



Q&A

The Use of Restraint Chairs on Persons with Disabilities

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Q. One of our state mental health facilities has recently begun to use a chair as a form of restraint. Our clients are complaining. Do we have any grounds to advocate against the use of this device?

A. Yes. All restraints are dangerous; restraint chairs are particularly so.

I. Introduction

“It’s like a padded cell on wheels”— says a manufacturer’s advertisement for its restraint chair.¹ Although vendors boast about their utility, restraint chairs, particularly when used on people who have disabilities and youth, are extremely dangerous and can result in serious injury or death. In the United States, restraint chairs are most frequently used in correctional facilities. There are, however, psychiatric facilities, developmental disability facilities, juvenile justice facilities, and schools that also use restraint chairs to manage behavior. This Q & A addresses how and why restraint chairs are dangerous for both youth and adults with disabilities. It will also discuss the legal aspect of the use of these devices in psychiatric facilities, jails and prisons, juvenile justice facilities and schools.

¹ See <http://www.restraintchair.com/>. While touted by the manufacturer, the restraint chair has become notorious because of its dangerousness and has been referred to as the “Devil’s Chair” or “Torture Chair.” See Radley Balko, *Death in the Devil’s Chair: Florida Man’s Pepper Spray Death Raises Questions About Jail Abuse*, The Huffington Post, Jan. 11, 2012, http://www.huffingtonpost.com/2012/01/11/jail-abuse-nick-christie-pepper-spray-florida_n_1192412.html. George Annas has called the chairs the “functional equivalent of strait jackets.” George J. Annas, *The Legacy of the Nuremberg Doctors’ Trial to American Bioethics and Human Rights*, 10 Minn. J.L. Sci. & Tech. 19, 36 (2009).

II. Restraint Chairs Are Dangerous

Individuals in restraint chairs are at risk of injury and, in some cases, death.² Common causes of death and injury from restraint, including restraint chairs, include: strangulation, asphyxiation, cardiac arrest, broken bones, trauma and concomitant exacerbation of already existing psychiatric conditions, among other causes.³ The risk of harm is exacerbated when a person spends an extended time in a restraint chair.⁴ In spite of this, individuals, particularly in correctional settings, are kept in restraint chairs for long periods of time, in some cases even for days.⁵

The risk of harm is also heightened when restraints are used on children.⁶ Studies have found that children are more likely to suffer from restraint-related asphyxiation, strangulation, cardiac arrest and aspiration in connection with the use of fixed restraints and that children are at higher risk of overall injury and death.⁷

² Although the literature is mostly in the context of corrections and detention facilities, the risks of injury and death in using the restraint chair are the same and therefore should not be discounted because of the context in which they are used. See Amnesty International, *United States of America: The restraint chair. How many more deaths?* (Feb. 2002), <http://www.amnesty.org/en/library/asset/AMR51/031/2002/en/2fb3905f-d890-11dd-ad8c-f3d4445c118e/amr510312002en.html>; see also Sue Burrell, *Moving Away from Hardware: The JDAI Standards on Fixed Restraint* (prepared for the Annie E. Casey Foundation Juvenile Detention Alternative Initiative, Feb. 2009), <http://www.ylc.org/pdfs/MovingAwayFromHardware-Final.pdf>; William P. Angrick, II, *Investigation of Restraint Device Use in Iowa's County Jails* (released Feb. 2009), https://www.legis.iowa.gov/DOCS/CAO/Invstgtv_Reports/2009/CIWPA001.PDF (prepared by the Iowa Citizens' Aide/Ombudsman).

³ See Angrick, *supra* note 2, at 50-52; see also Burrell, *supra* note 2; Amnesty International, *supra* note 2.

⁴ See Angrick, *supra* note 2, at 45-48, Amnesty International, *supra* note 2, at 6; see also E.R.C. Inc., chair diagram, <http://www.restraintchair.com/diagram.htm> (stating that no one should be left in the restraint chair for more than two hours).

⁵ *Blakeney v. Rusk Co. Sheriff*, 89 Fed. Appx. 897 (5th Cir. 2004) (inmate's constitutional rights not violated when left in restraint chair for 20 hours).

⁶ Burrell, *supra* note 2, at 2; see Andrew Dey & Michael Dafferen, *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People*, Report for the Guardian of Children and Young People, South Australia (November 2009) (finding that "[r]estraint of children is a dangerous practice that can cause significant injury and even death to children and young people.").

⁷ Burrell, *supra* note 2, at 2; Louis J. Kraus, *Seclusion and Restraint Standards in Juvenile Corrections*, in *Recommendations For Juvenile Justice Reform 70* (American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, 2d Ed. Oct. 2005), <http://aacap.browsermedia.com/galleries/LegislativeAction/JJmonograph1005.pdf> (chair restraints have an "increased risk for positional asphyxiation"); Dey & Dafferen, *supra* note 6, at 11 (citing Davidson, et al., *Holding Safely: A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People*, Glasgow: Scottish Institute of Residential Child Care (2005) (stating that "seated holds" are cause for concern because of increased risk of "[h]yperflexion, where the individual is bent forward at the waist while seated, can severely restrict breathing").

Restraint chairs are also dangerous because they often require a key to lock and unlock them.⁸ This can impair the ability of staff to quickly release someone in the event of an emergency. Some states prohibit use in psychiatric facilities of any mechanical restraint devices that requires a key to lock and unlock the restraint.⁹

Because of the dangers associated with the use of such devices, their use has been discontinued in some psychiatric facilities.¹⁰ A survey of the Expert Consensus Panel on Psychiatric Emergencies regarding emergency psychiatric treatment found that the use of restraint chairs was not a favored intervention.¹¹ The dangers of the restraint chair have also been recognized by some correctional facilities, prompting their ban. In Arizona, for example, the Maricopa County Sheriff, decided to discontinue the use of the restraint chair at the county jail after several people died after being restrained in it.¹² Similarly, following chair-restraint related deaths the Utah State Prison, the prison stopped using them.¹³ Florida has banned the use of restraint chairs in juvenile facilities.¹⁴ Other states have prohibited chair use in correctional facility for punishment and have limited its use for medical and mental health purposes only.¹⁵

III. Restraint Chairs & the Law: Applicable Legal Standards & Selected Cases

⁸ See Anchortex, Corp., Humane Restraint Emergency Restraint Chair, <http://www.anchortex.com/products/Z6001016>.

⁹ For example, Massachusetts prohibits the use of restraint devices requiring keys. 104 CMR § 27.12; see also 104 CMR § 27.08(9)(b)(1)(a) (prohibiting the use of any mechanical restraint device that “uses a key for their release.”).

¹⁰ See Jeffery L. Metzner, *Resource Document on the Use of Restraint and Seclusion in Correctional Mental Health Care*, 35 J. of the Amer. Acad. of Psy. & L. Online 417-25 (2007). In response to an e-mail inquiry, the Virginia P&A has reported that restraint chairs are used frequently in at least one of Virginia’s mental health facilities and are available at others.

¹¹ See Michael Allen, et al., *The Expert Consensus Guideline Series: Treatment of Behavioral Emergencies*, A Postgraduate Medicine Special Report, 31 (May 2001), <http://www.eird.org/cd/ibis/guidelines/guia%20tratamiento%20emergencias.pdf> (finding that leather or soft restraints were preferred by the “majority” -- 75% preferred leather while 52% preferred soft restraints -- of those psychiatrists surveyed and that there was less support -- only 29% -- for the use of the restraint chair).

¹² Katie McDevitt, *Maricopa County Retires Restraint Chairs*, East Valley Tribune, Aug. 22, 2006, www.eastvalleytribune.com/article_d9588db0-e661-584d-a9fa-05711e8fdcf9.html; Angrick, *supra* note 2, at 21.

¹³ McDevitt, *supra* note 12.

¹⁴ Disability Rights Florida, *Restraint in Florida-Department of Juvenile Justice, Prohibited Procedures*, http://www.disabilityrightsflorida.org/resources/disability_topic_info/category/restraint_in_florida_-_department_of_juvenile_justice (“Mechanical restraints, including neck restraints, restraint chair, and the securing of youth to a fixed object are prohibited.”).

¹⁵ See, e.g., State of Vermont Agency of Human Services Dept. of Corrections Administrative Directive on the Use of Restraint Chair, <http://doc.vermont.gov/about/policies/rpd/correctional-services-301-550/401-500-programs-security-and-supervision/413.10%20Use%20of%20Restraint%20Chair.pdf>.

Litigation to end or curtail the use of restraint chairs has had varied success. While some courts have enjoined or significantly limited the use of chairs for restraint, others have allowed their use. This section addresses the applicable legal standards regarding the use of the restraint chair and discusses selected cases in restraint chair litigation.

A. Psychiatric Hospitals

As noted above, the use of restraint chairs in psychiatric hospitals is relatively infrequent. Those facilities that use restraint chairs are required to follow relevant state and federal laws and regulations applicable to mechanical restraints. While restraint laws and regulations differ among jurisdictions, most states restrict the use of restraints to emergency situations where a person is an immediate danger to themselves or others. Statutes and regulations also govern the procedures for restraint addressing, for example, who can order restraint, for how long, and what devices can be used to restrain a person.¹⁶ Additionally, psychiatric facilities that receive federal funding must also adhere to federal regulations that limit the use of restraint promulgated by the Center for Medicare and Medicaid Services.¹⁷

Public psychiatric facilities and private facilities that are state actors must provide minimally adequate treatment as required by the Fourteenth Amendment to the U.S. Constitution.¹⁸ The Fourteenth Amendment has also been interpreted to require that individuals committed to state custody be free of undue restraint.¹⁹

While an extensive search revealed no reported cases regarding the use of the restraint chair in a psychiatric hospital, there was at least one decision, *U.S. v. State of Arkansas*²⁰ that addressed the use of restraint chair in an ICF/MR. In that case, the Department of Justice (DOJ) sought to enjoin the use of “the most

¹⁶ See, for example, Massachusetts Dept. of Mental Health Regulation 104 CMR § 27.12, Prevention of Restraint and Seclusion and Requirements When Used. Specifically, § 27.12(5) sets out detailed requirements, including that “mechanical Restraint . . . may be used only after the failure of less restrictive alternatives.” Under regulation, a patient’s dignity, privacy and safety must be respected during periods of seclusion and restraint. 104 CMR § 27.12(5)(c)(3). Also, DMH policy states that during restraint “[t]he patient should not be observable by visitors or other patients...” www.mass.gov/eohhs/docs/dmh/policy/policy-10-02.doc. Further, mechanical restraint devices requiring a lock and key are prohibited. § 27.12(5)(c)(5); see also Stephan Haimowitz, et al., *Restraint and Seclusion - A Risk Management Guide*, National Association of State Mental Health Program Directors, Publications (Sept. 2006), http://www.nasmhpd.org/general_files/publications/ntac_pubs/R-S%20RISK%20MGMT%2010-10-06.pdf.

¹⁷ See 42 C.F.R. § 482.13.

¹⁸ *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982).

¹⁹ *Id.* at 316; see also Deborah Dorfman & Robert D. Fleischner, *Isolation of Youth with Disabilities in Juvenile Justice Facilities*, TASC Fact Sheet, 8 (April 2012) (discussing the *Youngberg* analysis)

http://tascnw.com/tasc/images/Documents/Publications/TASC_PUBLICATIONS/FACTSHEETS/2012/FS- Isolation of Youth w-Disabilities in JJ Facilities CPR- 4-2012 FINAL.pdf

²⁰ Civ. No. 4:09CV00033 JLH (E.D. Ark. April 7, 2010).

severe, outdated forms of mechanical restraints,” including restraint chairs.²¹ The court, however, denied the request,²² noting that DOJ’s expert had not stated that such devices should never be used but rather that they could be used in limited circumstances.²³

B. Jails & Prisons

Restraint chair use is most common in the correctional facilities, both as punishment and for mental health and medical purposes. Use of the chairs in such settings may depend on and may be regulated by state and local laws and policies.

However, jails and prisons must also adhere to constitutional standards. The constitutional requirements may vary depending on the status of the incarcerated person. In cases alleging constitutional violations regarding the use of restraint chairs in correctional facilities, legal claims are often for excessive force, inadequate conditions of care including medical and mental health treatment, and violations of procedural due process. Pre-trial detainees are entitled to constitutional protections defined by the Fourth or Fourteenth Amendment²⁴ for excessive force claims and Fourteenth Amendment for conditions of care, including medical care and for claims involving punishment without procedural due process.²⁵ Convicted prisoners, on the other hand, are afforded Eighth Amendment protections, which may be less rigorous than those under the Fourteenth Amendment.²⁶

There have been a number of cases seeking damages for injuries to and the death of individuals in restraint chairs in correctional facilities. Many, but not all,²⁷

²¹ *Id.* (citing the declaration of DOJ’s request for injunction).

²² *Id.*

²³ *Id.* (citing DOJ expert declaration that states that “Mechanical restraints may be used in certain, carefully limited circumstances consistent with clinical standards. These standards require a careful evaluation of the benefits and risks of using restraints by qualified staff. To accurately evaluate these benefits and risks, clinicians must have an understanding of basic psychological principles and evidence-based treatment approaches. With appropriate review and oversight, mechanical restraints may then be used in a manner consistent with those principles . . .”).

²⁴ There is a split in the circuits as to whether the Fourth or the Fourteenth Amendment applies to claims of excessive force for people who are arrested without a warrant between the time of arrest and arraignment. *Aldini v. Johnson*, 609 F. 3d 858, 864-67 (6th Cir. 2010)(excessive force claim against police during post arrest booking process, which included restraining inmate to a chair after he was tazed and beaten); see *Bell v. Wofish*, 441 U.S. 520 (1979).

²⁵ *Fuentes v. Wagner*, 206 F. 3d 355, 342 (3d Cir. 2000). The “deliberate indifference” standard applies whether the claim is asserted under the Eighth Amendment (which applies to claims by convicted prisoners) or the Fourteenth Amendment (which applies to claims by pretrial detainees). *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996).

²⁶ See Dorfman & Fleischner, *supra* note 19, at 9 (explaining standard of proof for a claim alleging a violation of the Eighth Amendment).

²⁷ Examples of cases where courts upheld the use of restraint chairs on inmates include for example, *Fuentes v. Wagner*, 206 F. 3d 335 (2001); *Birdine v. Gray*, 375 F. Supp. 2d 874 (D. Neb. 2005).

of these cases have resulted in settlements and verdicts awarding damages, sometimes substantial damages. For example, a Utah family settled a case involving the death of a county inmate after he was strapped into a restraint chair for 16 hours, for \$200,000.²⁸ In 2007, an inmate died in Arizona's Maricopa County Jail after being confined to a restraint chair for three hours. The inmate's family settled their case against the county for \$2 million.²⁹

The DOJ has also conducted a number of investigations and filed lawsuits against of jails and prisons after finding that the use of restraint chairs violated the constitutional rights of inmates.³⁰

C. Juvenile Justice Facilities

Use of restraints, including restraint chairs, on youth poses a heightened risk of injury and death. In spite of this, a number of juvenile justice facilities continue to use restraint chairs.³¹ Some courts have enjoined or significantly limited their use at juvenile justice facilities.³²

²⁸ Associated Press, *4 Utah counties still use restraint chairs despite ban*, Desert News, Nov. 27, 1998, <http://www.deseretnews.com/article/665857/4-Utah-counties-still-use-restraint-chair-despite-ban.html>.

²⁹ Associated Press, *Maricopa County to pay \$2 million in restraint chair death*, Tucson Citizen (Jun. 21, 2007), available at, <http://tucsoncitizen.com/morgue/2007/06/21/55323-maricopa-county-to-pay-2-million-in-restraint-chair-death/> (last viewed April 23, 2012); McDevitt, *supra* note 12.

³⁰ Findings Letter from U.S. Dept. of Justice, Northern Dist. of Illinois to Todd H. Stroger, Cook County Bd. President and Thomas Dart, Cook County Sheriff (Jul. 11, 2008), http://graphics8.nytimes.com/packages/pdf/national/Cook_County_Jail_Findings_Letter.pdf (regarding Cook County Jail, Chicago, Illinois); Dept. of Justice Press Release (Jul. 17, 2008), http://www.justice.gov/usao/iln/pr/chicago/2008/pr0717_01.pdf; see also Letter from Bill Lee, Acting Asst. Attorney General, Civil Rights Division to the Honorable Brian S. Quirk (Jan. 4, 1999), <http://www.justice.gov/crt/about/spl/documents/bhfind.php> (regarding Black Hawk County Jail); Settlement Agreement, U.S. v. Maricopa County, <http://www.clearinghouse.net/chDocs/public/JC-AZ-0002-0003.pdf>.

³¹ Andrea J. Sedlak & Karla S. McPherson, *Conditions of Confinement: Findings from the Survey of Youth In Residential Placement*, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin (May 2010), <https://www.ncjrs.gov/pdffiles1/ojdp/227729.pdf>. Alabama's Department of Youth Services discontinued use of a restraint chair when the Alabama P&A objected.

³² *Pena v. New York State Division for Youth*, 419 F. Supp. 203, 210 (S.D.N.Y. 1976) (enjoining the use of fixed restraints, including restraint chairs, at juvenile justice facility). The use of fixed restraints, including chairs in juvenile facilities, has been enjoined or limited in many instances. See *Burrell*, *supra* note 2, at 13 n.17 (*Terry D. v. Rader*, No. CIV-78-0004-T (W.D. Okla. 1982) (stipulated agreement of January 11, 1982, at 12(B) stating that "defendants will not permit Juvenile Hall staff to use leg-shackles, straight-jackets, four-point restraints, or any other type of mechanical or chemical restraints (including mace) on detained youth at the Juvenile Hall for any purpose"); *Shaw v. San Francisco*, No. 915763 (Super. Ct. 1993) (settlement agreement of October 4, 1993, at 7-8 stating that "The State Defendants shall not permit employees to restrain youths to fixed objects"); *E.R. v. McDonnell*, Civ. No. 94-N-2816 (D. Colo. 1995) (settlement agreement of May 26, 1995, at 10); *Horton v. Williams*, No. C9405428 RJB (W.D. Wash. 1995) (July 26, 1995 stipulation & judgment resolving certain claims and continuing trial on the remaining ones, at 7, ¶ 34); *Doe v. Napper*, No. 1-93-CV-642-JEC (N.D. G. 1998) (Jan. 26, 1998

As with prisons, juvenile justice facilities must adhere to relevant state laws and regulations regarding the use of restraint. Additionally, they must also afford incarcerated youth care consistent with relevant constitutional standards. Most courts analyze juveniles' claims regarding conditions of care, including isolation, under the Fourteenth Amendment under the *Youngberg* standards.³³ Under *Youngberg*, juveniles have a right to minimally adequate care, treatment, and protection from harm.³⁴ Some courts, however, have applied an Eighth Amendment standard or have held that the Fourteenth Amendment and the Eighth Amendment analyses are the same in the context of juvenile facility conditions.³⁵

D. Schools

The use of restraint in schools, particular use on children with disabilities, has become a topic of national concern.³⁶ The primary federal legislation concerning

(stipulation for consent decree, at 9 stating that “[y]outh at the MRYDC will never be restrained to a fixed object or have their hands and feet bound together”); *U.S. v. Louisiana*, Civ. No. 98-947-B-1 (M.D. La. 2000) (United States’ *Jena* Agreement, April 13, 2000, at 8, ¶ 25 stating that “[n]o other forms of mechanical restraints may be used (including 4 or 5 point restraints) [however, this] does not apply to medical or mental health restraints ordered by a medial or mental health professional.”)). One additional case did not completely abolish the use of fixed restraint but the settlement limited their use to situations approved by a mental health professional; the facility involved in the litigation was subsequently closed. *Id.* (citing *Christina A. ex rel. Jennifer A. v. Bloomberg*, 167 F. Supp. 2d 1094, 1097 (D.S.D. 2001)).

³³ *Youngberg v. Romeo*, 457 U.S. 307, 322-23 (1982); see generally Susan Stefan, *Leaving Civil Rights to the “Experts”: From Deference to Abdication Under the Professional Judgment Standard*, 102 Yale L.J. 639 (1992).

³⁴ *Gary H. v. Hegstrom*, 831 F. 2d 1430,1438 (9th Cir. 1987); *Alexander S. by and through Bowers v. Boyd*, 876 F. Supp. 773, 782 (D.S.C. 1995), *aff’d in part and rev’d in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. den.*, 522 U.S. 1090 (1998); see also *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (finding that the Constitution requires jail officials to maintain “human conditions” of confinement for detainees); *Hare v. Conrith*, 74 F. 3d 633, 639 (5th Cir. 1996)(holding that the Constitution mandates that detainees be provided with basic human needs, including, protection from harm).

³⁵ *Compare Nelson v. Heyene*, 491 F.2d 352, 355 (7th Cir. 1974), *cert. den.*, 417 U.S. 976 (1974) (affirming finding that Indiana subjected juveniles to cruel and unusual punishment in violation of Eighth Amendment by paddling them and using drugs on them to control their behavior and failed to provided adequate care and treatment in boys correctional facility) and *Viero v. Bufano*, 925 F. Supp. 1374, 1381 n. 15 (N.D. Ill. 1966), with *In re Rochelle B.*, 49 Cal. App. 4th 1212, 1222 (1996) (adjudication of youth to be a ward of juvenile court is not conviction of a crime, so the Eighth Amendment does not apply); see also *Gary H.*, 831 F.2d at 1431 (citing *Santana v. Collazo*, 714 F. 2d 1172, 1179 (1st Cir. 1983)); *Rohde v. Rowland*, 898 F. 2d 156, 1990 WL 31564 (9th Cir.1990)(unpublished disposition) (analyzing the rights of juveniles in juvenile justice facility under the Fourteenth Amendment, and stating that “[w]e have held that juvenile detentions are “noncriminal and nonpenal”); Simkins, et al., *Access to Justice: Evolving Standards in Juvenile Justice: From Gault to Graham and Beyond: The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U.J.L. & Pol’y 241(2012).

³⁶ See, e.g., Shannon Muller, *Restraints used by NJ educators to curb unruly behavior under scrutiny*, Asbury Park Press, May 4, 2010, <http://www.app.com/article/20100505/SPECIAL20/100504060/Restraints-used-by-NJ-educators->

students with disabilities, the Individual with Disabilities Education Act (IDEA),³⁷ does not specifically address the use of restraints. However, because the IDEA requires a free appropriate public education (FAPE) for children with disabilities, the argument has been made that use of either seclusion or restraint would violate this requirement.³⁸ In response, bills have been filed in Congress to establish national standards for school restraint and seclusion.³⁹

Because there is no current federal statute specifically concerning student restraint, students who allege abuse by teachers may pursue claims under the Fourteenth Amendment's guarantee of due process⁴⁰ or the Fourth Amendment's

[curb-unruly-behavior-under-scrutiny](#); Jessica Calefati, *Students Suffer Abusive Restraint*, GAO Says, U.S. News & World Report, Jul. 7, 2009, <http://www.usnews.com/education/articles/2009/07/07/students-suffer-abusive-restraint-gao-says>; School Safety Partners, School Safety Law, *Girl Placed in "Miniature Electric Chair,"* <http://www.schoolsafetypartners.org/law/425-Girl-Placed-Miniature-Electric-Chair.html>; Disability Rights North Carolina, *Seclusion and Restraint: A Dangerous Education* (Feb. 2010), <http://www.disabilityrightsnorthcarolina.org/intranet/downloadManagerControl.php?mode=getFile&elementID=2053&type=5&atomID=1067> (including picture and description of restraint chair); Jessica Butler, *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*, The Council of Parent Attorneys and Advocates, Inc. (May 27, 2009), http://www.copaa.org/wp-content/uploads/2010/10/UnsafeCOPAAMay_27_2009.pdf (see chart for multiple recorded incidents involving Rifton chairs). The issue reached the head of the U.S. Department of Education. In 2009, he "issued a memorandum to chief state school officers, urging them to develop, review, and/or revise state policies and guidelines to ensure that students within their jurisdictions would be protected from unnecessary and inappropriate restraint and seclusion," and "followed up with a letter to Congressional leaders with a list of principles for the upcoming legislative proposals, including: (a) prohibiting the use of restraint for punishment or discipline or in a manner that restricts breathing; (b) appropriate staff training; (c) prompt parental notification; and (d) regular monitoring and data collection." Perry A. Zirkel & Caitlin A. Lyons, *Restraining the Use of Restraints for Students with Disabilities: An Empirical Analysis of the Case Law*, 10 Conn. Pub. Int. L.J. 323, 328 (2011).

³⁷ 20 U.S.C. § 1400 et. seq.

³⁸ See Nancy Lee Jones & Jody Feder, Congressional Research Service, CRS Report for Congress, *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*, 5-9 (2010) (analyzing statutory provisions and judicial decisions on this issue); see also National Disability Rights Network, *School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools* 18 (2010), [http://napas.org/sr/srjan10/School-Not-Supposed-to-Hurt-\(NDRN\).pdf](http://napas.org/sr/srjan10/School-Not-Supposed-to-Hurt-(NDRN).pdf) (calling for the Dept. of Education to state that the use of mechanical restraints or other aversive behavior techniques could be a violation of FAPE).

³⁹ On March 3, 2010, the House of Representatives passed H.R. 4247, the "Keeping All Students Safe Act," which would require the Secretary of Education to promulgate regulations "in order to protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any physical restraint or seclusion imposed solely for purposes of discipline or convenience" Zirkel & Lyons, *supra* note 36; see also Jones & Feder, *supra* note 38, at 10-11 (describing H.R. 4247 and two other related bills). The Senate failed to act during the 111th Congress and the bill was reintroduced by Senator Harkin (D-IA) in December 2011.

⁴⁰ Though the Supreme Court has not directly considered the issues of seclusion and restraint in public schools as a violation of the Due Process Clause, the Court has considered the related case *Youngberg v. Romeo*, 457 U.S. 307 (1982). Generally, due process challenges to the use of seclusion and restraint have been rejected if the use is deemed reasonable, particularly if it is a routine disciplinary action. See, e.g., *Wallace v. Bryant Sch. Dist.*, 46 F. Supp. 2d 863, 867 (E.D. Ark. 1999); *Dickens by Dickens v. Johnson Cnty. Bd. of Educ.*, 661 F. Supp. 155 (E.D. Tenn.

prohibition against unreasonable seizure,⁴¹ as well as section 504 or the ADA⁴² and state laws governing negligent hiring, supervision, or retention, or assault and battery, among others.⁴³ While it is possible to also bring claims under state restraint and seclusion laws, such law and policies vary extensively and a claimant should be careful to research whether a claim is available in his or her state.⁴⁴

1987). However, the claim may be viable if the use is found to be unreasonable. See, e.g., *Jefferson v. Ysleta Independent Sch. Dist.*, 817 F.2d 303 (5th Cir. 1987) (affirming district court's rejection of qualified immunity defense).

⁴¹ The Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits have used the Fourth Amendment reasonableness standard to analyze seizures of students in cases involving restraint and seclusion for the prevention of harm to themselves, other students, or school staff. Ralph D. Mawdsley & Allan Osborne, *Education Law Into Practice: Restraint of Students in Schools*, 47 ELA Notes 18, 19 (Jan. 2012), <http://educationlaw.org/images/PDFs/2012/Jan12Notes.pdf>; see also, e.g., *A.B. ex rel. B.S. v. Adams-Arapahoe 28J Sch. Dist.*, No. 09-cv-00715, 2011 WL 5910191 (D. Colo., Nov. 28, 2011)(fact issues precluded summary judgment on Fourth Amendment claims against teacher, behavior consultant, and school principal; procedural due process claim against teacher; Rehabilitation Act and ADA claims against the school district; and common-law tort claims against teacher). As compared to prison litigation, in 1977, the Supreme Court held that the Eighth Amendment's prohibition against cruel and unusual punishment was not applicable to corporal punishment inflicted by school administrators. *Ingraham v. Wright*, 430 U.S. 651 (1977).

⁴² See, e.g., *A.B. ex rel. B.S. v. Adams-Arapahoe 28J Sch. Dist.*, No. 09-cv-00715, 2011 WL 5910191, at *21 (D. Colo., Nov. 28, 2011) (fact issues precluded summary judgment on Rehabilitation Act and ADA claims against the school district, among other claims; specifically, "A.B. was denied the opportunity to participate in classroom activities while strapped into this chair, especially when Michaels faced the chair to the wall and erected barriers around her. Thus, Plaintiffs have established a *prima facie* case of statutory disability discrimination."); *S.L.S. by Holmes v. Detroit Pub. Schs.*, No. 08-14615, 2011 WL 4709163 (E.D. Mich. Oct. 7, 2011) (autistic plaintiff alleges that defendant violated the ADA, Persons with Disability Civil Rights Act, and Section 504 when school restrained her in a chair, in violation of a behavior intervention plan and allegedly caused her injuries; court granted in part and denied in part plaintiff's motion to compel, including ordering defendant to respond with full and complete answers to multiple interrogatories and to arrange a time for an inspection of the restraint chair).

⁴³ See, e.g., *A.B. ex rel. B.S.*, 2011 WL 5910191, at *24 (fact issues precluded summary judgment on multiple common law tort claims, including negligence, negligent infliction of emotional distress, assault, battery, false imprisonment, extreme and outrageous conduct, and invasion of privacy).

⁴⁴ See Jessica Butler, *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, The Autism National Committee (Jan. 20, 2012, updated), <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>; Perry A. Zirkel & Caitlin A. Lyons, *Restraining the Use of Restraints for Students with Disabilities: An Empirical Analysis of the case Law*, 10 Conn. Pub. Int. L.J. 323, 326-27 (2011) ("Some of these state policies focus solely on the use of restraint, while others less specifically address seclusion, corporal punishment, or aversive techniques generally. The provisions vary unsystematically with regard to training of staff members, reporting data to the state, obtaining parental consent prior to the use of restraints, and notifying them after such use, with only a few states- e.g., Colorado, Illinois, and Massachusetts-recognized for comprehensive policies. Moreover, nineteen states entirely lack legislation on or regulation of restraints. The gaps within and among state policies have contributed to the current movement toward federal legislation."); Jones and Feder, *supra* note 3, at 9-10; see also *Testimony Before the Committee on Education and Labor, House of Representatives, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, U.S. Gov't Accountability Office, GAO-09-719T (2009),

While it appears that the majority of reported or litigated cases involve physical (that is, manual) restraint, the improper use of mechanical restraint in schools is becoming apparent.⁴⁵ Mechanical restraint is a broad term covering devices that restrict movement, including chairs.⁴⁶ A well-publicized case involved a four-year-old girl born with cerebral palsy and diagnosed as autistic who was restrained by her teacher at a West Virginia public school.⁴⁷ She suffered bruising and post traumatic stress disorder after teachers restrained her in a wooden chair with leather straps, described by the child's mother, as a miniature electric chair, for being "uncooperative."⁴⁸ The school board was found liable for negligent training and supervision with the jury awarding the girl's family \$460,000 while the teachers were not found liable.⁴⁹

The Technical Assistance Center on Social Emotional Intervention for Young Children explains four major problems associated with seclusion and restraint. First, restraint has the potential to cause injury to the child being restrained.⁵⁰ Second, there is a risk of psychological harm. Third, with the lack of therapeutic benefit from restraint and seclusion, children fail to learn positive behavioral alternatives. And, fourth, by using restraint and seclusion as a control mechanism, the risk exists that such procedures will become the normal or routine practice in the classroom.⁵¹

<http://www.gao.gov/new.items/d09719t.pdf>.

⁴⁵ For more information, see the three reports published by the National Disability Rights Network, <http://www.napas.org/en/issues/abuse-and-neglect/restraint-and-seclusion.html>.

⁴⁶ The Department of Education defined restraint in the 2009-2010 Civil Rights Data Collection, in part, as: "The use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related service professional and are used for the specific and approved purposes which such devices were designed." Under the Children's Health Act of 2000, restraint is defined as a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces and individual's freedom of movement. P.L. 106-310, 42 U.S.C. § 290ii(d)(1), jj(d)(1); 42 C.F.R. 482.13(e)(1)(i).

⁴⁷ Calefati, *supra* note 36.

⁴⁸ Calefati, *supra* note 36.

⁴⁹ School Safety Partners, *supra* note 36. In fact, one teacher still works at the school. *Id.*

⁵⁰ Glen Dunlap, et al., *Issue Brief: Preventing the Use of Restraint and Seclusion with Young Children: The Role of Effective, Positive Practices*, Technical Assistance Center on Social Emotional Intervention for Young Children, 2 (2011) http://www.challengingbehavior.org/do/resources/documents/brief_preventing.pdf; see also Haimowitz, et al., *supra* note 16.

⁵¹ Dunlap, *supra* note 50. They also recommend that "mechanical restraints should never be used in school settings when their purpose is to manage or address student behavior." *Id.* Further, "mechanical restraints should only be used in schools for the purpose of providing mechanical support to students' orthopedic needs in order to permit them to learn and participate in school activities; use of mechanical restraints should only be under the supervision of and with a written order by physician, occupational therapist, or physical therapist; and use of these devices for a student in special education should be included in the student's IEP and with parent permission." *Id.*; see also The Council for Children with Behavioral Disorders, A Division of the Council for Exceptional Children, *Position Summary on the Use of Physical Restraint Procedures in School Settings* (2009), <http://www.casecec.org/pdf/seclusion/Approved,%20CCBD%20on%20Use%20of%20Restraint,%207-8-09.pdf>.

Anecdotal evidence suggests this fourth concern is a reality. In particular, there is documentation that some teachers have regularly used a Rifton chair to control behavior.⁵² Such restraint is considered off-use for the Rifton chairs as they are specially designed for children who need help sitting upright.⁵³ Other examples include a 6 year old girl diagnosed with autism, fetal alcohol syndrome, shaken baby syndrome, Attention-Deficit/Hyperactivity Disorder, one kidney and Hoshimoto's Thyroiditis, who sustained bruising on her neck and back when she was improperly restrained in a Rifton chair; a 7 year old child restrained in Rifton chair for behavior issues as opposed to the therapeutic purpose of the chair,⁵⁴ and a 5 year old boy with autism, ADHD and mood disorder whose parent discovered him in a hallway, locked into a Rifton Chair, unattended.⁵⁵

IV. Conclusion

Restraint chairs are a dangerous form of restraint. There is a significant body of evidence and case law to support an advocacy effort to ban their use.

⁵² Paul Sloth, *DPI: Unified teachers improperly restrained student with autism*, The Journal Times, Dec. 23, 2007, http://www.journaltimes.com/news/local/dpi-unified-teachers-improperly-restrained-student-with-autism/article_593230d5-3a3c-5842-b120-cb4f3d633b90.html

⁵³ *Id.*; National Disability Rights Network, *School is Not Supposed to Hurt The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion*, (Mar. 2012), http://www.napas.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf.

⁵⁴ National Disability Rights Network, *supra* note 53.

⁵⁵ See Butler, *Unsafe in the Schoolhouse*, *supra* note 36.