

CHAPTER 270

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 17-1276

BY REPRESENTATIVE(S) Lontine, Becker K., Benavidez, Bridges, Buckner, Coleman, Exum, Garnett, Gray, Hamner, Hansen, Herod, Hooton, Jackson, Kennedy, Lebsock, Lee, McLachlan, Melton, Michaelson Jenet, Pabon, Pettersen, Rosenthal, Salazar, Weissman, Williams D., Winter, Young, Duran, Kraft-Tharp;
 also SENATOR(S) Fields and Gardner, Aguilar, Court, Donovan, Fenberg, Garcia, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Priola, Todd, Williams A., Zenzinger.

AN ACT

**CONCERNING PROHIBITING THE USE OF CERTAIN RESTRAINTS UPON PUBLIC SCHOOL STUDENTS,
 AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Current law restricts the circumstances under which a public agency may use restraints on an individual;

(b) Children are more vulnerable and impressionable than adults, and it is wholly reasonable that our safeguards to protect the integrity and sanctity of their bodies should be at least equal to those safeguards that we afford to other persons; and

(c) The use of certain restraints on public school students should be prohibited except when exigent circumstances exist.

(2) Now, therefore, the general assembly declares that:

(a) The use of a chemical, mechanical, or prone restraint upon a student of a school of a school district, charter school of a school district, or institute charter school is generally prohibited; and

(b) Notwithstanding this general prohibition, the prohibition does not apply to:

(I) The use of a mechanical or prone restraint on a student who is openly

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

displaying a deadly weapon, including any device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or

(II) The use of mechanical or prone restraints by an armed security officer or a certified peace officer working in a school of a school district, charter school of a school district, or institute charter school when the officer satisfies certain conditions.

SECTION 2. In Colorado Revised Statutes, **add** 26-20-111 as follows:

26-20-111. Use of restraints in public schools - certain restraints prohibited.

(1) EXCEPT AS PROVIDED OTHERWISE IN THIS SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE 20, THE USE OF A CHEMICAL, MECHANICAL, OR PRONE RESTRAINT UPON A STUDENT OF A SCHOOL OF A SCHOOL DISTRICT, CHARTER SCHOOL OF A SCHOOL DISTRICT, OR INSTITUTE CHARTER SCHOOL IS PROHIBITED WHEN THE STUDENT IS ON THE PROPERTY OF ANY AGENCY OR IS PARTICIPATING IN AN OFF-CAMPUS, SCHOOL-SPONSORED ACTIVITY OR EVENT.

(2) THE PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO THE USE OF MECHANICAL OR PRONE RESTRAINTS ON A STUDENT OF A SCHOOL OF A SCHOOL DISTRICT, CHARTER SCHOOL OF A SCHOOL DISTRICT, OR INSTITUTE CHARTER SCHOOL WHO IS OPENLY DISPLAYING A DEADLY WEAPON, AS DEFINED IN SECTION 18-1-901 (3)(e).

(3) THE PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO THE USE OF MECHANICAL OR PRONE RESTRAINTS BY AN ARMED SECURITY OFFICER OR A CERTIFIED PEACE OFFICER WORKING IN A SCHOOL OF A SCHOOL DISTRICT, CHARTER SCHOOL OF A SCHOOL DISTRICT, OR INSTITUTE CHARTER SCHOOL WHEN THE OFFICER:

(a) HAS RECEIVED DOCUMENTED TRAINING IN DEFENSIVE TACTICS UTILIZING HANDCUFFING PROCEDURES;

(b) HAS RECEIVED DOCUMENTED TRAINING IN RESTRAINT TACTICS UTILIZING PRONE HOLDS; AND

(c) HAS MADE A REFERRAL TO A LAW ENFORCEMENT AGENCY.

(4) THE PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO SCHOOLS OPERATED IN STATE-OWNED FACILITIES WITHIN THE DIVISION OF YOUTH CORRECTIONS.

SECTION 3. In Colorado Revised Statutes, 26-20-102, **amend** the introductory portion, (1)(a)(II), (1)(a)(III), and (6)(c); and **add** (1)(a)(VI), (5.3), and (5.5) as follows:

26-20-102. Definitions. As used in this ~~article~~ ARTICLE 20, unless the context otherwise requires:

(1) (a) "Agency" means:

(II) Any county, city and county, municipality, ~~school district~~, or other political subdivision of the state or any department, division, section, unit, office, or agency of such county, city and county, municipality, ~~school district~~, or other political subdivision of the state;

(III) Any public or private entity that has entered into a contract for services with an entity described in ~~subparagraph (I) or (II) of this paragraph (a)~~ SUBSECTION (1)(a)(I), (1)(a)(II), OR (1)(a)(VI) OF THIS SECTION;

(VI) ANY SCHOOL DISTRICT, INCLUDING ANY SCHOOL OR CHARTER SCHOOL OF A SCHOOL DISTRICT, AND THE STATE CHARTER SCHOOL INSTITUTE ESTABLISHED IN SECTION 22-30.5-503, INCLUDING ANY INSTITUTE CHARTER SCHOOL.

(5.3) "PRONE POSITION" MEANS A FACE-DOWN POSITION.

(5.5) "PRONE RESTRAINT" MEANS A RESTRAINT IN WHICH THE INDIVIDUAL WHO IS BEING RESTRAINED IS SECURED IN A PRONE POSITION.

(6) "Restraint" means any method or device used to involuntarily limit freedom of movement, including bodily physical force, mechanical devices, or chemicals. "Restraint" includes chemical restraint, mechanical restraint, and physical restraint. "Restraint" does not include:

(c) The holding of an individual for less than five minutes by a staff person for protection of the individual or other persons; EXCEPT THAT NOTHING IN THIS SUBSECTION (6)(c) MAY BE INTERPRETED TO PERMIT THE HOLDING OF A PUBLIC SCHOOL STUDENT IN A PRONE POSITION, EXCEPT AS DESCRIBED IN SECTION 26-20-111 (2), (3), OR (4); or

SECTION 4. In Colorado Revised Statutes, **add** 22-32-147 as follows:

22-32-147. Use of restraints on students - certain restraints prohibited - reports and review process - definitions - rules. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CHEMICAL RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (2).

(b) "MECHANICAL RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (4).

(c) "PRONE POSITION" MEANS A FACE-DOWN POSITION.

(d) "PRONE RESTRAINT" MEANS A RESTRAINT IN WHICH THE INDIVIDUAL BEING RESTRAINED IS SECURED IN A PRONE POSITION.

(e) "RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (6).

(2) PURSUANT TO SECTION 26-20-111, THE USE OF A CHEMICAL, MECHANICAL, OR PRONE RESTRAINT UPON A STUDENT IN A SCHOOL OR CHARTER SCHOOL OF A SCHOOL

DISTRICT OR BOARD OF COOPERATIVE SERVICES IS PROHIBITED.

(3) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH SCHOOL DISTRICT SHALL REQUIRE ANY SCHOOL EMPLOYEE OR VOLUNTEER WHO USES ANY TYPE OF RESTRAINT ON A STUDENT OF THE SCHOOL DISTRICT TO SUBMIT A WRITTEN REPORT OF THE INCIDENT TO THE ADMINISTRATION OF THE SCHOOL NOT LATER THAN ONE SCHOOL DAY AFTER THE INCIDENT OCCURRED.

(b) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH SCHOOL DISTRICT SHALL ESTABLISH A REVIEW PROCESS, CONDUCT THE REVIEW PROCESS AT LEAST ANNUALLY, AND DOCUMENT THE RESULTS OF EACH REVIEW PROCESS IN WRITING. EACH ANNUAL REVIEW PROCESS MUST INCLUDE A REVIEW OF EACH INCIDENT IN WHICH RESTRAINT WAS USED ON A STUDENT DURING THE PRECEDING YEAR. THE PURPOSE OF EACH ANNUAL REVIEW PROCESS IS TO ENSURE THAT THE SCHOOL DISTRICT IS PROPERLY ADMINISTERING RESTRAINT, IDENTIFYING ADDITIONAL TRAINING NEEDS, MINIMIZING AND PREVENTING THE USE OF RESTRAINT BY INCREASING THE USE OF POSITIVE BEHAVIOR INTERVENTIONS, AND REDUCING THE INCIDENCE OF INJURY TO STUDENTS AND STAFF. EACH ANNUAL REVIEW PROCESS MUST INCLUDE BUT IS NOT LIMITED TO:

(I) ANALYSIS OF INCIDENT REPORTS, INCLUDING CONSIDERATION OF PROCEDURES USED DURING THE RESTRAINT, PREVENTATIVE OR ALTERNATIVE TECHNIQUES ATTEMPTED, DOCUMENTATION, AND FOLLOW-UP;

(II) TRAINING NEEDS OF STAFF;

(III) STAFF-TO-STUDENT RATIOS; AND

(IV) ENVIRONMENTAL CONSIDERATIONS, INCLUDING PHYSICAL SPACE, STUDENT SEATING ARRANGEMENTS, AND NOISE LEVELS.

(c) NOT MORE THAN FIVE CALENDAR DAYS AFTER THE USE OF RESTRAINT ON A STUDENT, THE SCHOOL ADMINISTRATION SHALL MAIL, FAX, OR E-MAIL A WRITTEN REPORT OF THE INCIDENT TO THE PARENT OR LEGAL GUARDIAN OF THE STUDENT. THE WRITTEN REPORT MUST BE PLACED IN THE STUDENT'S CONFIDENTIAL FILE AND INCLUDE:

(I) THE ANTECEDENT OF THE STUDENT'S BEHAVIOR, IF KNOWN;

(II) A DESCRIPTION OF THE INCIDENT;

(III) ANY EFFORTS MADE TO DE-ESCALATE THE SITUATION;

(IV) ANY ALTERNATIVES TO THE USE OF RESTRAINTS THAT WERE ATTEMPTED;

(V) THE TYPE AND DURATION OF THE RESTRAINT USED;

(VI) ANY INJURIES THAT OCCURRED; AND

(VII) THE STAFF MEMBERS WHO WERE PRESENT AND STAFF MEMBERS WHO WERE INVOLVED IN ADMINISTERING THE RESTRAINT.

(4) ON OR BEFORE NOVEMBER 1, 2017, THE STATE BOARD SHALL PROMULGATE RULES ESTABLISHING A PROCESS BY WHICH A STUDENT OR A PARENT OR LEGAL GUARDIAN OF A STUDENT MAY FORMALLY COMPLAIN ABOUT THE USE OF RESTRAINT OR SECLUSION BY ANY EMPLOYEE OR VOLUNTEER OF ANY SCHOOL OR CHARTER SCHOOL OF A SCHOOL DISTRICT OR BOARD OF COOPERATIVE SERVICES. TO THE EXTENT PRACTICABLE, THE PROCESS MUST REFLECT THE COMPLAINT PROCESS FOR FILING A STATE COMPLAINT UNDER THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. SEC. 1400 ET SEQ., AS AMENDED.

SECTION 5. In Colorado Revised Statutes, add 22-30.5-528 as follows:

22-30.5-528. Institute charter schools - use of restraints on students - certain restraints prohibited - reports and review process - definitions - rules. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CHEMICAL RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (2).

(b) "MECHANICAL RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (4).

(c) "PRONE POSITION" MEANS A FACE-DOWN POSITION.

(d) "PRONE RESTRAINT" MEANS A RESTRAINT IN WHICH THE INDIVIDUAL BEING RESTRAINED IS SECURED IN A PRONE POSITION.

(e) "RESTRAINT" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-20-102 (6).

(2) PURSUANT TO SECTION 26-20-111, THE USE OF A CHEMICAL, MECHANICAL, OR PRONE RESTRAINT UPON A STUDENT IN AN INSTITUTE CHARTER SCHOOL IS PROHIBITED.

(3) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH SCHOOL DISTRICT SHALL REQUIRE ANY SCHOOL EMPLOYEE OR VOLUNTEER WHO USES ANY TYPE OF RESTRAINT ON A STUDENT OF THE SCHOOL DISTRICT TO SUBMIT A WRITTEN REPORT OF THE INCIDENT TO THE ADMINISTRATION OF THE SCHOOL NOT LATER THAN ONE SCHOOL DAY AFTER THE INCIDENT OCCURRED.

(b) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, EACH SCHOOL DISTRICT SHALL ESTABLISH A REVIEW PROCESS, CONDUCT THE REVIEW PROCESS AT LEAST ANNUALLY, AND DOCUMENT THE RESULTS OF EACH REVIEW PROCESS IN WRITING. EACH ANNUAL REVIEW PROCESS MUST INCLUDE A REVIEW OF EACH INCIDENT IN WHICH RESTRAINT WAS USED ON A STUDENT DURING THE PRECEDING YEAR. THE PURPOSE OF EACH ANNUAL REVIEW PROCESS IS TO ENSURE THAT THE SCHOOL DISTRICT IS PROPERLY ADMINISTERING RESTRAINT, IDENTIFYING ADDITIONAL TRAINING NEEDS, MINIMIZING AND PREVENTING THE USE OF RESTRAINT BY INCREASING THE USE OF POSITIVE BEHAVIOR INTERVENTIONS, AND REDUCING THE INCIDENCE OF INJURY TO STUDENTS AND STAFF. EACH ANNUAL REVIEW PROCESS MUST INCLUDE BUT IS NOT LIMITED TO:

(I) ANALYSIS OF INCIDENT REPORTS, INCLUDING CONSIDERATION OF PROCEDURES USED DURING THE RESTRAINT, PREVENTATIVE OR ALTERNATIVE TECHNIQUES ATTEMPTED, DOCUMENTATION, AND FOLLOW-UP;

(II) TRAINING NEEDS OF STAFF;

(III) STAFF-TO-STUDENT RATIOS; AND

(IV) ENVIRONMENTAL CONSIDERATIONS, INCLUDING PHYSICAL SPACE, STUDENT SEATING ARRANGEMENTS, AND NOISE LEVELS.

(c) NOT MORE THAN FIVE CALENDAR DAYS AFTER THE USE OF RESTRAINT ON A STUDENT, THE SCHOOL ADMINISTRATION SHALL MAIL, FAX, OR E-MAIL A WRITTEN REPORT OF THE INCIDENT TO THE PARENT OR LEGAL GUARDIAN OF THE STUDENT. THE WRITTEN REPORT MUST BE PLACED IN THE STUDENT'S CONFIDENTIAL FILE AND INCLUDE:

(I) THE ANTECEDENT OF THE STUDENT'S BEHAVIOR, IF KNOWN;

(II) A DESCRIPTION OF THE INCIDENT;

(III) ANY EFFORTS MADE TO DE-ESCALATE THE SITUATION;

(IV) ANY ALTERNATIVES TO THE USE OF RESTRAINTS THAT WERE ATTEMPTED;

(V) THE TYPE AND DURATION OF THE RESTRAINT USED;

(VI) ANY INJURIES THAT OCCURRED; AND

(VII) THE STAFF MEMBERS WHO WERE PRESENT AND STAFF MEMBERS WHO WERE INVOLVED IN ADMINISTERING THE RESTRAINT.

(4) ON OR BEFORE NOVEMBER 1, 2017, THE STATE BOARD SHALL PROMULGATE RULES ESTABLISHING A PROCESS BY WHICH A STUDENT OR A PARENT OR LEGAL GUARDIAN OF A STUDENT MAY FORMALLY COMPLAIN ABOUT THE USE OF RESTRAINT OR SECLUSION BY ANY EMPLOYEE OR VOLUNTEER OF ANY INSTITUTE CHARTER SCHOOL. TO THE EXTENT PRACTICABLE, THE PROCESS MUST REFLECT THE COMPLAINT PROCESS FOR FILING A STATE COMPLAINT UNDER THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. SEC. 1400 ET SEQ., AS AMENDED.

SECTION 6. In Colorado Revised Statutes, 22-32-109.1, **add** (2)(a)(I)(L) as follows:

22-32-109.1. Board of education - specific powers and duties - safe school plan - conduct and discipline code - safe school reporting requirements - school response framework - school resource officers - definitions - repeal. (2) **Safe school plan.** In order to provide a learning environment that is safe, conducive to the learning process, and free from unnecessary disruption, each school district board of education or institute charter school board for a charter school authorized by the charter school institute shall, following consultation with the school district

accountability committee and school accountability committees, parents, teachers, administrators, students, student councils where available, and, where appropriate, the community at large, adopt and implement a safe school plan, or review and revise, as necessary in response to any relevant data collected by the school district, any existing plans or policies already in effect. In addition to the aforementioned parties, each school district board of education, in adopting and implementing its safe school plan, may consult with victims' advocacy organizations, school psychologists, local law enforcement, and community partners. The plan, at a minimum, must include the following:

(a) **Conduct and discipline code.** (I) A concisely written conduct and discipline code that shall be enforced uniformly, fairly, and consistently for all students. Copies of the code shall be provided to each student upon enrollment at the elementary, middle, and high school levels and shall be posted or kept on file at each public school in the school district. The school district shall take reasonable measures to ensure that each student of each public school in the school district is familiar with the code. The code shall include, but need not be limited to:

(L) INFORMATION CONCERNING THE SCHOOL DISTRICT'S POLICIES FOR THE USE OF RESTRAINT AND SECLUSION ON STUDENTS, INCLUDING A REFERENCE TO SECTION 26-20-111 AND INFORMATION CONCERNING THE PROCESS FOR FILING A COMPLAINT REGARDING THE USE OF RESTRAINT OR SECLUSION, AS SUCH PROCESS IS SET FORTH BY RULE OF THE STATE BOARD PURSUANT TO SECTION 22-32-147.

SECTION 7. Appropriation. For the 2017-18 state fiscal year, \$18,414 is appropriated to the department of education. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.3 FTE. To implement this act, the department may use this appropriation for the office dropout prevention and student reengagement.

SECTION 8. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2017