENCY RESPONSIBLE FOR PROVIDING EDUCATION TO STUDENTS~~ THE MARYLAND SCHOOL FOR THE BLIND.

[(h)] **(F)** “Seclusion” means the confinement of a student **ALONE** in a [locked] room, [closet, box] **AN ENCLOSURE**, or **ANY** other space from which the student is physically prevented from leaving.

~~**(G)** “**TRAUMA INFORMED INTERVENTIONS**” MEANS AN APPROACH TO A BEHAVIOR INTERVENTION PLAN THAT IS INFORMED BY THE RECOGNITION OF THE IMPACT THAT TRAUMA, INCLUDING VIOLENCE, ABUSE, NEGLECT, DISASTER, TERRORISM, AND WAR MAY HAVE ON AN INDIVIDUAL’S PHYSICAL AND EMOTIONAL HEALTH AND ABILITY TO FUNCTION.~~

~~§7-1102.~~

(a) The State Superintendent shall ~~appoint~~ **CONVENE** a task force ~~to propose regulations to the State Board regarding student behavior intervention practices~~ **IN ACCORDANCE WITH THIS SECTION.**

(b) The task force shall consist of:

(1) ONE MEMBER OF THE SENATE, APPOINTED BY THE PRESIDENT OF THE SENATE;

(2) ONE MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE; AND

(3) THE FOLLOWING MEMBERS APPOINTED BY THE STATE SUPERINTENDENT:

~~(1)~~ **(I)** Representatives of the Department;

~~(2)~~ **(II)** Representatives of local school systems, including teachers, administrators, school psychologists, and social workers;

~~(3)~~ **(III)** Representatives of advocacy communities;

~~(4)~~ **(IV)** Representatives from nonpublic special education facilities; ~~and~~

~~(5)~~ **(V)** Individuals with knowledge of and expertise in positive behavioral interventions;

(VI) REPRESENTATIVES OF STUDENTS WITH DISABILITIES; AND

(VII) INDIVIDUALS WITH CLINICAL EXPERTISE REGARDING CHILDREN WHO HAVE SUSTAINED ABUSE, NEGLECT, OR TRAUMA.

(c) The task force shall consider:

(1) The circumstances under which, and the schools or types of schools in which, ~~physical restraint, mechanical restraint,~~ **RESTRAINT** and seclusion shall be prohibited;

(2) CONTRAINDICATIONS FOR RESTRAINT AND SECLUSION AND WHO MAY AUTHORIZE RESTRAINT AND SECLUSION;

~~(2) The definitions of involuntary and other types of time out;~~

~~(3) The use of physical restraint, mechanical restraint, voluntary time out, and involuntary time out, including:~~

~~(i) The types of permissible and prohibited physical holds and mechanical restraints;~~

~~(ii) The size and characteristics of a time out room or other area; and~~

~~(iii) The amount of time and examples of circumstances under which students may be placed in physical restraint, voluntary time out, and involuntary time out;~~

~~(4) The circumstances under which review of a student's individualized education program would occur if restraints or involuntary time out are used with the student as a behavior intervention;~~

~~(5) The circumstances under which the special education evaluation process shall be initiated for students not in special education who are restrained or placed in involuntary time out as a behavior intervention;~~

~~(6) The circumstances under which a functional assessment and a behavior intervention plan will be conducted for the students described in items (4) and (5) of this subsection;~~

~~(7) Appropriate behavioral interventions, including but not limited to crisis intervention and prevention techniques;~~

~~(8)~~ **(3)** Definitions of “positive behavioral supports” ~~and~~ “behavior interventions and strategies plan”, **AND “TRAUMA-INFORMED INTERVENTIONS”**;

~~(9) How to document properly the need for and use of behavioral interventions with students, including notice requirements to parents;~~

~~(10)~~ **(4)** Training requirements for school staff regarding behavioral interventions, including the need to individualize behavioral interventions based on a

student's behavioral, medical, and psychological history and disability characteristics, AND TRAUMA-INFORMED INTERVENTIONS;

~~(11)~~ **(5)** Minimum requirements for policies and procedures to be developed by local school systems, State operated programs, and nonpublic schools; and

~~(12)~~ **(6)** Standards for monitoring compliance by local school systems, State operated programs, and nonpublic schools with the requirements of this subtitle.

(D) THE TASK FORCE SHALL:

(1) REVIEW EXISTING REGULATIONS RELATING TO SECLUSION; AND

(2) ON OR BEFORE OCTOBER 1, 2017, MAKE RECOMMENDATIONS TO THE STATE BOARD AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY REGARDING:

(i) FINDINGS AND RECOMMENDATIONS DETERMINED UNDER THIS SECTION, INCLUDING CONSIDERATION OF THE FOLLOWING FACTORS IF THE TASK FORCE DETERMINES THAT THERE ARE CIRCUMSTANCES UNDER WHICH SECLUSION MAY BE USED:

1. THE TYPES OF DOORS AND LOCKING MECHANISMS THAT MAY BE USED;

2. THE SAFETY OF THE ROOMS USED FOR SECLUSION;

3. THE REQUIREMENTS FOR OBSERVATION OF THE ROOMS USED FOR SECLUSION;

4. THE PERIOD OF TIME FOR THE USE OF SECLUSION;
AND

5. THE REQUIREMENTS FOR THE DISCONTINUATION OF SECLUSION; AND

(ii) CHANGES THAT ARE NEEDED TO UPDATE REGULATIONS TO BE CONSISTENT WITH § 7-1103 OF THIS SUBTITLE OR ANY OTHER FINDINGS AND RECOMMENDATIONS.

~~(d)~~ **(E)** The Department shall submit proposed regulations to the State Board of Education on or before ~~December 31, 2002~~ **DECEMBER 1, 2017.**

~~7-1102.~~ **7-1102.1.**

~~(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY NOT USE PHYSICAL RESTRAINT.~~

~~(2) A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY USE PHYSICAL RESTRAINT ONLY IF:~~

~~(I) PHYSICAL RESTRAINT IS NECESSARY TO PROTECT A STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM; AND~~

~~(II) OTHER LESS INTRUSIVE, NONPHYSICAL INTERVENTIONS HAVE BEEN DEMONSTRATED BY EMPIRICAL EVIDENCE TO BE INEFFECTIVE.~~

~~(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY NOT USE SECLUSION.~~

~~(2) A PUBLIC AGENCY AND A NONPUBLIC SCHOOL MAY USE SECLUSION ONLY IF:~~

~~(I) SECLUSION IS NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM;~~

~~(II) OTHER LESS INTRUSIVE INTERVENTIONS HAVE BEEN DEMONSTRATED BY EMPIRICAL EVIDENCE TO BE INEFFECTIVE; AND~~

~~(III) ONE OF THE FOLLOWING INDIVIDUALS HAS AUTHORIZED THE USE OF SECLUSION:~~

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

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

~~3. A CLINICAL SOCIAL WORKER WHO IS LICENSED TO PRACTICE CLINICAL SOCIAL WORK UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE.~~

~~(3) BEFORE AN INDIVIDUAL DESCRIBED IN PARAGRAPH (2)(III) OF THIS SUBSECTION MAY AUTHORIZE THE USE OF SECLUSION, THE INDIVIDUAL MUST:~~

~~(I) HAVE RECEIVED TRAINING IN EACH OF THE PRACTICES AND STANDARDS AREAS SPECIFIED IN COMAR 13A.08.04.06(C)(3);~~

~~(II) BE FAMILIAR WITH THE STUDENT; AND~~

~~(III) HAVE COMPLETED A RISK ASSESSMENT OF THE STUDENT TO DETERMINE WHETHER SECLUSION IS CONTRAINDICATED FOR MEDICAL, PHYSICAL, PSYCHOLOGICAL, PSYCHOSOCIAL, OR ANOTHER REASON AND HAVE CONCLUDED THAT SECLUSION IS NOT CONTRAINDICATED.~~

~~(4) IF THE DOOR TO A ROOM USED FOR SECLUSION HAS A LOCKING MECHANISM:~~

~~(i) THE LOCKING MECHANISM MAY BE ENGAGED ONLY WHEN IT IS HELD IN POSITION BY AN INDIVIDUAL; OR~~

~~(ii) IF THE LOCKING MECHANISM IS ELECTRONICALLY ENGAGED, THE LOCKING MECHANISM MUST AUTOMATICALLY RELEASE IF A FIRE ALARM IS ACTIVATED.~~

~~(c) (1) IF A PUBLIC AGENCY OR NONPUBLIC SCHOOL USES SECLUSION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE SECLUSION SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION.~~

~~(2) THE PUBLIC AGENCY OR NONPUBLIC SCHOOL SHALL DOCUMENT THE COMPLETION OF THE RISK ASSESSMENT REQUIRED UNDER SUBSECTION (B)(3)(II) OF THIS SECTION:~~

~~(i) AT EACH ANNUAL INDIVIDUALIZED EDUCATION PROGRAM MEETING FOR A STUDENT WHO IS RECEIVING SPECIAL EDUCATION SERVICES;~~

~~(ii) WHENEVER A PLACEMENT CHANGE OF A STUDENT IS MADE;~~
AND

~~(iii) AT OTHER TIMES AS WARRANTED, INCLUDING WHEN THERE IS A CHANGE IN THE STUDENT'S HEALTH STATUS OR A TRAUMATIC EVENT OCCURS IN THE STUDENT'S LIFE.~~

~~(3) THE STUDENT SHALL BE DIRECTLY OBSERVED AT ALL TIMES.~~

~~(4) THE PERIOD OF SECLUSION MAY NOT EXCEED 30 MINUTES.~~

~~(5) THE SECLUSION SHALL BE DISCONTINUED AS SOON AS IT IS NO LONGER NECESSARY TO PROTECT THE STUDENT OR ANOTHER INDIVIDUAL FROM IMMINENT SERIOUS PHYSICAL HARM.~~

~~(6) IF THE STUDENT'S BEHAVIOR ESCALATES WITH THE USE OF SECLUSION OR THE STUDENT IS OTHERWISE ADVERSELY AFFECTED BY THE USE OF SECLUSION, THE NEED FOR ALTERNATIVE BEHAVIOR INTERVENTIONS SHALL BE CONSIDERED AS FOLLOWS:~~

~~(i) IF THE STUDENT IS RECEIVING SPECIAL EDUCATION SERVICES, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL CONVENE AN EXPEDITED TEAM MEETING; OR~~

~~(ii) IF THE STUDENT IS NOT RECEIVING SPECIAL EDUCATION SERVICES, THE PUBLIC AGENCY OR NONPUBLIC SCHOOL SHALL CONVENE AN EXPEDITED PUPIL PERSONNEL MEETING.~~

~~(D) BEGINNING WITH THE 2018-2019 SCHOOL YEAR, ON OR BEFORE DECEMBER 1 EACH YEAR, :~~

(1) 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) EACH PUBLIC AGENCY AND NONPUBLIC SCHOOL SHALL SUBMIT TO THE DEPARTMENT A REPORT FOR THE PRIOR SCHOOL YEAR ON THE PROFESSIONAL DEVELOPMENT PROVIDED TO DESIGNATED SCHOOL PERSONNEL RELATED TO POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS AND TRAUMA-INFORMED INTERVENTIONS.

(3) EACH PUBLIC AGENCY AND NONPUBLIC SCHOOL SHALL:

(i) PERSONALLY OBSERVE AND REVIEW SECLUSION ROOMS;

(ii) REVIEW TRAINING PLANS FOR THE USE OF SECLUSION; AND

(iii) REPORT TO THE DEPARTMENT REGARDING FINDINGS MADE UNDER ITEMS (I) AND (II) OF THIS PARAGRAPH.

(4) THE DEPARTMENT SHALL:

(i) PROVIDE GUIDANCE TO PUBLIC AGENCIES AND NONPUBLIC SCHOOLS REGARDING THE REQUIREMENTS OF THE USE OF SECLUSION AND ROOMS FOR SECLUSION; AND

(II) REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, REGARDING FINDINGS AND RECOMMENDATIONS REPORTED TO THE DEPARTMENT UNDER THIS SECTION.

~~(E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

7-1103.

Each [local school system, State operated program,] PUBLIC AGENCY and nonpublic school shall develop policies and procedures in compliance with this subtitle and the regulations adopted by the Department.

7-1104.

~~(A) The State Superintendent shall consult 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 training requirements for teachers AND ADMINISTRATORS to ensure that sufficient training is available regarding EVIDENCE-BASED positive behavioral interventions [and], strategies, AND SUPPORTS AND TRAUMA-INFORMED INTERVENTIONS consistent with professionally accepted practices and standards for persons entering the field of education.~~

~~(B) THE DEPARTMENT SHALL COORDINATE WITH EACH PUBLIC AGENCY AND NONPUBLIC SCHOOL TO ENSURE THAT ALL SCHOOL ADMINISTRATORS, TEACHERS, BEHAVIORAL SUPPORT SPECIALISTS, PARAPROFESSIONALS, AIDES, AND OTHER PERSONNEL WHO DIRECTLY WORK WITH STUDENTS ON A DAILY OR ROUTINE BASIS RECEIVE INITIAL AND PERIODIC PROFESSIONAL DEVELOPMENT REGARDING EVIDENCE-BASED POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS, AND TRAUMA-INFORMED INTERVENTIONS TO CHALLENGING BEHAVIOR.~~

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7-1102 of Article – Education of the Annotated Code of Maryland, as enacted by Section 1 of this Act, be repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 7-1102.1 of Article – Education of the Annotated Code of Maryland, as enacted by Section 1 of this Act, be renumbered to be Section(s) 7-1102.

SECTION 4. AND BE IT FURTHER ENACTED, That Sections 2 and 3 of this Act shall take effect June 30, 2019.

SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2017.

Approved by the Governor, May 25, 2017.