

CHAPTER 324
SB 396 – FINAL VERSION

03/27/14 1064s
14May2014... 1704h

2014 SESSION

14-2782
05/04

SENATE BILL **396**

AN ACT relative to child restraint practices.

SPONSORS: Sen. Stiles, Dist 24; Sen. Odell, Dist 8; Rep. Ladd, Graf 4

COMMITTEE: Health, Education and Human Services

AMENDED ANALYSIS

This bill revises the chapter limiting the use of child restraint practices in facilities and schools and further regulates the use of seclusion and restraint in such programs.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to child restraint practices.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 324:1 Definition of Child. Amend RSA 126-U:1, I to read as follows:

2 I. “Child” means a person who has not reached the age of 18 years and who is not under
3 adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to
4 having reached the age of 17 years or due to the completion of proceedings for transfer to the adult
5 criminal justice system under RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26. **“Child” also**
6 ***includes a person in actual attendance at a school who is less than 22 years of age and who***
7 ***has not received a high school diploma.***

8 324:2 Definition of Restraint. Amend RSA 126-U:1, IV to read as follows:

9 IV. “Restraint” means bodily physical restriction, mechanical devices, or any device that
10 [~~unreasonably limits~~] ***immobilizes a person or restricts the*** freedom of movement ***of the torso,***
11 ***head, arms, or legs.*** It includes mechanical restraint, physical restraint, and medication restraint
12 used to control behavior in an emergency or any involuntary medication. ***It is limited to actions***
13 ***taken by persons who are school or facility staff members, contractors, or otherwise under***
14 ***the control or direction of a school or facility.***

15 (a) “Medication restraint” occurs when a child is given medication involuntarily for the
16 purpose of immediate control of the child’s behavior.

17 (b) “Mechanical restraint” occurs when a physical device or devices are used to restrict
18 the movement of a child or the movement or normal function of a portion of his or her body.

19 (c) “Physical restraint” occurs when a manual method is used to restrict a child’s
20 freedom of movement or normal access to his or her body.

21 (d) Restraint shall not include:

22 (1) [~~Holding a child to calm or comfort the child, holding a child’s hand or arm to~~
23 ~~escort the child safely from one area to another, or intervening in an ongoing assault or fight]~~ ***Brief***
24 ***touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of***
25 ***freedom of movement of the child does not occur.***

26 (2) [~~Brief periods of physical restriction by person to person contact, without the aid~~
27 ~~of medication or mechanical restraints, accomplished with minimal force and designed either to~~
28 ~~prevent a child from completing an act that potentially would result in physical harm to himself or~~

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1 ~~herself or to another person, or to remove a disruptive child who is unwilling to leave an area~~
2 ~~voluntarily.]~~ ***The temporary holding of the hand, wrist, arm, shoulder, or back for the***
3 ***purpose of inducing a child to stand, if necessary, and then walk to a safe location, so long***
4 ***as the child is in an upright position and moving toward a safe location.***

5 (3) Physical devices, such as orthopedically prescribed appliances, surgical dressings
6 and bandages, and supportive body bands, or other physical holding when necessary for routine
7 physical examinations and tests or for orthopedic, surgical, and other similar medical treatment
8 purposes, or when used to provide support for the achievement of functional body position or proper
9 balance or to protect a person from falling out of bed, or to permit a child to participate in activities
10 without the risk of physical harm.

11 (4) The use of seat belts, safety belts, or similar passenger restraints during the
12 transportation of a child in a motor vehicle.

13 (5) The use of force by a person to defend himself or herself or a third person from
14 what the actor reasonably believes to be the imminent use of unlawful force by a child, when the
15 actor uses a degree of such force which he or she reasonably believes to be necessary for such
16 purpose ***and the actor does not immobilize a child or restrict the freedom of movement of the***
17 ***torso, head, arms, or legs of any child.***

18 324:3 New Paragraph; Definition of Seclusion. Amend RSA 126-U:1 by inserting after
19 paragraph V the following new paragraph:

20 V-a. "Seclusion" means the involuntary placement of a child alone in a place where no other
21 person is present and from which the particular child is unable to exit, either due to physical
22 manipulation by a person, a lock, or other mechanical device or barrier. The term shall not include
23 the voluntary separation of a child from a stressful environment for the purpose of allowing the child
24 to regain self-control, when such separation is to an area which a child is able to leave. Seclusion
25 does not include circumstances in which there is no physical barrier between the child and any other
26 person or the child is physically able to leave the place. A circumstance may be considered seclusion
27 even if a window or other device for visual observation is present, if the other elements of this
28 definition are satisfied.

29 324:4 Written Policies. Amend RSA 126-U:2 and 126-U:3 to read as follows:

30 126-U:2 Written Policies Required. Each facility and school shall have a written policy and
31 procedures for managing the behavior of children. Such policy shall describe how and under what
32 circumstances ***seclusion or*** restraint is used and shall be provided to the parent, guardian, or legal
33 representative of each child at such facility or school.

34 126-U:3 Post Admission Planning in Facilities.

35 I. As soon as possible after admission to a facility, the treatment staff of the facility, the
36 child, and the child's parent or guardian shall develop a plan to:

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- 1 (a) Identify the child’s history of physical, sexual, or emotional trauma, if any.
2 (b) Identify effective responses to potential behavior or situations which will avoid the
3 use of **seclusion and** restraint.
4 (c) Identify health conditions which may make the child vulnerable to injury while at the
5 facility.

6 II. The plan described in this section is not required if the child is expected to be at the
7 facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is
8 not informed of any history of the use of **seclusion or** restraint of the child.

9 324:5 Limitation on the Use of Restraint. Amend RSA 126-U:5 to read as follows:

10 126-U:5 Limitation of the Use of Restraint to Emergencies Only.

11 I. Restraint shall only be used in a school or facility to ensure the immediate physical safety
12 of persons when there is a substantial and imminent risk of serious bodily harm to the child or
13 others. ***The determination of whether the use of restraint is justified under this section may***
14 ***be made with consideration of all relevant circumstances, including whether continued***
15 ***acts of violence by a child to inflict damage to property will create a substantial risk of***
16 ***serious bodily harm to the child or others. Restraint*** [H] shall be used only by trained
17 personnel using extreme caution when all other interventions have failed or have been deemed
18 inappropriate.

19 II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a
20 child.

21 324:6 New Sections; Limitation on the Use of Seclusion. Amend RSA 126-U by inserting after
22 section 5 the following new sections:

23 126-U:5-a Limitation on the Use of Seclusion.

24 I. Seclusion may not be used as a form of punishment or discipline. It may only be used
25 when a child’s behavior poses a substantial and imminent risk of physical harm to the child or to
26 others, and may only continue until that danger has dissipated.

27 II. Seclusion shall only be used by trained personnel after other approaches to the control of
28 behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to
29 succeed based on the history of actual attempts to control the behavior of a particular child.

30 III. Seclusion shall not be used in a manner that that unnecessarily subjects the child to the
31 risk of ridicule, humiliation, or emotional or physical harm.

32 126-U:5-b Conditions of Seclusion.

33 I. When permitted by this chapter, seclusion may only be imposed in rooms which:

34 (a) Are of a size which is appropriate for the chronological and developmental age, size,
35 and behavior of the children placed in them.

36 (b) Have a ceiling height that is comparable to the ceiling height of the other rooms in

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1 the building in which they are located.

2 (c) Are equipped with heating, cooling, ventilation, and lighting systems that are
3 comparable to the systems that are in use in the other rooms of the building in which they are
4 located.

5 (d) Are free of any object that poses a danger to the children being placed in the rooms.

6 (e) Have doors which are either not equipped with locks, or are equipped with devices
7 that automatically disengage the lock in case of an emergency. For the purposes of this
8 subparagraph, an “emergency” includes, but is not limited to:

9 (1) The need to provide direct and immediate medical attention to a child;

10 (2) Fire;

11 (3) The need to remove a child to a safe location during a building lockdown; or

12 (4) Other critical situations that may require immediate removal of a child from
13 seclusion to a safe location.

14 (f) Are equipped with unbreakable observation windows or equivalent devices to allow
15 the safe, direct, and uninterrupted observation of every part of the room.

16 II. Each use of seclusion shall be directly and continuously visually and auditorially
17 monitored by a person trained in the safe use of seclusion.

18 126-U:5-c Room Confinement at the Youth Development Center. Notwithstanding any other
19 provision of this chapter, the youth development center may confine children in their rooms when
20 such confinement is part of a routine practice applicable to substantial portions of the population at
21 the center and not imposed as a consequence in response to the behavior of one or more children.
22 Such confinement is not subject to the notice and reporting requirements of RSA 126-U:7.

23 324:7 New Section; Notice and Record-Keeping Requirements for Foster Family Homes. Amend
24 RSA 126-U by inserting after section 7 the following new section:

25 126-U:7-a Notice and Record-Keeping Requirements for Foster Family Homes. Notwithstanding
26 RSA 126-U:7, foster family homes, as defined in RSA 170-E:25, shall keep records and provide notice
27 of incidents involving seclusion or restraint, according to rules adopted pursuant to RSA 541-A by
28 the commissioner of the department of human services. The rules shall provide for timely notice to
29 parents or guardians, which may be provided through the department. In cases involving serious
30 injury or death to a child subject to seclusion or restraint in a foster home, the rules shall provide for
31 timely notification to the commissioner of the department of health and human services, the attorney
32 general, and the state’s federally-designated protection and advocacy agency for individuals with
33 disabilities.

34 324:8 Notice and Record-Keeping Requirements; Investigations and Review. Amend RSA 126-
35 U:7 through 126-U:10 to read as follows:

36 126-U:7 Notice and Record-Keeping Requirements.

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1 I. Unless prohibited by court order, the facility or school shall, [~~within 24 hours,~~] make
2 reasonable efforts to verbally notify the child’s parent or guardian and guardian ad litem whenever
3 ***seclusion or*** restraint has been used on the child. ***Such notification shall be made as soon as***
4 ***practicable and in no event later than the time of the return of the child to the parent or***
5 ***guardian or the end of the business day, whichever is earlier. Notification shall be made***
6 ***in a manner calculated to give the parent or guardian actual notice of the incident at the***
7 ***earliest practicable time.***

8 II. A facility employee or school employee who uses ***seclusion or*** restraint, or if the facility
9 employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business
10 days after the occurrence, submit a written notification containing the following information to the
11 director or his or her designee:

12 (a) The date, time, and duration of the use of ***seclusion or*** restraint.

13 (b) A description of the actions of the child before, during, and after the occurrence.

14 (c) A description of any other relevant events preceding the use of ***seclusion or***
15 restraint, including the justification for initiating the use of restraint.

16 (d) The names of the persons involved in the occurrence.

17 (e) A description of the actions of the facility or school employees involved before, during,
18 and after the occurrence.

19 (f) A description of any interventions used prior to the use of the ***seclusion or*** restraint.

20 (g) A description of the ***seclusion or*** restraint used, including any hold used and the
21 reason the hold was necessary.

22 (h) A description of any injuries sustained by, and any medical care administered to, the
23 child, employees, or others before, during, or after the use of ***seclusion or*** restraint.

24 (i) A description of any property damage associated with the occurrence.

25 (j) A description of actions taken to address the emotional needs of the child during and
26 following the [~~restraint~~] incident.

27 (k) A description of future actions to be taken to control the child’s problem behaviors.

28 (l) The name and position of the employee completing the notification.

29 (m) The anticipated date of the final report.

30 III. Unless prohibited by court order, the director or his or her designee shall, within 2
31 business days of receipt of the notification required in paragraph II, send or transmit by first class
32 mail or electronic transmission to the child’s parent or guardian and the guardian ad litem the
33 information contained in the notification. Each notification prepared under this section shall be
34 retained by the school or facility for review in accordance with rules adopted under RSA 541-A by the
35 state board of education and the department of health and human services.

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1 ***IV. Whenever a facility or school employee has intentional physical contact with a***
2 ***child which is in response to a child’s aggression, misconduct, or disruptive behavior, a***
3 ***representative of the school or facility shall make reasonable efforts to promptly notify the***
4 ***child’s parent or guardian. Such notification shall be made no later than the time of the***
5 ***return of the child to the parent or guardian or the end of the business day, whichever is***
6 ***earlier. Notification shall be made in a manner calculated to give the parent or guardian***
7 ***actual notice of the incident at the earliest practicable time.***

8 ***V. In any case requiring notification under paragraph IV, the school or facility***
9 ***shall, within 5 business days of the occurrence, prepare a written description of the***
10 ***incident. Such description shall include at least the following information:***

11 ***(a) The date and time of the incident.***

12 ***(b) A brief description of the actions of the child before, during, and after the***
13 ***occurrence.***

14 ***(c) The names of the persons involved in the occurrence.***

15 ***(d) A brief description of the actions of the facility or school employees involved***
16 ***before, during, and after the occurrence.***

17 ***(e) A description of any injuries sustained by, and any medical care***
18 ***administered to, the child, employees, or others before, during, or after the incident.***

19 ***VI. The notification and record-keeping requirements of paragraphs IV and V shall***
20 ***not apply in the following circumstances:***

21 ***(a) When a child is escorted from an area by way of holding of the hand, wrist,***
22 ***arm, shoulder, or back to induce the child to walk to a safe location. However, if the child***
23 ***is actively combative, assaultive, or self-injurious while being escorted, the requirements of***
24 ***paragraphs IV and V shall apply.***

25 ***(b) When actions are taken such as separating children from each other,***
26 ***inducing a child to stand, or otherwise physically preparing a child to be escorted.***

27 ***(c) When the contact with the child is incidental or minor, such as for the***
28 ***purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible***
29 ***release from a grasp, or other significant and intentional physical contact with a***
30 ***disruptive or assaultive child shall be subject to the requirements.***

31 ***(d) When an incident is subject to the requirements of paragraphs I-III.***

32 126-U:8 Review of Restraint Records by Department of Education.

33 ***I. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to:***

34 ***(a) [~~Establishing a process for~~ Periodic, regular review by the department of***
35 ***education of records [~~of restraint usage kept by schools and~~ maintained by schools relative to***
36 ***the use of seclusion and restraint.***

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1 (b) ~~[Providing a process for complaints and investigations of reports]~~ *A process for the*
2 *department of education's receipt of complaints and its conduct of investigations of*
3 *improper use of **seclusion and** restraint in schools. The process shall provide for:*

4 (1) *Investigation of complaints regarding any violation of this chapter,*
5 *regardless of whether injury results.*

6 (2) *Investigation by persons not affiliated with the school district which is*
7 *the subject of the complaint.*

8 (3) *Resolution of complaints and completion of investigations within 30*
9 *days, with provision for limited extensions for good cause.*

10 (4) *Protection of children before and after completion of the investigation.*

11 (5) *Appropriate remedial measures to address physical and other injuries,*
12 *protect against retaliation, and reduce the incidence of violations of this chapter.*

13 **II.** Beginning November 1, 2010, and each November 1 thereafter, the state board of
14 education shall provide an annual report to the ~~[chairperson of the children and family law~~
15 ~~committee of the]~~ *chairpersons of the education committees of the senate and* house of
16 representatives regarding the use of **seclusion and** restraint in schools. The annual report shall be
17 prepared from the periodic, regular review of such records, and shall include the number and
18 location of reported incidents and the status of any outstanding investigations.

19 126-U:9 Review of Restraint Records by Department of Health and Human Services.

20 **I.** The commissioner of the department of health and human services shall adopt rules,
21 pursuant to RSA 541-A, *relative to:*

22 (a) ~~[Establishing a process for]~~ Periodic, regular review ~~[of]~~ *by the department of*
23 *health and human services of* records ~~[of restraint usage kept]~~ *maintained* by facilities
24 *regarding the use of seclusion and restraint.* ~~[and providing a process for complaints and~~
25 ~~investigations of reports]~~

26 (b) *A process for the department's receipt of complaints and its conduct of*
27 *investigations of reports of improper use of **seclusion and** restraint in facilities, which may be*
28 *through the department of health and human services, office of the ombudsman, or otherwise. The*
29 *process shall provide for:*

30 (1) *Investigation of complaints regarding any violation of this chapter,*
31 *regardless of whether injury results.*

32 (2) *Investigation by persons not affiliated with the facility which is the*
33 *subject of the complaint.*

34 (3) *Resolution of complaints and completion of investigations within 30*
35 *days, with provision for limited extensions for good cause.*

36 (4) *Protection of children before and after completion of the investigation.*

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1 (5) *Appropriate remedial measures to address physical and other injuries,*
2 *protect against retaliation, and reduce the incidence of violations of this chapter.*

3 II. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the
4 department of health and human services shall provide an annual report to the [~~chairperson of the~~
5 ~~children and family law committee of the house of representatives~~] *committees of the house of*
6 *representatives and the senate with jurisdiction over health and human services and over*
7 *children and family law*, regarding the use of *seclusion and* restraint in facilities. The annual report
8 shall be based on the periodic, regular review of such records and shall include the number and location
9 of reported incidents and the status of any outstanding investigations.

10 126-U:10 Injury or Death During Incidents of Restraint *or Seclusion*.

11 I. In cases involving serious injury or death to a child subject to restraint *or seclusion* in a
12 facility, the facility shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the
13 department of health and human services, the attorney general, and the state's federally-designated
14 protection and advocacy agency for individuals with disabilities. Such notice shall include the
15 notification required in RSA 126-U:7, II. *The department of health and human services shall*
16 *annually notify facilities of their responsibilities under this section and provide contact*
17 *information for the persons to be notified.*

18 II. In cases involving serious injury or death to a child subject to restraint *or seclusion* in a
19 school, the school shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the
20 department of education, the attorney general, and the state's federally-designated protection and
21 advocacy agency for individuals with disabilities. Such notice shall include the written notification
22 required in RSA 126-U:7, II. *The department of education shall annually notify schools of*
23 *their responsibilities under this section and provide contact information for the persons to*
24 *be notified.*

25 324:9 New Section; School Review of Restraint and Seclusion Incidents. Amend RSA 126-U by
26 inserting after section 13 the following new section:

27 126-U:14 School Review Following the Use of Restraint or Seclusion. Upon information that
28 restraint or seclusion has been used for the first time upon a child with a disability as defined in
29 RSA 186-C:2, I or a child who is receiving services under Section 504 of the Rehabilitation Act of
30 1973, 29 U.S.C. section 701, and its implementing regulations, the school shall review the individual
31 educational program and/or Section 504 plan and make such adjustments as are indicated to
32 eliminate or reduce the future use of restraint or seclusion. A parent or guardian of a child with a
33 disability may request such a review at any time following an instance of restraint or seclusion and
34 such request shall be granted if there have been multiple instances of restraint or seclusion since the
35 last review.

36 324:10 Rulemaking. The state board of education and department of health and human services

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1 shall commence rulemaking under RSA 541-A, as required by RSA 126-U:7-a, RSA 126-U:8, and
2 RSA 126-U:9, no later than 60 days after the effective date of this act. Such rulemaking shall
3 include the modification of existing rules to achieve compliance with this act.

4 324:11 Effective Date. This act shall take effect 60 days after its passage.

5

6 Approved: August 1, 2014

7 Effective Date: September 30, 2014