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HOUSE BILL 1032*
Committee Substitute Favorable 4/18/05
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Short Title: Placing Students in Seclusion.

(Public)

Sponsors:

Referred to:

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. This act shall be known as the "Deborah Greenblatt Act".

SECTION 2. 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) The following definitions apply in this section:

- (1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

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

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

- 1 e. As reasonably needed to ensure the safety of any student,
2 school employee, volunteer, or other person present.
- 3 (2) Except as set forth in subdivision (1) of this subsection, mechanical
4 restraint, including the tying, taping, or strapping down of a student,
5 shall not be considered a reasonable use of force, and its use is
6 prohibited.
- 7 (3) Nothing in this subsection shall be construed to prevent the use of
8 mechanical restraint devices, such as handcuffs by law enforcement
9 officers in the lawful exercise of their law enforcement duties.
- 10 (e) Seclusion:
- 11 (1) Seclusion of students by school personnel may be used in the
12 following circumstances:
- 13 a. As reasonably needed to respond to a person in control of a
14 weapon or other dangerous object.
- 15 b. As reasonably needed to maintain order or prevent or break up a
16 fight.
- 17 c. As reasonably needed for self-defense.
- 18 d. As reasonably needed when a student's behavior poses a threat
19 of imminent physical harm to self or others or imminent
20 substantial destruction of school or another person's property.
- 21 e. When used as specified in the student's IEP, Section 504 plan,
22 or behavior intervention plan; and
- 23 1. The student is monitored while in seclusion by an adult
24 in close proximity who is able to see and hear the student
25 at all times.
- 26 2. The student is released from seclusion upon cessation of
27 the behaviors that led to the seclusion or as otherwise
28 specified in the student's IEP or Section 504 plan.
- 29 3. The space in which the student is confined has been
30 approved for such use by the local education agency.
- 31 4. The space is appropriately lighted.
- 32 5. The space is appropriately ventilated and heated or
33 cooled.
- 34 6. The space is free of objects that unreasonably expose the
35 student or others to harm.
- 36 (2) Except as set forth in subdivision (1) of this subsection, the use of
37 seclusion is not considered reasonable force, and its use is not
38 permitted.
- 39 (3) Seclusion shall not be considered a reasonable use of force when used
40 solely as a disciplinary consequence.
- 41 (4) Nothing in this subsection shall be construed to prevent the use of
42 seclusion by law enforcement officers in the lawful exercise of their
43 law enforcement duties.

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

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

5 (2) The duration of the isolation is reasonable in light of the purpose of the
6 isolation.

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

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

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

12 (h) Aversive Procedures. – The use of aversive procedures as defined in this
13 section is prohibited in public schools.

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

17 (j) Notice, Reporting, and Documentation.

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

22 (2) Notice of specified incidents:

23 a. School personnel shall promptly notify the principal or
24 principal's designee of:

25 1. Any use of aversive procedures.

26 2. Any prohibited use of mechanical restraint.

27 3. Any use of physical restraint resulting in observable
28 physical injury to a student.

29 4. Any prohibited use of seclusion or seclusion that exceeds
30 10 minutes or the amount of time specified on a student's
31 behavior intervention plan.

32 b. When a principal or principal's designee has personal
33 knowledge or actual notice of any of the events described in this
34 subdivision, the principal or principal's designee shall promptly
35 notify the student's parent or guardian and will provide the
36 name of a school employee the parent or guardian can contact
37 regarding the incident.

38 (3) As used in subdivision (2) of this subsection, "promptly notify" means
39 by the end of the workday during which the incident occurred when
40 reasonably possible, but in no event later than the end of following
41 workday.

42 (4) The parent or guardian of the student shall be provided with a written
43 incident report for any incident reported under this section within a

1 reasonable period of time, but in no event later than 30 days after the
 2 incident. The written incident report shall include:

- 3 a. The date, time of day, location, duration, and description of the
 4 incident and interventions.
- 5 b. The events or events that led up to the incident.
- 6 c. The nature and extent of any injury to the student.
- 7 d. The name of a school employee the parent or guardian can
 8 contact regarding the incident.

9 (5) No local board of education or employee of a local board of education
 10 shall discharge, threaten, or otherwise retaliate against another
 11 employee of the board regarding that employee's compensation, terms,
 12 conditions, location, or privileges of employment because the
 13 employee makes a report alleging a prohibited use of physical
 14 restraint, mechanical restraint, aversive procedure, or seclusion, unless
 15 the employee knew or should have known that the report was false.

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

19 **SECTION 3.** G.S. 115C-296 reads as rewritten:

20 **"§ 115C-296. Board sets certification requirements.**

21 ...

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

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

41 The State Board of Education, in consultation with the Board of Governors of The
 42 University of North Carolina, shall evaluate and develop enhanced requirements for
 43 continuing certification. The new requirements shall reflect more rigorous standards for
 44 continuing certification and to the extent possible shall be aligned with quality

1 professional development programs that reflect State priorities for improving student
2 achievement.

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

9 The standards for approval of institutions of teacher education shall require that
10 teacher education programs for all students who do not major in special education
11 include demonstrated competencies in (i) the identification and education of children
12 with learning disabilities, disabilities and (ii) positive management of student behavior
13 and effective communication techniques for defusing and deescalating disruptive or
14 dangerous behavior. The State Board of Education shall incorporate the criteria
15 developed in accordance with G.S. 116-74.21 for assessing proposals under the School
16 Administrator Training Program into its school administrator program approval
17 standards.

18 All North Carolina institutions of higher education that offer teacher education
19 programs, masters degree programs in education, or masters degree programs in school
20 administration shall provide performance reports to the State Board of Education. The
21 performance reports shall follow a common format, shall be submitted according to a
22 plan developed by the State Board, and shall include the information required under the
23 plan developed by the State Board.

24 ...

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

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

1"

2 **SECTION 4.** G.S. 115C-105.47(b)(9) reads as rewritten:

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

4 ...

5 (9) Professional development clearly matched to the goals and objectives
6 of the plan. This professional development shall include a component
7 to train appropriate school personnel in the management of disruptive
8 or dangerous student behavior. Appropriate school personnel may
9 include, but is not limited to, teachers, teacher assistants, school
10 administrators, bus drivers, school resource officers, school
11 psychologists, and school counselors. The training shall include
12 instruction in positive management of student behavior, effective
13 communication for defusing and deescalating disruptive or dangerous
14 behavior, and safe and appropriate use of seclusion and restraint. The
15 appropriate personnel with priority for the training shall include those
16 staff members who are most likely to be called upon to prevent or
17 address disruptive or dangerous student behavior. Each local board of
18 education shall include in this component of its safe school plan
19 procedures to evaluate the effectiveness of this training in preventing
20 or addressing disruptive or dangerous student behavior. Local boards
21 of education are encouraged to use available sources of discretionary
22 revenue to implement the plan to train personnel in the management of
23 disruptive or dangerous student behavior. Local boards may only be
24 required to implement the behavior management training component
25 of the plan to the extent that funds have been appropriated for this
26 purpose by the General Assembly or by local units of government. By
27 January 1, 2006, local boards of education shall amend their safe
28 school plans to include this training component."

29 **SECTION 5.** G.S. 115C-47 is amended by adding a new subdivision to read:

30 "§ 115C-47. Powers and duties generally.

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

33 ...

34 (45) To Report Certain Incidents of Seclusion and Restraint. – Local boards
35 of education shall maintain a record of incidents reported under
36 G.S. 115C-391.1(j)(4) and shall provide this information annually to
37 the State Board of Education."

38 **SECTION 6.** G.S. 143-138(b) reads as rewritten:

39 "(b) Contents of the Code. – The North Carolina State Building Code, as adopted
40 by the Building Code Council, may include reasonable and suitable classifications of
41 buildings and structures, both as to use and occupancy; general building restrictions as
42 to location, height, and floor areas; rules for the lighting and ventilation of buildings and
43 structures; requirements concerning means of egress from buildings and structures;
44 requirements concerning means of ingress in buildings and structures; rules governing

1 construction and precautions to be taken during construction; rules as to permissible
2 materials, loads, and stresses; rules governing chimneys, heating appliances, elevators,
3 and other facilities connected with the buildings and structures; rules governing
4 plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering
5 of temperature, and electrical systems; and such other reasonable rules pertaining to the
6 construction of buildings and structures and the installation of particular facilities
7 therein as may be found reasonably necessary for the protection of the occupants of the
8 building or structure, its neighbors, and members of the public at large.

9 In addition, the Code may regulate activities and conditions in buildings, structures,
10 and premises that pose dangers of fire, explosion, or related hazards. Such fire
11 prevention code provisions shall be considered the minimum standards necessary to
12 preserve and protect public health and safety, subject to approval by the Council of
13 more stringent provisions proposed by a municipality or county as provided in
14 G.S. 143-138(e). These provisions may include regulations requiring the installation of
15 either battery-operated or electrical smoke detectors in every dwelling unit used as
16 rental property, regardless of the date of construction of the rental property. For
17 dwelling units used as rental property constructed prior to 1975, smoke detectors shall
18 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
19 laboratory approval, and shall be installed in accordance with either the standard of the
20 National Fire Protection Association or the minimum protection designated in the
21 manufacturer's instructions, which the property owner shall retain or provide as proof of
22 compliance.

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

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

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

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

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

- 42 (1) Any rules governing boilers adopted by the Board of Boiler and
43 Pressure Vessels Rules,

- 1 (2) Any rules relating to the safe operation of elevators adopted by the
2 Commissioner of Labor, and
3 (3) Any rules relating to sanitation adopted by the Commission for Health
4 Services which the Building Code Council believes pertinent.

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

10 Nothing in this Article shall extend to or be construed as being applicable to the
11 regulation of the design, construction, location, installation, or operation of (1)
12 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
13 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
14 petroleum gas from the outlet of the first stage pressure regulator to and including each
15 liquefied petroleum gas utilization device within a building or structure covered by the
16 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
17 in G.S. 62-3, or an electric or telephone membership corporation, including without
18 limitation poles, towers, and other structures supporting electric or communication
19 lines.

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

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

31 **SECTION 7.** Except as otherwise provided, this act becomes effective July
32 1, 2006.