

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 1032\*

Short Title: Placing Students in Seclusion. (Public)

Sponsors: Representatives Glazier, Preston, Farmer-Butterfield, Barnhart (Primary Sponsors); Alexander, Brown, Harrison, and Wainwright.

Referred to: Education Subcommittee on Pre-School, Elementary and Secondary Education.

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN MANAGEMENT OF STUDENT BEHAVIOR.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 115C of the General Statutes is amended by adding a new section to read:

**"§ 115C-391.1. Permissible use of seclusion and restraint.**

(a) It is the policy of the State of North Carolina to:

- (1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.
- (2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.
- (3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.
- (4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.
- (5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) Definition of Terms:

- (1) Aversive procedure means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability that causes or reasonably may be expected to cause one or more of the following:

- 1           a.     Significant physical harm, such as tissue damage, physical  
2           illness, and/or death.
- 3           b.     Serious, foreseeable long-term psychological impairment.
- 4           c.     Obvious repulsion on the part of observers who cannot  
5           reconcile such extreme procedures with acceptable, standard  
6           practice, for example: electric shock applied to the body;  
7           extreme auditory stimuli; forcible introduction of foul  
8           substances to the mouth, eyes, ears, nose, or skin; placement in  
9           a tub of cold water or shower; slapping, pinching, hitting, or  
10          pulling hair; blindfolding or other forms of visual blocking;  
11          unreasonable withholding of meals; eating one's own vomit; or  
12          denial of reasonable access to toileting facilities.
- 13       (2)   Isolation means a behavior management technique in which a student  
14       is placed alone in an enclosed space from which the student is  
15       prevented from leaving.
- 16       (3)   Law enforcement officer means a sworn law enforcement officer with  
17       the power to arrest.
- 18       (4)   Restraint:
- 19           a.     Physical restraint means the use of physical force to restrict the  
20           free movement of all or a portion of a student's body.
- 21           b.     Mechanical restraint means the use of any device or material  
22           attached or adjacent to a student's body that restricts freedom of  
23           movement or normal access to any portion of the student's body  
24           and that the student cannot easily remove.
- 25       (5)   School personnel means:
- 26           a.     Employees of a local board of education.
- 27           b.     Any person working on school grounds or at a school function  
28           under a contract or written agreement with the public school  
29           system to provide educational or related services to students.
- 30           c.     Any person working on school grounds or at a school function  
31           for another agency providing educational or related services to  
32           students.
- 33       (6)   Seclusion means the confinement of a student alone in an enclosed  
34       space from which the student is:
- 35           a.     Physically prevented from leaving by locking hardware or other  
36           means.
- 37           b.     Not capable of leaving due to physical or cognitive incapacity.
- 38       (7)   Time-out means a behavior management technique in which a student  
39       is separated from other students for a limited period of time in a  
40       monitored setting.
- 41       (c)   Physical Restraint:
- 42           (1)   Physical restraint of students by school personnel shall be considered a  
43           reasonable use of force when used in the following circumstances:

- 1           a.     As reasonably needed to obtain possession of a weapon or other  
2           dangerous objects on a person or within the control of a person.  
3           b.     As reasonably needed to maintain order or prevent or break up a  
4           fight.  
5           c.     As reasonably needed for self-defense.  
6           d.     As reasonably needed to ensure the safety of any student,  
7           school employee, volunteer, or other person present, to teach a  
8           skill, to calm or comfort a student, or to prevent self-injurious  
9           behavior.  
10          e.     As reasonably needed to escort a student safely from one area to  
11          another.  
12          f.     If used as provided for in a student's Individualized Education  
13          Plan (IEP) or Section 504 plan or behavior intervention plan.  
14          g.     As reasonably needed to prevent imminent destruction to school  
15          or another person's property.  
16          (2)    Except as set forth in subdivision (1) of this subsection, physical  
17          restraint of students shall not be considered a reasonable use of force,  
18          and its use is prohibited.  
19          (3)    Physical restraint shall not be considered a reasonable use of force  
20          when used solely as a disciplinary consequence.  
21          (4)    Nothing in this subsection shall be construed to prevent the use of  
22          force by law enforcement officers in the lawful exercise of their law  
23          enforcement duties.  
24          (d)    Mechanical Restraint:  
25          (1)    Mechanical restraint of students by school personnel is permissible  
26          only in the following circumstances:  
27               a.     When properly used as an assistive technology device included  
28               in the student's IEP or Section 504 plan or behavior intervention  
29               plan or as otherwise prescribed for the student by a medical or  
30               related service provider.  
31               b.     When using seat belts or other safety restraints to secure  
32               students during transportation.  
33               c.     As reasonably needed to obtain possession of a weapon or other  
34               dangerous objects on a person or within the control of a person.  
35               d.     As reasonably needed for self-defense.  
36               e.     As reasonably needed to ensure the safety of any student,  
37               school employee, volunteer, or other person present.  
38          (2)    Except as set forth in subdivision (1) of this subsection, mechanical  
39          restraint, including the tying, taping, or strapping down of a student,  
40          shall not be considered a reasonable use of force, and its use is  
41          prohibited.  
42          (3)    Nothing in this subsection shall be construed to prevent the use of  
43          mechanical restraint devices, such as handcuffs by law enforcement  
44          officers in the lawful exercise of their law enforcement duties.

1 (e) Seclusion:

2 (1) Seclusion of students by school personnel may be used in the  
3 following circumstances:

4 a. As reasonably needed to respond to a person in control of a  
5 weapon or other dangerous object.

6 b. As reasonably needed to maintain order or prevent or break up a  
7 fight.

8 c. As reasonably needed for self-defense.

9 d. As reasonably needed when a student's behavior poses a threat  
10 of imminent physical harm to self or others or imminent  
11 substantial destruction of school or another person's property.

12 e. When used as specified in the student's IEP, Section 504 plan,  
13 or behavior intervention plan.

14 1. The student is monitored while in seclusion by an adult  
15 in close proximity who is able to see and hear the student  
16 at all times.

17 2. The student is released from seclusion upon cessation of  
18 the behaviors that led to the seclusion or as otherwise  
19 specified in the student's IEP or Section 504 plan.

20 3. The space in which the student is confined has been  
21 approved for such use by the local education agency.

22 4. The space is appropriately lighted.

23 5. The space is appropriately ventilated and heated or  
24 cooled.

25 6. The space is free of objects that unreasonably expose the  
26 student or others to harm.

27 (2) Except as set forth in subdivision (1) of this subsection, the use of  
28 seclusion is not considered reasonable force, and its use is not  
29 permitted.

30 (3) Seclusion shall not be considered a reasonable use of force when used  
31 solely as a disciplinary consequence.

32 (4) Nothing in this subsection shall be construed to prevent the use of  
33 seclusion by law enforcement officers in the lawful exercise of their  
34 law enforcement duties.

35 (f) Isolation. – Isolation is permitted as a behavior management technique  
36 provided that:

37 (1) The space used for isolation is appropriately lighted, ventilated, and  
38 heated or cooled.

39 (2) The duration of the isolation is reasonable in light of the purpose of the  
40 isolation.

41 (3) The student is reasonably monitored while in isolation.

42 (4) The isolation space is free of objects that unreasonably expose the  
43 student or others to harm.

1       (g) Time-Out – Nothing in this section is intended to prohibit or regulate the use  
2 of time-out as defined herein.

3       (h) Aversive Procedures. – The use of aversive procedures as defined herein is  
4 prohibited in public schools.

5       (i) Nothing in this section modifies the rights of school personnel to use  
6 reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures  
7 governing discipline pursuant to G.S. 115C-391(a).

8           (1) Notice of procedures. – Each board of education shall provide copies  
9 of this section and all local board policies developed to implement this  
10 section to school personnel and parents or guardians at the beginning  
11 of each school year.

12           (2) Notice of specified incidents:

13           a. School personnel shall promptly notify the principal or  
14 principal's designee of:

15                   1. Any use of aversive procedures.

16                   2. Any prohibited use of mechanical restraint.

17                   3. Any use of physical restraint resulting in observable  
18 physical injury to a student.

19                   4. Any prohibited use of seclusion or seclusion that exceeds  
20 10 minutes or the amount of time specified on a student's  
21 behavior intervention plan.

22           b. When a principal or principal's designee has personal  
23 knowledge or actual notice of any of the events described in this  
24 subdivision, the principal or principal's designee shall promptly  
25 notify the student's parent or guardian and will provide the  
26 name of a school employee the parent or guardian can contact  
27 regarding the incident.

28           (3) As used in subdivision (2) of this subsection, prompt notice means by  
29 the end of the workday during which the incident occurred when  
30 reasonably possible, but in no event later than the end of following  
31 workday.

32           (4) The parent or guardian of the student shall be provided with a written  
33 incident report for any incident reported under this section within a  
34 reasonable period of time, but in no event later than 30 days after the  
35 incident. The written incident report shall include:

36           a. The date, time of day, location, duration, and description of the  
37 incident and interventions.

38           b. The events or events that led up to the incident.

39           c. The nature and extent of any injury to the student.

40           d. The name of a school employee the parent or guardian can  
41 contact regarding the incident.

42           (5) No local board of education or employee of a local board of education  
43 shall discharge, threaten, or otherwise retaliate against another  
44 employee of the board regarding that employee's compensation, terms,

1                   conditions, location, or privileges of employment because the  
2                   employee makes a report alleging a prohibited use of physical  
3                   restraint, mechanical restraint, aversive procedure, or seclusion, unless  
4                   the employee knew or should have known that the report was false.

5           (k)   Nothing in this section shall be construed to create a private cause of action  
6           against any local board of education, its agents or employees, or any institutions of  
7           teacher education or their agents or employees."

8                   **SECTION 2.** G.S. 115C-296 reads as rewritten:

9           **"§ 115C-296. Board sets certification requirements.**

10           ...

11           (b)   It is the policy of the State of North Carolina to maintain the highest quality  
12           teacher education programs and school administrator programs in order to enhance the  
13           competence of professional personnel certified in North Carolina. To the end that  
14           teacher preparation programs are upgraded to reflect a more rigorous course of study,  
15           the State Board of Education, as lead agency in coordination and cooperation with the  
16           University Board of Governors, the Board of Community Colleges and such other  
17           public and private agencies as are necessary, shall continue to refine the several  
18           certification requirements, standards for approval of institutions of teacher education,  
19           standards for institution-based innovative and experimental programs, standards for  
20           implementing consortium-based teacher education, and standards for improved  
21           efficiencies in the administration of the approved programs. The certification program  
22           shall provide for initial certification after completion of preservice training, continuing  
23           certification after three years of teaching experience, and certificate renewal every five  
24           years thereafter, until the retirement of the teacher. The last certificate renewal received  
25           prior to retirement shall remain in effect for five years after retirement.

26           The State Board of Education, as lead agency in coordination with the Board of  
27           Governors of The University of North Carolina and any other public and private  
28           agencies as necessary, shall continue to raise standards for entry into teacher education  
29           programs.

30           The State Board of Education, in consultation with the Board of Governors of The  
31           University of North Carolina, shall evaluate and develop enhanced requirements for  
32           continuing certification. The new requirements shall reflect more rigorous standards for  
33           continuing certification and to the extent possible shall be aligned with quality  
34           professional development programs that reflect State priorities for improving student  
35           achievement.

36           The State Board of Education, in consultation with local boards of education and the  
37           Board of Governors of The University of North Carolina, shall reevaluate and enhance  
38           the requirements for renewal of teacher certificates. The State Board shall consider  
39           modifications in the certificate renewal achievement and to make it a mechanism for  
40           teachers to renew continually their knowledge and professional skills. The State Board  
41           shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

42           The standards for approval of institutions of teacher education shall require that  
43           teacher education programs for all students ~~who do not major in special education~~  
44           include demonstrated competencies in (i) the identification and education of children

1 with ~~learning disabilities~~ disabilities and (ii) positive management of student behavior  
2 and effective communication techniques for defusing and deescalating disruptive or  
3 dangerous behavior. The State Board of Education shall incorporate the criteria  
4 developed in accordance with G.S. 116-74.21 for assessing proposals under the School  
5 Administrator Training Program into its school administrator program approval  
6 standards.

7 All North Carolina institutions of higher education that offer teacher education  
8 programs, masters degree programs in education, or masters degree programs in school  
9 administration shall provide performance reports to the State Board of Education. The  
10 performance reports shall follow a common format, shall be submitted according to a  
11 plan developed by the State Board, and shall include the information required under the  
12 plan developed by the State Board.

13 ...

14 (c) It is the policy of the State of North Carolina to encourage lateral entry into  
15 the profession of teaching by skilled individuals from the private sector. To this end,  
16 before the 1985-86 school year begins, the State Board of Education shall develop  
17 criteria and procedures to accomplish the employment of such individuals as classroom  
18 teachers. Beginning with the 2006-2007 school year, such criteria and procedures shall  
19 include preservice training in (i) the identification and education of children with  
20 disabilities and (ii) positive management of student behavior, effective communication  
21 for defusing and deescalating disruptive or dangerous behavior, and safe and  
22 appropriate use of seclusion and restraint. Regardless of credentials or competence, no  
23 one shall begin teaching above the middle level of differentiation. Skilled individuals  
24 who choose to enter the profession of teaching laterally may be granted a provisional  
25 teaching certificate for no more than five years and shall be required to obtain  
26 certification before contracting for a sixth year of service with any local administrative  
27 unit in this State.

28 It is further the policy of the State of North Carolina to ensure that local boards of  
29 education can provide the strongest possible leadership for schools based upon the  
30 identified and changing needs of individual schools. To this end, before the 1994-95  
31 school year begins, the State Board of Education shall carefully consider a lateral entry  
32 program for school administrators to ensure that local boards of education will have  
33 sufficient flexibility to attract able candidates.

34 ...."

35 **SECTION 3.** G.S. 115C-105.47(b)(9) reads as rewritten:

36 "(b) Each plan shall include each of the following components:

37 ...

38 (9) Professional development clearly matched to the goals and objectives  
39 of the plan. This professional development shall include a component  
40 to train appropriate school personnel in the management of disruptive  
41 or dangerous student behavior. Appropriate school personnel may  
42 include, but is not limited to, teachers, teacher assistants, school  
43 administrators, bus drivers, school resource officers, school  
44 psychologists, and school counselors. The training shall include

1 instruction in positive management of student behavior, effective  
2 communication for defusing and deescalating disruptive or dangerous  
3 behavior, and safe and appropriate use of seclusion and restraint. The  
4 appropriate personnel with priority for the training shall include those  
5 staff members who are most likely to be called upon to prevent or  
6 address disruptive or dangerous student behavior. Each local board of  
7 education shall include in this component of its safe school plan  
8 procedures to evaluate the effectiveness of this training in preventing  
9 or addressing disruptive or dangerous student behavior. Local boards  
10 of education are encouraged to use available sources of discretionary  
11 revenue to implement the plan to train personnel in the management of  
12 disruptive or dangerous student behavior. Local boards may only be  
13 required to implement the behavior management training component  
14 of the plan to the extent that funds have been appropriated for this  
15 purpose by the General Assembly or by local units of government. By  
16 January 1, 2006, local boards of education shall amend their safe  
17 school plans to include this training component."

18 **SECTION 4.** G.S. 115C-47 is amended by adding a new subdivision to read:

19 **"§ 115C-47. Powers and duties generally.**

20 In addition to the powers and duties designated in G.S. 115C-36, local boards of  
21 education shall have the power or duty:

22 ...

23 (45) To report certain incidents of seclusion and restraint. – Local boards of  
24 education shall maintain a record of incidents reported under  
25 G.S. 115C-391.1(j)(4) and shall provide this information annually to  
26 the State Board of Education."

27 **SECTION 5.** G.S. 143-138(b) reads as rewritten:

28 "(b) Contents of the Code. – The North Carolina State Building Code, as adopted  
29 by the Building Code Council, may include reasonable and suitable classifications of  
30 buildings and structures, both as to use and occupancy; general building restrictions as  
31 to location, height, and floor areas; rules for the lighting and ventilation of buildings and  
32 structures; requirements concerning means of egress from buildings and structures;  
33 requirements concerning means of ingress in buildings and structures; rules governing  
34 construction and precautions to be taken during construction; rules as to permissible  
35 materials, loads, and stresses; rules governing chimneys, heating appliances, elevators,  
36 and other facilities connected with the buildings and structures; rules governing  
37 plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering  
38 of temperature, and electrical systems; and such other reasonable rules pertaining to the  
39 construction of buildings and structures and the installation of particular facilities  
40 therein as may be found reasonably necessary for the protection of the occupants of the  
41 building or structure, its neighbors, and members of the public at large.

42 In addition, the Code may regulate activities and conditions in buildings, structures,  
43 and premises that pose dangers of fire, explosion, or related hazards. Such fire  
44 prevention code provisions shall be considered the minimum standards necessary to



1 preserve and protect public health and safety, subject to approval by the Council of  
2 more stringent provisions proposed by a municipality or county as provided in  
3 G.S. 143-138(e). These provisions may include regulations requiring the installation of  
4 either battery-operated or electrical smoke detectors in every dwelling unit used as  
5 rental property, regardless of the date of construction of the rental property. For  
6 dwelling units used as rental property constructed prior to 1975, smoke detectors shall  
7 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing  
8 laboratory approval, and shall be installed in accordance with either the standard of the  
9 National Fire Protection Association or the minimum protection designated in the  
10 manufacturer's instructions, which the property owner shall retain or provide as proof of  
11 compliance.

12 The Code may contain provisions regulating every type of building or structure,  
13 wherever it might be situated in the State.

14 Provided further, that nothing in this Article shall be construed to make any building  
15 rules applicable to farm buildings located outside the building-rules jurisdiction of any  
16 municipality.

17 Provided further, that no building permit shall be required under the Code or any  
18 local variance thereof approved under subsection (e) for any construction, installation,  
19 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any  
20 single family residence or farm building unless the work involves: the addition, repair,  
21 or replacement of load bearing structures; the addition (excluding replacement of same  
22 size and capacity) or change in the design of plumbing; the addition, replacement or  
23 change in the design of heating, air conditioning, or electrical wiring, devices,  
24 appliances, or equipment, the use of materials not permitted by the North Carolina  
25 Uniform Residential Building Code; or the addition (excluding replacement of like  
26 grade of fire resistance) of roofing.

27 Provided further, that no building permit shall be required under such Code from any  
28 State agency for the construction of any building or structure, the total cost of which is  
29 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

30 For the information of users thereof, the Code shall include as appendices

- 31 (1) Any rules governing boilers adopted by the Board of Boiler and  
32 Pressure Vessels Rules,
- 33 (2) Any rules relating to the safe operation of elevators adopted by the  
34 Commissioner of Labor, and
- 35 (3) Any rules relating to sanitation adopted by the Commission for Health  
36 Services which the Building Code Council believes pertinent.

37 In addition, the Code may include references to such other rules of special types,  
38 such as those of the Medical Care Commission and the Department of Public Instruction  
39 as may be useful to persons using the Code. No rule issued by any agency other than the  
40 Building Code Council shall be construed as a part of the Code, nor supersede that  
41 Code, it being intended that they be presented with the Code for information only.

42 Nothing in this Article shall extend to or be construed as being applicable to the  
43 regulation of the design, construction, location, installation, or operation of (1)  
44 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases

1 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied  
2 petroleum gas from the outlet of the first stage pressure regulator to and including each  
3 liquefied petroleum gas utilization device within a building or structure covered by the  
4 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined  
5 in G.S. 62-3, or an electric or telephone membership corporation, including without  
6 limitation poles, towers, and other structures supporting electric or communication  
7 lines.

8 In addition, the Code may contain rules concerning minimum efficiency  
9 requirements for replacement water heaters, which shall consider reasonable availability  
10 from manufacturers to meet installation space requirements.

11 No State, county, or local building code or regulation shall prohibit the use of special  
12 locking mechanisms for seclusion rooms in the public schools approved pursuant to  
13 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be  
14 constructed so that it will engage only when a key, knob, handle, button, or other similar  
15 device is being held in position by a person, and provide further that, if the mechanism  
16 is electrically or electronically controlled, it automatically disengages when the  
17 building's fire alarm is activated. Upon release of the locking mechanism by a  
18 supervising adult, the door must be able to be opened readily."

19 **SECTION 6.** Except as otherwise provided, this act becomes effective July  
20 1, 2006.