

# William & Mary Journal of Race, Gender, and Social Justice

---

Volume 28 (2021-2022)  
Issue 3

Article 3

---

5-2022

## Ending School Brutality

Nicole Tuchinda

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Education Law Commons](#)

---

### Repository Citation

Nicole Tuchinda, *Ending School Brutality*, 28 Wm. & Mary J. Women & L. 617 (2022),  
<https://scholarship.law.wm.edu/wmjowl/vol28/iss3/3>

Copyright c 2022 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmjowl>

## ENDING SCHOOL BRUTALITY

NICOLE TUCHINDA\*

### ABSTRACT

Children, especially Black children, are killed, traumatized, injured, and terrorized through assaults, solitary confinement, inappropriate handcuffing, and other excessive applications of physical force upon children in public schools. The state employees enacting such maltreatment are not just police. They are mainly teachers, principals, and security guards, and they are given authorization by law for purposes of “educating,” “disciplining,” and “maintaining order” in public schools. Scientific research does not support the use of physical force to improve behavior, however. This Article describes the problem of school brutality, the excessive, unwarranted, and traumatizing use of physical force by state employees upon students. By traumatizing children, school brutality can cause lasting and disabling developmental and educational harm. School brutality is facilitated by multiple legal structures, including a tort law privilege rooted in colonial times; an inconsistent patchwork of state laws permitting seclusion, restraint, and corporal punishment; qualified immunity; lack of regulation of police officers’ actions in schools; federal funding for regular police presence in public schools; and lack of enforcement and review of reporting on school brutality. Substantive due process rights under the Fourteenth Amendment, originally framed to protect adult criminal suspects, are inadequate for children. Unless state employees become less shielded from civil and criminal actions that seek to hold them accountable for school brutality, new private rights of action are needed. State and federal legislators can save lives and support educational achievement by ending the legalization of school brutality.

---

\* Visiting Assistant Professor of Law, The University of Memphis Cecil C. Humphreys School of Law; 2019–2020 Director and 2015–2017 Clinical Instructor of the Juvenile and Special Education Law Clinic at the University of the District of Columbia David A. Clarke School of Law (UDC); 2017–2019 Clinical Teaching Fellow at the Health Justice Alliance clinic at Georgetown University Law Center (GULC); LLM, GULC, LLM, UDC; JD, George Washington University Law School; MD, Johns Hopkins University School of Medicine; BA, Yale College. The author’s ideas developed from her work in advocating for special education clients. The author would like to thank Yael Cannon, Katy Ramsey, Deborah Epstein, Phil Lee, Matthew Fraidin, Joseph Tulman, Ronnie Gipson, Daniel Schaffzin, Kate Schaffzin, Amy Stein, William Montross, Jodi Wilson, Margaret Hu, Colleen Chien, Margaret Woo, Natasha Varyani, Stacey Eunnae, and Howard Pryor for their support. This Article was presented as a work in progress at the 2021 Inaugural Workshop for Asian American Women in the Legal Academy.

## INTRODUCTION

- I. THE PREVALENCE OF SCHOOL BRUTALITY AND ITS UNNECESSARY HARM
  - A. *School Brutality and Its Unnecessary Harm*
  - B. *The Prevalence of School Brutality and Its Disproportionate Harm upon Black Children and Children with Disabilities*
- II. LEGAL STRUCTURES LEGALIZING AND FACILITATING SCHOOL BRUTALITY
  - A. *Teacher Privilege: The Colonial Root of the Legalization of School Brutality*
  - B. *Limitations in Constitutional Law Protections Against School Brutality*
    - 1. *Eighth Amendment Claims*
    - 2. *Fourteenth Amendment Claims*
    - 3. *Fourth Amendment Claims*
  - C. *State Statutes Regarding School Corporal Punishment*
    - 1. *States that Ban Corporal Punishment in Schools*
    - 2. *States that Permit Corporal Punishment in Schools*
  - D. *State Statutes on Seclusion and Restraint*
  - E. *State Statutes Regarding Police in Schools*
  - F. *How School Systems Are Closed to Public Scrutiny and the Need for New Private Rights of Action*
- III. SOLUTIONS
- CONCLUSION

## INTRODUCTION

George Floyd's last words echoed the screams of a Black child in a D.C. public middle school a few years ago.<sup>1</sup> "Mama! Mama! No! No! Mama!" she cried as the school resource officer (SRO) dragged her by the leg down the hallway.<sup>2</sup> Every time the child tried to get up, the SRO dragged her farther down the hall, causing her to fall backwards onto her shoulders and back with a thud.<sup>3</sup> Her teary eyes wide,

1. Cf. Lonnae O'Neal, *George Floyd's mother was not there, but he used her as a sacred invocation*, NAT'L GEOGRAPHIC (May 30, 2020), <https://www.nationalgeographic.com/history/article/george-floyds-mother-not-there-he-used-her-as-sacred-invocation> [<https://perma.cc/F6XM-VYCV>] (explaining that George Floyd, age 46, called to his mother multiple times before his death by police brutality).

2. Statement of Unidentified Child at Johnson Middle School, D.C. Public Schools (Oct. 2016) [hereinafter Statement of Unidentified Child] (document on file with author). This was one of several disturbing interactions between governmental employees in schools and children that I witnessed while I was a Clinical Instructor and Director of the Juvenile and Special Education Law Clinic at the University of the District of Columbia David A. Clarke School of Law.

3. *Id.*

she cried, screamed for help, and tried to twist away to no avail.<sup>4</sup> Teachers and administrators walked past, but everyone pretended not to hear.<sup>5</sup> Occasionally the SRO laughed.<sup>6</sup>

Screaming, crying, twisting, laughing, and more dragging.<sup>7</sup> The torturous cycle continued for several minutes before the child was released and became a shaking ball of tears.<sup>8</sup> Clearly this was a regular interaction between governmental employees and a child in a public school. No school staff intervened.<sup>9</sup> No one tried to hide it from or explain it to me, the attorney who represented parents and children sitting just feet away in the lobby while waiting for a meeting about another child. Maybe they all guessed correctly that the law did little to protect the child.<sup>10</sup>

This was one of the milder incidents of state agents traumatizing children at school. Brief news coverage and viral video releases help the public to catch sight of the dangers. A thirteen-year-old boy with autism died in Northern California after “multiple school employees kept him facedown on his stomach for nearly two hours until he vomited and passed out.”<sup>11</sup> When a five-year-old boy in Maryland wandered away from school, police officers handcuffed him and told him fifteen to twenty times that he “needed to be beaten.”<sup>12</sup> A six-year-old girl in Florida cried and pled “no, no” as a school principal hit her with a wooden paddle as another woman held her down.<sup>13</sup> News reporters called the footage “graphic,” and the girl’s mother said that the paddling expressed “hatred.”<sup>14</sup> A twelve-year-old girl

---

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Statement of Unidentified Child, *supra* note 2.

9. *Id.*

10. *See, e.g.*, D.C. Mun. Regs. tit. 5-E, §§ 2401(12), 2403 (prohibiting corporal punishment in certain circumstances). D.C. regulations prohibit the corporal punishment of public school students, but these regulations do not apply to law enforcement officers. *See id.*

11. Amber Jamieson, *Three School Employees Are Being Charged After A 13-Year-Old Autistic Boy Died After Being Restrained*, BUZZFEED NEWS (Nov. 13, 2019, 11:14 AM), <https://www.buzzfeednews.com/article/amberjamieson/autistic-boy-restraint-death-charged-manslaughter> [<https://perma.cc/GLE7-2ZQV>].

12. Laura Wainman, Kolbie Satterfield & John Henry, *This is why people need to beat their kids: Video shows police officers handcuffing, screaming at 5-year-old boy*, WUSA9 (Mar. 27, 2021, 7:57 AM), <https://www.wusa9.com/article/news/local/maryland/body-camera-police-footage-5-year-old-boy/65-48579fa7-8422-48b4-8f6f-f5361721879a> [<https://perma.cc/J233-JFWB>].

13. Justin Vallejo, *Florida teacher caught on camera hitting 6-year-old girl with paddle*, INDEP. (May 4, 2021, 7:52 AM), <https://www.independent.co.uk/news/world/americas/florida-school-child-paddle-video-b1841413.html>.

14. *Id.*

was thrown face-first onto the ground by a police officer at a school in Texas.<sup>15</sup> Over three years, a child was secluded or restrained 437 times in Virginia.<sup>16</sup>

When people talk about school safety, they usually discuss mass shootings at school, which are relatively rare,<sup>17</sup> and drugs and weapons brought onto campus by children.<sup>18</sup> They are not usually envisioning more than 222,000 incidents per year of corporal punishment, seclusion, restraint, and other acts of brutality committed by the adults hired to protect and support schoolchildren.<sup>19</sup> State employees regularly injure, traumatize, terrorize, and kill children through school brutality, which includes shootings,<sup>20</sup> assaults, solitary confinement, inappropriate handcuffing, and other excessive applications of physical force in public schools.<sup>21</sup> The state agents enacting such maltreatment are not just police, however. They are mainly teachers, principals, and security guards, and they are given authorization by law for purposes of “punishing,” “educating,” “controlling,” “disciplining,” and “maintaining order” in public schools.<sup>22</sup> The use of physical force to improve child behavior, however, is not supported

---

15. Sebastian Murdock, *Video Shows Texas Cop Body Slam Middle School Girl*, HUFFINGTON POST (Apr. 7, 2016), [https://www.huffpost.com/entry/california-cop-slams-girl\\_n\\_57057e4ee4b0b90ac271278d](https://www.huffpost.com/entry/california-cop-slams-girl_n_57057e4ee4b0b90ac271278d).

16. Jenny Abamu & Rob Manning, *Desperation And Broken Trust When Schools Restrain Students Or Lock Them In Rooms*, NPR (June 5, 2019, 5:00 AM), <https://www.npr.org/2019/06/05/726519409/desperation-and-broken-trust-when-schools-restrain-students-or-lock-them-in-room> [<https://perma.cc/8L4N-7DSA>].

17. Cf. Sergio Peçanha, *Lockdown drills: An American quirk, out of control*, WASH. POST (Oct. 11, 2019), <https://www.washingtonpost.com/opinions/2019/10/11/lockdown-drills-an-american-quirk-out-control> [<https://perma.cc/N2QF-FFVQ>]. On average, three children and one adult die per year from school shootings. *Id.*

18. See, e.g., Kirk A. Bailey & Catherine J. Ross, *School Safety & Youth Violence: A Legal Primer*, HAMILTON FISH INST., at ii.

19. See Corey Mitchell, *Schools Underreport How Often Students Are Restrained or Secluded*, GAO FINDS, EDUC. WEEK (June 18, 2019), <https://www.edweek.org/leadership/schools-underreport-how-often-students-are-restrained-or-secluded-gao-finds/2019/06> [<https://perma.cc/3QZQ-C469>]; see also Mark Keierleber, *Kids Keep Getting Hit at School, Even Where Corporal Punishment is Banned*, THE 74 (May 19, 2021), <https://www.the74million.org/article/kids-keep-getting-hit-at-school-even-where-corporal-punishment-is-banned> [<https://perma.cc/P4SL-9G85>].

20. See Mark Keierleber, *The California School Safety Officer Accused of Murder Wasn't a Cop. Does that Actually Matter?*, THE 74 (Nov. 9, 2021), <https://www.the74million.org/article/the-california-school-safety-officer-accused-of-murder-wasnt-a-cop-does-that-actually-matter> [<https://perma.cc/9E4B-7ZAT>] (describing when a school security officer shot an 18-year-old girl as she fled in the passenger seat of a car near the high school where he worked; the girl had been in a fight with a 15-year-old student of the school; the 18-year-old died shortly after).

21. Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, SOC. POL'Y RPT., 2016, at 2.

22. Cf. *id.*

by research. Rather, scientific research consistently shows that applying physical force to children worsens behavior and educational achievement and harms children mentally and physically.<sup>23</sup>

In particular, research since the late 1990s reveals that two-thirds of Americans have experienced a potentially traumatic event or series of events during childhood, called an adverse childhood experience (ACE).<sup>24</sup> Hundreds of studies show that the more adversity, or ACEs, that a child experiences, the more likely the child is to have impairments in health, learning, and behavior.<sup>25</sup> When an adversity causes long-term harm, it is trauma.<sup>26</sup> Trauma can so significantly impact development and health that it can create and exacerbate disabilities that impede learning and behavior, promote academic failure and incarceration, and cause disease and even early death.<sup>27</sup> Childhood trauma is so harmful and prevalent that “many experts consider [it] to be the most important public health crisis of our time.”<sup>28</sup>

Currently, “the vast majority of public schools do not provide the support that children [who have experienced] trauma need to succeed.”<sup>29</sup> In particular, most schools “operate on the traditional assumption that student functioning is not impaired by trauma. Consequently, student misbehavior is commonly misinterpreted as premeditated or intentional [action] rather than [impulsivity or] unthinking, fight-or-flight responses [that resulted from] trauma.”<sup>30</sup> Such interpretation fuels the desire by educators to punish misbehaving students with moral condemnation and violence.

The use of physical force to discipline schoolchildren, however, is itself an adversity that adds to children’s traumas, thereby worsening the challenges that cause much of the misbehavior at school.<sup>31</sup>

---

23. See discussion, *infra* Section I.A; cf. Nicole Tuchinda, *The Imperative for Trauma-Responsive Special Education*, 95 N.Y.U. L. REV. 706, 772, 787–93 (2020).

24. See *id.* at 770, 787 (explaining that Adverse Childhood Experiences (ACEs) were originally defined as childhood emotional, sexual, or physical abuse; physical or emotional neglect; substance abuse by a household member; mental illness in a household member; violence directed at one’s mother, parental divorce, or separation; or incarceration of a member of the household).

25. *Id.* at 786–94.

26. *Id.* at 794.

27. *Id.* at 770–71.

28. *Id.* at 771.

29. Tuchinda, *supra* note 23, at 773.

30. *Id.* at 772.

31. Cf. Peter F. Cronholm, Christine M. Forke, Roy Wade, Megan H. Bair-Merritt, Martha Davis, Mary Harkins-Schwarz, Lee M. Pachter & Joel A. Fein, *Adverse Childhood Experiences: Expanding the Concept of Adversity*, 49 AM. J. PREVENTATIVE MED. 354, 358 (2015) (providing evidence to support the addition of witnessing violence, feeling

Accordingly, a major reason to end school brutality is that the new research on trauma underscores how such brutality will cause the opposite effects—worse behavior, worse health and disability, and worse educational outcomes—of what schools and policymakers desire.<sup>32</sup> Children need schools to be a place where they can recover from traumas, rather than be subjected to more of them.<sup>33</sup>

It is time to call school corporal punishment, seclusion, restraint, and other violence upon children by a name—school brutality—that captures the traumatic and unreasonable nature of these practices and centers the needs of children, rather than adults. School brutality often occurs when adults are acting aggressively or without control.<sup>34</sup> Such brutality destroys trust and connection, promotes academic failure and the development of mental illness, and increases the likelihood that children will become incarcerated.<sup>35</sup> School brutality also plays a significant role in subjugating the most vulnerable children, including children with disabilities, Black children, and children in poverty.<sup>36</sup> The public is occasionally alarmed by stories and images of school brutality, yet such brutality persists.<sup>37</sup> By more accurately naming traumatic practices by state agents at schools, this Article seeks to end desensitization to the problem.

Similar to police brutality, school brutality is the excessive and unwarranted use of force by state officials upon ordinary citizens.<sup>38</sup> Both forms of brutality inflict injury, terror, trauma, and death.<sup>39</sup>

---

discrimination, and unsafe neighborhood to the Adverse Childhood Experiences (ACEs) scale); David Finkelhor, Anne Shattuck, Heather Turner & Sherry Hamby, *A Revised Inventory of Adverse Childhood Experiences*, 48 CHILD ABUSE & NEGLECT 13, 16, 19 (2015) (providing evidence supporting the addition of community violence exposure to the ACEs scale).

32. Tuchinda, *supra* note 23, at 787–93, 801–02.

33. *See, e.g.*, Stephen Sawchuk, *More School Districts Sever Ties With Police. Will Others Follow?*, EDUC. WEEK (June 26, 2020), <https://www.edweek.org/leadership/more-school-districts-sever-ties-with-police-will-others-follow/2020/06> [<https://perma.cc/6VWD-6Z7D>] (“Our schools become a sanctuary because of the violence in their communities. We have communities under siege by gun violence,” said Dwayne Truss, a member of the Los Angeles school board.).

34. Abamu & Manning, *supra* note 16.

35. *See* Tuchinda, *supra* note 23, at 787–93, 801.

36. *See infra* Section I.B.

37. *See, e.g.*, Meredith Deliso & Sabina Ghebremedhin, *Florida teen body-slammed by school resource officer ‘traumatized,’ family says*, ABC NEWS (Jan. 30, 2021, 5:08 PM), <https://abcnews.go.com/US/florida-teen-body-slammed-school-resource-officer-traumatized/story?id=75582344> [<https://perma.cc/6LHQ-YAFU>].

38. *Cf.* THE L. DICTIONARY, *What Is Police Brutality?*, <https://thelawdictionary.org/article/what-is-police-brutality> [<https://perma.cc/JL6T-HWER>] (last visited Apr. 7, 2022) (defining police brutality “as the use of excessive and/or unnecessary force by police when dealing with civilians.” The umbrella term includes excessive use of force, false arrest or wrongful imprisonment, racial discrimination, and sexual harassment and abuse.).

39. *See id.*

Unlike police brutality, however, almost all of the victims of school brutality are children, and the state actors are mainly teachers, principals, other school administrators, and security guards, although police commit some of the worst offenses.<sup>40</sup>

This Article highlights what the school-to-prison pipeline lens does not focus upon. The school-to-prison pipeline describes the collection of education and public safety policies and practices, including suspension and expulsion, that push primarily children of color and children with disabilities out of the classroom and into the streets, the juvenile system, or the criminal law system.<sup>41</sup> Much literature appropriately describes the pipeline and proposes to dismantle it.<sup>42</sup> However, descriptions of the school-to-prison pipeline do not focus upon the physical maltreatment of children in public schools, a phenomenon that causes significant harm, helps to send children to prison, and requires attention and change.<sup>43</sup>

Parents have sought criminal and civil liability for school brutality, but they have rarely succeeded because state and federal law have never adequately protected children from school brutality.<sup>44</sup> Consequently, children have very little right to protection from state violence in public schools, even in states with statutes that prohibit corporal punishment and regulate seclusion and restraint.<sup>45</sup> Layers of legal structures protect adult governmental employees, rather than children, from violence and liability.<sup>46</sup> These layers include continued case law support for the outdated tort privilege enabling teachers to physically punish children;<sup>47</sup> a patchwork of inconsistent and

---

40. See Clare Lombardo & Jenny Abamu, *A Dreaded Part of Teachers' Jobs: Restraining and Secluding Students*, NPR (Dec. 5, 2019, 6:00 AM), <https://www.npr.org/2019/12/05/777358918/a-dreaded-part-of-teachers-jobs-restraining-and-secluding-students> [<https://perma.cc/Y49J-V6FT>] (including experiences of teachers' assistants, English second language teachers, special education teachers, and a dean at a charter school and including that one teacher sometimes received calls from "administrators and other teachers . . . to use these methods not as a last resort, but as a way to gain control of chaotic situations.").

41. See School-to-Prison-Pipeline, DISABILITY RTS. EDUC. & DEF. FUND, <https://dredf.org/legal-advocacy/school-to-prison-pipeline/#~:text=The%20School-to-Prison%20Pipeline%20%28STPP%29%20refers%20to%20the%20practice,greatest%20risk%20of%20being%20thrust%20into%20the%20STPP> [<https://perma.cc/C78N-A6PF>].

42. See, e.g., CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, *THE SCHOOL-TO-PRISON PIPELINE* 112–13 (2010).

43. Matt Barnum, *Do police keep schools safe? Fuel the school-to-prison pipeline? Here's what the research says.*, CHALKBEAT (June 23, 2020, 6:00 AM), <https://www.chalkbeat.org/2020/6/23/21299743/police-schools-research> [<https://perma.cc/FA7D-79KB>].

44. See *infra* Part II.

45. See *infra* Section II.C.1.

46. See *infra* Part II.

47. See *infra* Section II.A.

gap-filled state statutes regarding corporal punishment, seclusion, and restraint;<sup>48</sup> statutory exclusions of school brutality from child abuse definitions;<sup>49</sup> a lack of statutory law limiting police action in schools;<sup>50</sup> inaccurate and incomplete reporting on school brutality incidents;<sup>51</sup> qualified immunity and statutory indemnification for school corporal punishment;<sup>52</sup> and weak constitutional protections.<sup>53</sup>

Legal literature on topics relating to school brutality do not analyze corporal punishment and seclusion and restraint laws together, and they usually focus exclusively on constitutional law theories for remedying state violence upon children at school.<sup>54</sup> Articles on corporal punishment, for instance, have made arguments about how school corporal punishment violates international law or why the U.S. Supreme Court should overturn *Ingraham v. Wright*,<sup>55</sup> the decision that generally authorizes states to corporally punish children in schools.<sup>56</sup>

This is the first law review article to define school brutality and describe the significance of its traumatic nature. This Article emphasizes that any law that permits the use of any form of physical force upon students opens the door to physical abuse upon schoolchildren.

48. See *infra* Section II.D.

49. See *infra* Section II.C.2.

50. See *infra* Section II.E.

51. See *infra* Section II.F.

52. See *infra* Section II.C.2.

53. See *infra* Section II.B.

54. See, e.g., Craig Goodmark, *A Tragic Void: Georgia's Failure to Regulate Restraint and Seclusion in Schools*, 3 JOHN MARSHALL L.J. 249, 253–54, 257–59 (2010) (analyzing seclusion and restraint laws, but not corporal punishment laws); Jessica Butler, *How Safe Is the Schoolhouse?: An Analysis of State Seclusion and Restraint Laws and Policies*, AUTISM NAT'L COMM., <https://www.autcom.org/pdf/HowSafeSchoolhouse.pdf> [<https://perma.cc/XYL3-2H3C>] (analyzing seclusion and restraint laws, but not corporal punishment laws); Nicole Mortorano, Note, *Protecting Children's Rights Inside of the Schoolhouse Gates: Ending Corporal Punishment in Schools*, 102 GEO. L.J. 481, 483–84 (2014) (analyzing corporal punishment laws, but not seclusion and restraint laws); Daniel Stewart, *How Do the States Regulate Restraint and Seclusion in Public Schools? A Survey of the Strengths and Weaknesses in State Laws*, 34 HAMLINE L. REV. 531, 533–34 (2011) (neglecting to analyze corporal punishment laws); Lanette Suarez, Comment, *Restraint, Seclusion, and the Disabled Student: The Blurred Lines Between Safety and Physical Punishment*, 71 UNIV. MIAMI L. REV. 859, 867, 872–73 (2017) (neglecting to analyze corporal punishment laws).

55. See, e.g., Susan Bitensky, *Spare the Rod, Embrace Human Rights: International Law's Mandate Against All Corporal Punishment of Children*, 21 WHITTIER L. REV. 147, 153–54 (1999); SUSAN BITENSKY, CORPORAL PUNISHMENT OF CHILDREN: A HUM. RTS. VIOLATION 47 (2006); Mortorano, *supra* note 54, at 497–98 (making strong arguments for why the U.S. Supreme Court should overturn *Ingraham v. Wright* regarding school corporal punishment).

56. See *Ingraham v. Wright*, 430 U.S. 651, 683 (1977) (holding that the Eighth Amendment does not apply to school corporal punishment, and such punishment does not violate the due process clause of the Fourteenth Amendment because of state common-law constraints and remedies).

Thus, a state's strict regulation of seclusion and restraint, for instance, is undermined by insufficient regulation of corporal punishment.

This is the first article to challenge the U.S. Supreme Court's assumptions in *Ingraham v. Wright* that schools are adequately open to public scrutiny, and common law tort and criminal remedies are sufficient to meet due process requirements of the Fourteenth Amendment.<sup>57</sup> Significant data show that schools often hide school brutality, and common law tort and criminal remedies are regularly unavailing to child victims and their parents due to qualified immunity and statutory indemnification for corporal punishment at school;<sup>58</sup> ambivalent regulation of school corporal punishment, seclusion, and restraint;<sup>59</sup> the undue influence of the tort privilege for teachers;<sup>60</sup> and other legal structures.<sup>61</sup> Unless state employees become less shielded from civil and criminal actions that seek to hold them accountable for school brutality, new private rights of action are needed to enforce prohibitions on such brutality.

This is the first article to discuss the need for reform in multiple areas of law beyond constitutional law—including state tort, criminal, and child abuse law—to prevent school brutality. Part I of this Article provides an overview of the prevalence of school brutality and its unnecessary harm. Part II describes the legal structures that facilitate school brutality. Part II includes a survey of state statutory and regulatory law regarding corporal punishment, seclusion, restraint, and police action in schools. Part III proposes solutions to school brutality.

## I. THE PREVALENCE OF SCHOOL BRUTALITY AND ITS UNNECESSARY HARM

### A. *School Brutality and Its Unnecessary Harm*

School brutality is the excessive, unwarranted, and traumatizing use of physical force by governmental employees upon students.<sup>62</sup> It typically involves the use of force to solitarily confine, immobilize, or inflict pain on a student as a means of discipline or control.<sup>63</sup> Examples of the intentional infliction of physical pain by educators, security

---

57. See *Ingraham*, 430 U.S. at 678 (“[T]he available civil and criminal sanctions for abuse—considered in light of the openness of the school environment—afford significant protection against unjustified corporal punishment.”).

58. See *infra* Section II.C.2.

59. See *infra* Section II.D.

60. See *infra* Section II.A.

61. See *infra* Part II.

62. Cf. THE L. DICTIONARY, *supra* note 38.

63. See, e.g., Mortorano, *supra* note 54, at 482.

guards, and police officers include hitting, shoving, punching, grabbing, stuffing into bags,<sup>64</sup> applying tasers upon,<sup>65</sup> and handcuffing.<sup>66</sup>

School brutality includes corporal punishment, which is typically defined as the intentional hitting or paddling or other use of force to inflict physical pain on students for purposes of discipline or control.<sup>67</sup> School brutality includes seclusion, which is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.<sup>68</sup> It also includes restraint, which, as defined by the U.S. Department of Education, is “a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.”<sup>69</sup>

64. See, e.g., Brian Ross, *Deadly Discipline? Students Hurt, Dying After Being Restrained*, ABC NEWS (Nov. 29, 2012), <https://abcnews.go.com/video/amp/embed?id=17843767&storyId=18892197&storyHeadline=New%20Law%20Targets%20Padded%20Rooms%20for%20Autistic%20Kids&contentType=story&placement=featured> [<https://perma.cc/6442-J3PV>] (showing a duffel bag that educators use to stuff children into during restraint).

65. Luke Darby, *Florida Police Officer Arrested and Handcuffed a 6-Year-Old Black Girl for a Tantrum in Class*, GQ (Sept. 23, 2019), <https://www.gq.com/story/six-year-old-black-girl-arrested-for-a-tantrum> [<https://perma.cc/VTJ6-XNM2>] (explaining that in 2016, the Huffington Post found nearly 90 cases of school resource officers using tasers on students between 12 and 19 years old).

66. See *id.*

67. See Lynn Roy, *Corporal Punishment in American Public Schools and the Rights of the Child*, 30 J. L. & EDUC. 554, 555 (2001) (defining corporal punishment as “the willful and deliberate infliction of physical pain on the person of another to modify undesirable behavior”). The United Nations defines corporal punishment as

any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement—a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion.

Convention on the Rights of the Child, General Comment No. 8 Nov. 20, 1989, 4 U.N.T.S. 11; see also NAT’L ASSOC. SCH. PSYCH., *Position Statement Corporal Punishment*, <https://webcache.googleusercontent.com/search?q=cache:bZ2zvA1XyYIJ:https://www.nasponline.org/x26815.xml+&cd=1&hl=en&ct=clnk&gl=us> [<https://perma.cc/7NRS-EQ7K>] (last visited Apr. 7, 2022) (defining corporal punishment as “the intentional infliction of pain or discomfort or the use of physical force upon a student with the intention of causing the student to experience bodily pain to punish the student’s behavior”). Compare 22 PA. CODE § 12.16 (defining corporal punishment as “[a] form of physical discipline that is intended to cause pain and fear and in which a student is spanked, paddled or hit on any part of the body with a hand or instrument”), with 2 TEX. ADMIN. CODE § 37.0011(a) (defining corporal punishment as the “deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline,” but excludes restraint).

68. U.S. DEP’T EDUC., RESTRAINT AND SECLUSION: RES. DOCUMENT 10 (May 2012), <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> [<https://perma.cc/7TR9-24T4>] (defining seclusion and differentiating it from timeout, supervised in-school detentions, and out-of-school suspensions, which do not involve physically locking a child in an area).

69. *Id.* (explaining that restraint includes mechanical restraint, which is the use of any device or equipment, such as handcuffs, to restrict a student’s freedom of movement).

Corporal punishment in American schools has involved a wide range of actions and injuries.<sup>70</sup> To illustrate, in 2016, in Alabama, an assistant principal paddled a twelve-year-old child twice because he was seen licking his fingers, which a teacher misinterpreted as an obscene gesture.<sup>71</sup>

The paddling caused the child to cry in pain during and after the paddling, and an examination revealed dark bruises.<sup>72</sup> Afterwards, the child was afraid to go to school, and “his grades slipped from A’s and B’s to D’s and F’s.”<sup>73</sup> He was “subsequently diagnosed with PTSD, anxiety, and depression as a result of child abuse.”<sup>74</sup> He was treated with medication for these conditions.<sup>75</sup>

In another case in Georgia in 2016, a paraprofessional aide picked up and hung an elementary school student on a classroom chalkboard by his belt loop while other children laughed, causing him physical and mental pain.<sup>76</sup> In Arkansas, a school coach dragged a thirteen-year-old student across the floor for fifteen feet and then banged his head against a metal pole.<sup>77</sup> Corporal punishment, even when it involves a single blow by a paddle, often leads to injuries that may require medical attention.<sup>78</sup> Corporal punishment is also not reserved for the worst rule violations; students have been paddled for minor infractions, such as being late to class and dress code violations.<sup>79</sup>

Seclusion and restraint are similarly inherently dangerous, resulting in injuries of children and adults, and deaths of children every year.<sup>80</sup> A 2009 report by the U.S. Government Accountability Office documented hundreds of cases of abuse and death resulting from school restraint and seclusion.<sup>81</sup> Security guards have kicked and

---

70. See, e.g., Abamu & Manning, *supra* note 16.

71. Wells v. Ayers, 292 F. Supp. 3d 1267, 1268–69 (N.D. Ala. 2017).

72. *Id.* at 1269.

73. *Id.*

74. *Id.*

75. *Id.*

76. Davis v. Thomas, No. 1:20-cv-01062, 2021 WL 673418, at \*2–3 (N.D. Ga. Feb. 22, 2021).

77. London v. Dir. of Dewitt Pub. Sch., 194 F.3d 873, 875 (8th Cir. 1999); see also Neal v. Fulton Cnty. Bd. of Educ., 229 F.3d 1069, 1071 (11th Cir. 2000) (describing how a teacher struck a high school freshman with a metal weight lock, blinding him in one eye).

78. See, e.g., Derrick Johnson, *The Striking Outlier: The Persistent, Painful and Problematic Practice of Corporal Punishment in Schools*, S. POVERTY L. CTR. & UCLA CTR. CIV. RTS. REMEDIES, June 11, 2019, at 12, [https://www.splcenter.org/sites/default/files/com\\_corporal\\_punishment\\_final\\_web\\_0.pdf](https://www.splcenter.org/sites/default/files/com_corporal_punishment_final_web_0.pdf) [<https://perma.cc/VS3S-PG9L>] (describing bruises from school paddling that required medical attention).

79. *Id.*

80. SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., ISSUE BRIEF#1: PROMOTING ALTERNATIVES TO THE USE OF SECLUSION AND RESTRAINT 1 (2010) [hereinafter ISSUE BRIEF#1], [https://www.samhsa.gov/sites/default/files/topics/trauma\\_and\\_violence/seclusion-restraints-1.pdf](https://www.samhsa.gov/sites/default/files/topics/trauma_and_violence/seclusion-restraints-1.pdf) [<https://perma.cc/KX7D-FHD5>].

81. U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-719T, SECLUSIONS AND RESTRAINTS:

punched children while walking them to seclusion rooms.<sup>82</sup> Children have died by suicide by hanging in seclusion rooms.<sup>83</sup> They have defecated and urinated on themselves.<sup>84</sup> They have also scratched windows, torn at and banged their heads on walls, and begged and screamed to be let out of seclusion.<sup>85</sup> Injuries, including head injuries, broken bones, pulled hair, scratches, and bruises, are common.<sup>86</sup>

Regarding conditions of seclusion, school staff have locked children in closets and confined them in dark rooms.<sup>87</sup> Children have endured excessive numbers of hours—such as twenty-seven hours—inside seclusion rooms, missing class time.<sup>88</sup> An investigation revealed seclusion of a girl in North Dakota for half a year.<sup>89</sup> Similarly, schools have secluded children excessive numbers of times: a New York public school put a child in a room “seventy-five times over a six month period” for “whistling, slouching, and hand waving.”<sup>90</sup>

Regarding restraint, school staff killed a seven-year-old after holding the child face down for hours, and a teacher tied five-year-old children to chairs with bungee cords and duct tape.<sup>91</sup> Schools have pinned students to the floor for hours at a time, handcuffed them, and placed them in strangleholds.<sup>92</sup> Children have suffered from broken arms; bloody noses; punches to the face; vomiting; and loss of consciousness during restraint.<sup>93</sup> Restraints are typically assaults, involving being forced to the ground, and they often involve being

---

SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (2009) [hereinafter SECLUSIONS & RESTRAINTS].

82. See, e.g., *Carestio v. Sch. Bd. of Broward Cnty.*, 866 So. 2d 754, 756 (Fla. Dist. Ct. App. 2004) (describing how three security guards kicked and punched Marc Carestio, a minor, while they escorted him out of class for disruptive behavior).

83. See SECLUSIONS & RESTRAINTS, *supra* note 81, at 5 (describing a thirteen-year-old who hanged himself in a seclusion room after prolonged confinement).

84. See Abamu & Manning, *supra* note 16 (describing how a nonverbal child with autism defecated and urinated on himself in a desperate attempt to get out of the seclusion room).

85. Jennifer Smith Richards, Jodi S. Cohen & Lakeidra Chavis, *The Quiet Rooms*, PROPUBLICA ILL. (Nov. 19, 2019), <https://features.propublica.org/illinois-seclusion-rooms/school-students-put-in-isolated-timeouts> [<https://perma.cc/J74P-5WWK>].

86. See DISABILITY RTS. D.C., *Restraint, Seclusion, and Abuse in District of Columbia Schools and the Need for Accountability*, March 2017, at 4, <http://www.uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf> [<https://perma.cc/S5UY-F5DN>] (describing a head injury caused by a restraint in a Washington, D.C. school).

87. SECLUSIONS & RESTRAINTS, *supra* note 81, at 2, 6.

88. *Id.*

89. Butler, *supra* note 54.

90. SECLUSIONS & RESTRAINTS, *supra* note 81, at 13.

91. See *id.* at 6.

92. *Id.* at 1–2, 6.

93. See, e.g., *id.* at 6; DISABILITY RTS. D.C., *supra* note 86, at 4 (describing when a seventeen-year-old child was punched and lost consciousness during a restraint).

dragged by a wrist or other body part.<sup>94</sup> Although restraints that block air to the lungs can cause death, educators are often not trained on how to safely restrain or seclude a child, and educators often remain employed at schools even after a restraint or seclusion results in a criminal conviction, a finding of civil or administrative liability, or a large financial settlement.<sup>95</sup>

School brutality by law enforcement officers and former law enforcement officers is especially violent, including shootings, kicking, hitting, body-throwing, body-slammings, and inappropriate handcuffing.<sup>96</sup> As described in Section II.C, although many states outlaw the use of mechanical restraints by school staff,<sup>97</sup> law enforcement officers regularly use handcuffs, a form of mechanical restraint, upon children who are generally considered too young to be arrested.<sup>98</sup> In addition, in 2016, the Huffington Post found nearly ninety cases of school resource officers (SROs) using tasers on students between twelve and nineteen years old for offenses such as mouthing off to a police officer and running from the principal's office.<sup>99</sup> At least "17% of public schools equipped their security personnel with tasers or stun guns in 2010," even though such weapons can seriously injure or kill children.<sup>100</sup>

School safety experts have observed that the "hierarchical, command-and-control nature of policing can [clash] with the culture of schools, which is supposed [to] be nurturing."<sup>101</sup> As Harold Jordan, the nationwide equity coordinator at the American Civil Liberties Union of Pennsylvania says, the presence of law enforcement officers at schools "creates an inherently threatening environment. It

---

94. See, e.g., Abamu & Manning, *supra* note 16 ("They shoved me to the ground. They grabbed my wrist, and they dragged me up the hill by my wrist.").

95. SECLUSIONS & RESTRAINTS, *supra* note 81.

96. See Rebecca Klein, *Set to Stun*, HUFFINGTON POST (Aug. 11, 2016, 9:01 AM), <https://data.huffingtonpost.com/2016/school-police/tasers> [<https://perma.cc/KUE6-6GFX>] (describing multiple incidents of police brutality upon students); Keierleber, *supra* note 20.

97. See U.S. DEPT EDUC., *supra* note 68, at 10. Mechanical restraint is the use of any device or material attached to or adjacent to a student's body that is intended to restrict the normal freedom of movement, and which cannot easily be removed by a student. *Id.*

98. See, e.g., Wainman, Satterfield & Henry, *supra* note 12; John Donovan, *How Young Is Too Young to Be Arrested?*, HOWSTUFFWORKS (Sept. 24, 2019), <https://people.howstuffworks.com/too-young-to-be-arrested.htm> [<https://perma.cc/ELE6-NM85>] (explaining that most of the eighteen jurisdictions that place a minimum age limit on criminal liability have determined that a child less than 10 years old cannot be charged with a crime. The Orlando Police Department fired an officer who arrested two six-year-old children on misdemeanor battery charges in 2019).

99. Klein, *supra* note 96 (describing multiple incidents of police brutality upon students).

100. *Id.*

101. See Sawchuk, *supra* note 33.

sends the message that the kids are the problem there and it increases the expectation that something may go wrong in a school.”<sup>102</sup>

All forms of school seclusion and corporal punishment constitute school brutality.<sup>103</sup> The reason is that seclusion and corporal punishment are never necessary to educate a child or manage a child’s behavior, and such techniques have an unacceptably high risk of physically harming and traumatizing the child.<sup>104</sup> Seclusion and corporal punishment are never necessary because many effective, noncoercive behavior management and teaching strategies exist, including positive behavioral interventions and supports (PBIS), trauma-responsive care, mindfulness practice, restorative justice, social-emotional learning, and Ukeru.<sup>105</sup>

Similarly, all forms of school restraint constitute school brutality except restraint that is necessary to prevent imminent, serious physical harm to self or others.<sup>106</sup> The restraint of a student in an

102. Keierleber, *supra* note 20.

103. *Cf.* THE L. DICTIONARY, *supra* note 38.

104. *See* Johnson, *supra* note 78 (“corporal punishment in schools is traumatic and not educationally necessary”).

105. Robert H. Horner, George Sugai & Cynthia M. Anderson, *Examining the Evidence Base for School-Wide Positive Behavior Support*, 42 FOCUS ON EXCEPTIONAL CHILD. 1 (Apr. 2010) (providing an overview of the “rigorous and voluminous body of scholarship” establishing positive behavioral supports and interventions as an “evidence-based practice . . . to decrease problem behavior and promote prosocial behavior”); Tuchinda, *supra* note 23, at 766 (describing the evidentiary justification for trauma-responsive education, especially for children with behavioral challenges); Trevor Fronius, Sean Darling-Hammond, Hannah Persson, Sarah Guckenburger, Nancy Hurley & Anthony Petrosino, *Restorative Justice in U.S. Schools: An Updated Research Review*, WESTED JUST. & PREVENTION RSCH. CTR., Mar. 2019, at 24, <https://www.wested.org/wp-content/uploads/2019/04/resource-restorative-justice-in-u-s-schools-an-updated-research-review.pdf> [<https://perma.cc/3WDM-9JK9>] (explaining that most of the empirical studies reviewed reported a decrease in harmful behavior after implementation of a restorative justice program); UKERU SYSTEMS, *Our History*, <https://www.ukerusystems.com/who-we-are/our-history> [<https://perma.cc/73WM-NXUX>] (last visited Apr. 7, 2022) (describing how a behavioral healthcare organization called Grafton ended the use of seclusion and reduced the use of restraint by over 99 percent through a cutting edge, trauma-informed approach called Ukeru); *see, e.g.*, Vernon A. Barnes, Lynnette B. Bauza & Frank A. Treiber, *Impact of stress reduction on negative school behavior in adolescents*, 1 HEALTH & QUALITY OF LIFE OUTCOMES 1, 1 (2003) (explaining how a transcendental meditation program at school decreased absenteeism, rule infractions, and suspension rates); Dorothy L. Espelage, Sabina Low, Joshua R. Polanin & Eric C. Brown, *The Impact of a Middle School Program to Reduce Aggression, Victimization, and Sexual Violence*, 53 J. ADOLESCENT HEALTH 180, 180 (2013) (explaining that a curriculum focused on social emotional learning skills led to significant reductions in physical aggression by students); DIGNITY IN SCH., *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, 2016, at 3–5, [https://dignityinschools.org/wp-content/uploads/2017/10/DSC\\_Counselors\\_Not\\_Cops\\_Recommendations-1.pdf](https://dignityinschools.org/wp-content/uploads/2017/10/DSC_Counselors_Not_Cops_Recommendations-1.pdf) [<https://perma.cc/ZD3K-2VGN>] (providing a list of positive approaches to school climate and discipline).

106. *See* Jeffrey P. Miller, *Physical Education: Amending the Individuals with Disabilities Education Act to Restrict Restraint and Seclusion in Public and Private Schools*, 49 FAM. CT. REV. 400, 404 (2011).

emergency situation in which the student's behavior poses an imminent danger of serious, physical harm upon their self or others is reasonable. In all other circumstances, however, restraint is never necessary to educate or discipline a student because, as mentioned earlier, safer, effective, and noncoercive behavior management and teaching strategies exist.<sup>107</sup>

By permitting the use of any force against a child without well-defined, enforced limitations, state laws permitting corporal punishment, seclusion, or restraint upon schoolchildren opens the door to innumerable kinds of physical abuses of these children. The U.S. Centers for Disease Control and Prevention (CDC) defines physical abuse as “the use of physical force, such as hitting, . . . or other shows of force against a child.”<sup>108</sup> Child maltreatment includes any abuse of a child by a person in a custodial role “that results in harm, potential for harm, or threat of harm to a child.”<sup>109</sup> Because any law that allows corporal punishment, seclusion, or restraint upon a child permits the use of physical force against a child, such law is authorizing child abuse according to current standards.<sup>110</sup> Further, such law, without well-defined, enforced limitations, also authorizes other abusive behaviors, which helps to explain how schoolchildren continue to be tasered, closeted, duct-taped, and body-slammed at school.

Lawmakers across the country have tended to regulate corporal punishment, seclusion, and restraint separately, as if they were distinctly different practices.<sup>111</sup> However, when these practices are used as punishment to control or “correct” a child, little justifies treating them differently.<sup>112</sup> The reason, as federal courts have concluded, is that at essence, these practices are merely different forms of corporal punishment.<sup>113</sup>

---

107. *See id.* at 404 (asserting that restraint should be limited to those students who pose an imminent danger to a person's safety); Stewart, *supra* note 54, at 539 (asserting that restraint and seclusion should only be used in schools to prevent harm to a person and never for punishment, discipline, or a substitute for lack of staffing, planning, or services).

108. Beverly L. Fortson, Joanne Klevens, Melissa T. Merrick, Leah K. Gilbert & Sandra P. Alexander, *Preventing Child Abuse and Neglect: A Technical Package for Policy, Norm, and Programmatic Activities*, CTR. FOR DISEASE CONTROL & PREVENTION 8 (2016), <https://www.cdc.gov/violenceprevention/pdf/can-prevention-technical-package.pdf> [<https://perma.cc/8NJX-467P>].

109. *Id.*

110. *But see* Ingraham v. Wright, 430 U.S. 651, 663 (1977) (concluding that there is contemporary approval of reasonable corporal punishment of schoolchildren).

111. *See, e.g.*, SECLUSIONS & RESTRAINTS, *supra* note 81, at 33, 40, 45–46, 48–49, 51, 55.

112. *See, e.g., id.* at 6.

113. *See, e.g.*, T.W. *ex rel.* Wilson v. Sch. Bd. of Seminole Cnty., 610 F.3d 588, 598–99 (11th Cir. 2010) (regarding the Fourteenth Amendment, analyzing a restraint as a type of corporal punishment); A.T. *ex rel.* L.T. v. Baldo, 798 Fed. App'x. 80, 83 (9th Cir. 2019)

Their central, shared quality is the use of physical force to inflict physical and emotional pain and fear in hopes that the child's behavior will change, to express frustration or moral condemnation about the child or the child's behavior, and/or to exclude the child from an educational environment.<sup>114</sup> The hopes that corporal punishment will improve a child's behavior are no longer reasonable, however, based upon decades of scientific research. Further, applying physical force upon a child to express frustration or moral condemnation or to exclude a child is inappropriate in an educational setting when non-abusive alternatives exist.

All forms of school brutality are coercive, demeaning, and dangerous, and they cause physical and psychological trauma to their victims, student witnesses, and the people who commit them.<sup>115</sup> Children typically experience school brutality as violative, frightening, and overwhelming.<sup>116</sup> Amplifying these reactions is the fact that school brutality often occurs when an adult has lost their temper and is acting recklessly, aggressively, in a fight-flight response, or without self-control.<sup>117</sup> School brutality violates the trust that a child ideally has in the adults who work at school; such trust ideally involves the belief that the adults will protect and care for the child and support the child's best interest.

School brutality also involves the unconsented touching or threat of such touching by a state agent upon the body of a child.<sup>118</sup>

---

(regarding the Fourth Amendment, analyzing the use of restraints and seclusion as corporal punishment).

114. *Cf.* T.W. *ex rel.* Wilson, 610 F.3d at 598–99; A.T. *ex rel.* L.T., 798 Fed. App'x. at 83.

115. *See* Cronholm et al., *supra* note 31, at 358 (providing evidence to support the addition of witnessing violence to the Adverse Childhood Experiences (ACEs) scale, which gauges exposures to potentially traumatic events); RESMAA MENAKEM, MY GRANDMOTHER'S HANDS 47 (2017) (asserting that inflicting harm upon another human causes secondary trauma, resulting in profound shame called "moral injury"); *see* Lombardo & Abamu, *supra* note 40 ("parents with children who have been secluded or restrained have said the experience was traumatic," and teachers say that seclusion and restraint can be physically and mentally painful for both them and their students); *see* Abamu & Manning, *supra* note 16 (describing how repeated seclusions traumatized a child with autism, "causing him to hate school and making him more violent and distrusting of authority figures"; "educators acknowledge that even well-performed restraints can have a traumatizing effect on students"); SECLUSIONS & RESTRAINTS, *supra* note 81 ("Even if no physical injury is sustained, . . . individuals can be severely traumatized during restraint.").

116. *See, e.g.,* Melinda D. Anderson, *Where Teachers Are Still Allowed to Spank Students*, ATLANTIC (Dec. 15, 2015), <https://www.theatlantic.com/education/archive/2015/12/corporal-punishment/420420> [<https://perma.cc/H2DT-U8XA>] (reporting that 30 years later, the memory of the paddling of a 10-year-old, which caused the child to scream, still haunts the witness).

117. *See id.* (describing the "arbitrary," "inconsistent," and "petty" ways in which children were corporally punished in school); MENAKEM, *supra* note 115, at 121–22, 128 (describing how police brutality often occurs when the officer is in fight, flee, or freeze response).

118. *See* COUNCIL EUR. COMM'R HUM. RTS., *Children and Corporal Punishment: "The*

The pain and unconsented touching of school brutality violate the physical integrity of the student, demonstrate disrespect for the human dignity of the student, humiliate the student, and undermine the student's self-esteem.<sup>119</sup> Further, force or the threat of force to obtain obedience or compliance from a child teaches the child to solve problems and interact with others with violence and threats.<sup>120</sup>

School brutality, in whatever form, is a type of adverse childhood experience (ACE) that can constitute trauma, an adversity that causes long-term harm to a child.<sup>121</sup> Trauma is

any experience or event that overwhelms a person's ability to cope and elicits feelings of terror, powerlessness, and out-of-control physiological arousal. Trauma typically occurs when a person is faced with an intense, frightening event (or series of events) or a set of circumstances that are physically or emotionally harmful or life threatening that persists without appropriate support and intervention.<sup>122</sup>

Research increasingly shows that school brutality can be traumatizing, and it is often re-traumatizing for a child who has suffered previous trauma.<sup>123</sup> Corporal punishment, seclusion, and restraint at school have qualities in common with experiences that can be traumatic, including corporal punishment at home, community violence, and witnessing domestic violence.<sup>124</sup> All of these experiences involve violence that destroys trust, causes physical harm, and violates a

---

*Right Not to Be Hit, Also a Children's Right*, Jan. 2008, at 3, <https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b> [<https://perma.cc/78FT-J2Q3>].

119. *See id.* ("Corporal punishment of children often becomes inhuman or degrading, and it always violates their physical integrity, demonstrates disrespect for human dignity and undermines self-esteem.")

120. *See* Tuchinda, *supra* note 23, at 793.

121. *See* Johnson, *supra* note 78; ISSUE BRIEF #1, *supra* note 80; Tuchinda, *supra* note 23, at 790 (describing the profound and myriad ways in which trauma can impair the academic and behavioral functioning of children at school); Billy Kobin, *Kentucky lawmaker makes renewed effort to ban paddling and corporal punishment in schools*, LOUISVILLE COURIER J. (Jan. 5, 2021, 2:59 PM), <https://www.courier-journal.com/story/news/politics/ky-general-assembly/2021/01/05/kentucky-lawmaker-tries-again-ban-paddling-corporal-punishment-schools/4140075001> [<https://perma.cc/EW4Z-QR5E>] (quoting Kentucky State Representative Tina Bojanowski, a teacher, who indicated that school corporal punishment is another adverse childhood experience that can be traumatic).

122. Tuchinda, *supra* note 23, at 794.

123. *See, e.g.*, ISSUE BRIEF #1, *supra* note 80 (indicating that restraint and seclusion are traumatic and, for those who have already experienced trauma, re-traumatizing).

124. *See* Cronholm et al., *supra* note 31, at 358; Finkelhor et al., *supra* note 31, at 16; Robert Sege et al., *Effective Discipline to Raise Healthy Children*, PEDIATRICS, 2008, at 4 (recognizing the recommendation that spanking be considered as an adverse childhood experience).

person's physical integrity. Further, corporal punishment, seclusion, and restraint at school are forms of community violence.<sup>125</sup> Accordingly, corporal punishment, seclusion, and restraint at school should be identified as ACEs.

Like other forms of trauma, school brutality can have a profound physical, mental, and academic toll.<sup>126</sup> Scientific studies indicate that the majority of "children experience a potentially traumatic event before age eighteen and that the more adversity [a child experiences], the more likely they are to experience impairments in health, learning, and behavior."<sup>127</sup> Recent research reveals that trauma over-activates and dysregulates the stress-response system so that the body experiences unrelenting and debilitating stress, called toxic stress.<sup>128</sup> Toxic stress causes inflammation in multiple body systems and changes gene expression, increasing the risk of disease and disability during childhood and adulthood and early death.<sup>129</sup> Due to the vulnerability of the developing brain to extreme and chronic stress, trauma reorganizes the architecture of children's brains, causing the parts of the brain that are responsible for the fight or flight response, fear, anxiety, and impulsivity to overproduce neural connections, while decreasing the development of neural connections in the parts of the brain needed for behavioral self-regulation and academic success.<sup>130</sup> Specifically, trauma decreases neural connectivity in the parts of the brain responsible for executive function (paying attention, learning from mistakes, making measured judgments, organizing, and managing one's emotions); memory; logical and sequential thinking; and language development.<sup>131</sup> Trauma also increases the risk of behavioral impairments by causing deficits in self-regulation and social-emotional skills and increasing hypersensitivity to non-threatening environmental stimuli.<sup>132</sup>

Accordingly, the consequences of childhood trauma include increased likelihood of academic decline and failure; acting aggressively or disruptively at school; absenteeism and disengagement with school; need for special education; difficulty in forming positive relationships with peers and adults; school suspension, expulsion, and involvement in the juvenile delinquency and criminal justice systems.<sup>133</sup> Trauma causes and worsens mental health conditions,

---

125. Cf. Finkelhor et al., *supra* note 31, at 13.

126. Tuchinda, *supra* note 23, at 785–98.

127. *Id.* at 786.

128. *Id.* at 798.

129. *Id.* at 787, 798.

130. *Id.* at 799.

131. *Id.*

132. Tuchinda, *supra* note 23, at 800–01.

133. *Id.* at 789–93, 801–02.

especially post-traumatic stress disorder, anxiety, attention deficit disorder, and depression.<sup>134</sup>

Thus, contrary to traditional views that physical punishment of schoolchildren promotes “group discipline” and “control” of children,<sup>135</sup> studies indicate that seclusion, restraint, and corporal punishment lead to “an increase in the behaviors that schools are attempting to eliminate or control.”<sup>136</sup> Children who have endured any of these practices are “more likely to be aggressive” and “misbehave over time.”<sup>137</sup> Research shows that school corporal punishment increases the possibility that a student will become involved in the delinquency or criminal system.<sup>138</sup> Research also indicates that school corporal punishment is associated with lower self-efficacy and self-esteem and lower scores in vocabulary, math, and executive functioning.<sup>139</sup> Seclusion and restraint negatively impact a child’s educational learning and damage relationships between children and adults.<sup>140</sup> Conversely, programs that have reduced or eliminated seclusion and restraint have realized positive outcomes, including greater effectiveness in improving behaviors, reduced youth and staff injuries, decreased staff turnover, higher staff satisfaction, and significant cost savings.<sup>141</sup> In other words, research indicates that public systems that educate, rehabilitate, treat, and incarcerate children and youth will save money and become more effective in managing behavior if they stop corporally punishing, secluding, and restraining children and youth.<sup>142</sup>

---

134. *Id.* at 792.

135. *See* *Ingraham v. Graham*, 430 U.S. 651, 661–62 (1977) (concluding that the prevalent rule privileges “such force as a teacher or administrator ‘reasonably believes to be necessary for (the child’s) proper control, training, or education’”).

136. ISSUE BRIEF #1, *supra* note 80, at 2; SECLUSIONS & RESTRAINTS, *supra* note 81; Ross, *supra* note 64 (including that Dr. Michael George, Director of Centennial School, says that seclusion and restraint “contribute to the problem” because “they make children angrier . . . resentful . . . want to engage in more aggression, to get even, to get back.” Children who had been restrained in other schools echoed these sentiments in interviews.).

137. Gershoff & Font, *supra* note 21, at 12 (describing how corporal punishment increases aggression at home and school); QUALITYRTS., *Strategies to end seclusion and restraint: WHO QualityRights specialized training course guide*, WORLD HEALTH ORG. (2019), <https://apps.who.int/iris/bitstream/handle/10665/329605/9789241516754-eng.pdf> [<https://perma.cc/QVK3-G7KZ>] (“Evidence shows that seclusion and restraints can make feelings of frustration and anger worse, resulting in more harmful behavior.”); Ross, *supra* note 64.

138. Johnson, *supra* note 78, at 10 (using data from 2013–14 year).

139. Gershoff & Font, *supra* note 21, at 11.

140. Abamu & Manning, *supra* note 16.

141. *Id.*; Jennifer Richards & Jodi Cohen, *These schools did away with seclusion and restraint. They say Illinois can too.*, CHI. TRIB. (Apr. 13, 2020), <https://www.chicagotribune.com/investigations/ct-seclusion-restraint-alternatives-grafton-20200413-bfw7u2srp-bao3pffhcjdnhr2qq-story.html> (describing the benefits of Ukeru, which bans the use of restraints and focuses on comforting youth and helping them regulate emotions during crises).

142. *See id.*

Consistent with such research, a large body of research on the effects of corporal punishment by parents show that such punishment is ineffective in improving behavior over the long term, can be traumatic, and has numerous unintended negative effects.<sup>143</sup> Studies show that the “more children receive physical punishment, the more defiant they are and the less likely they are to empathize with others.”<sup>144</sup> Corporal punishment by parents is associated with more physical and verbal aggression, physical fighting and bullying, antisocial behavior, and behavior problems generally.<sup>145</sup> Unintended negative effects include increased stress levels; perpetrating violence on family members; higher rates of mental health problems, such as anxiety, depression, and psychological maladjustment; alcohol and drug use; lower cognitive ability and academic achievement; and a more negative parent-child relationship.<sup>146</sup>

In response to the research, the U.S. Department of Education has declared that it has found that there is “no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors.”<sup>147</sup> Accordingly, the U.S. Department of Education has stated that “restraint and seclusion should be never be used except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others.”<sup>148</sup> Similarly, in 2016, the U.S. Department of Education sent a letter urging state leaders to end corporal punishment in schools due to the practice’s short-term and long-term effects on students.<sup>149</sup>

Multiple national mental health organizations, including the Substance Abuse Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services (HHS), and the National Association of State Mental Health Program Directors (NASMHPD), have deemed “the use of seclusion or restraint [to be] the result of treatment failure” in programs that address behavioral health.<sup>150</sup> Restraint originated in hospitals and psychiatric institutions, particularly in the treatment of violent persons.<sup>151</sup> Although

---

143. See Gershoff & Font, *supra* note 21, at 12; Elizabeth Gershoff, *Report on Physical Punishment in the United States: What the Research Tells Us About Its Effects on Children*, 13, 15–16 (2008), <http://www.nospank.net/gershoff.pdf> [<https://perma.cc/ES9Z-H9R9>].

144. Gershoff, *supra* note 143, at 13.

145. *Id.* at 13–14.

146. *Id.* at 15–16.

147. U.S. DEP’T EDUC., *supra* note 68, at iii.

148. *Id.*

149. Letter from John B. King, Jr. to Governors and Chief State School Officers (Nov. 22, 2016) [hereinafter Letter from John B. King, Jr.] (on file with the U.S. Dep’t of Educ.).

150. See ISSUE BRIEF #1, *supra* note 80.

151. COUNSEL OF PARENTS, ADVOCS. & ATT’YS, *The Crisis of Trauma and Abuse in Our Nation’s Schools* 12 (2020).

seclusion and restraint were traditionally thought to create a safer and more secure environment for children with behavioral health problems and adults who cared for them, research contradicts this.<sup>152</sup> Further, even though seclusion and restraint were once perceived as therapeutic, this misconception has been challenged and refuted through multiple studies.<sup>153</sup>

Another misconception has been that “seclusion and restraint are used only when absolutely necessary as crisis response techniques.”<sup>154</sup> However, research in behavioral health settings, where many children receive treatment, reveal that “seclusion and restraint are most commonly used to address loud, disruptive, noncompliant behavior and generally originate from a power struggle between consumer and staff.”<sup>155</sup> “The decision to apply seclusion or restraint techniques is often arbitrary, idiosyncratic, and generally avoidable,” SAMHSA observes.<sup>156</sup>

Parents have complained that they do not want anyone hitting their children.<sup>157</sup> Such complaints are consistent with a parent’s right to the “custody and management of his or her children,” a right recognized by the U.S. Supreme Court.<sup>158</sup> Most states that allow school corporal punishment do not allow parents to opt out of the practice, however. And in states such as Texas, where parents can sign a form to indicate that their child is not to be corporally punished at school, those forms are occasionally lost by schools.<sup>159</sup>

Despite traditional beliefs that corporal punishment is “reasonably necessary ‘for the proper education of the child,’”<sup>160</sup> school brutality does not create an environment that promotes learning. Instead, research shows that physical safety at school is necessary for students to learn.<sup>161</sup> Students who do not worry about their safety feel more connected to their school and care more about their educational experience.<sup>162</sup> “Physical safety at school is related to higher

152. See Letter from John B. King, Jr., *supra* note 149, at 2.

153. *Id.*

154. ISSUE BRIEF #1, *supra* note 80, at 2.

155. *Id.*

156. *Id.*

157. See *id.* at 3.

158. *Lassiter v. Dep’t of Soc. Serv. of Durham Cnty.*, 452 U.S. 18, 27 (1981).

159. See, e.g., ISSUE BRIEF #1, *supra* note 80.

160. *Ingraham v. Wright*, 430 U.S. 651, 662 (1977) (“[T]he State itself may impose such corporal punishment as is reasonably necessary ‘for the proper education of the child.’”).

161. See NAT’L DROPOUT PREVENTION CTR., *Safe Learning Environments*, <https://dropoutprevention.org/effective-strategies/safe-learning-environments> [<https://perma.cc/6UUL-PKAB>] (last visited Apr. 7, 2022) (“Students cannot learn in an unsafe environment.”).

162. NAT’L CTR. ON SAFE SUPPORTIVE LEARNING ENV’T, U.S. DEP’T OF EDUC., *Physical Safety* [hereinafter NAT’L CTR. LEARNING ENV’T], <https://safesupportivelearning.ed.gov/topic-research/safety/physical-safety> [<https://perma.cc/YA3H-VCBP>] (last visited Apr. 7, 2022).

academic performance, fewer risky behaviors, and lower dropout rates.”<sup>163</sup> The U.S. Department of Education has indicated that acts of violence by school staff or police at school “imperil safety for students and staff, and undermine the teaching and learning climate.”<sup>164</sup> “Positive relationships between students and staff—not police presence or corporal punishment—is a strong predictor of school safety.”<sup>165</sup> As the U.S. Department of Education has concluded, “[i]t is essential that all students have the opportunity to attend schools that provide a safe environment where they can thrive and fully engage in their studies without the distraction and worry about physical safety concerns.”<sup>166</sup>

Unfortunately, American public schools are not effective at creating a sense of physical safety for children and their parents. “In 2019, only 21.6 percent of students reported feeling satisfied with their safety at school, compared with 76 percent of educators and 35 percent of parents.”<sup>167</sup> In 2020, approximately 41 percent of students experienced anxiety regarding safety concerns at school.<sup>168</sup> Nearly half of the students were unable to relax as a result of their safety concerns, and more than half of the students experienced unstable emotions and inability to focus in class as a result of safety concerns at school.<sup>169</sup> Children, especially Black children, have complained that SROs do not make them feel safe and instead make them feel unvalued, intimidated, and threatened.<sup>170</sup> Unfortunately, “school safety” is often more about making adult, governmental employees feel safe at the expense of children.<sup>171</sup>

---

163. *Id.*

164. *Id.*

165. *See* Klein, *supra* note 96.

166. NAT’L CTR. LEARNING ENV’T, *supra* note 162.

167. *Id.*

168. SAFE & SOUND SCH., 2020 STATE OF SCHOOL SAFETY REPORT 23 (2020), <https://www.safeandsoundschools.org/wp-content/uploads/2020/06/2020-State-of-School-Safety-Report.pdf> [<https://perma.cc/P255-KLPT>].

169. *Id.*

170. *See, e.g.*, Sarah Schwartz, Stephen Sawchuk, Eeesha Pendharkar & Ileana Najarro, *These Districts Defunded Their School Police. What Happened Next?*, EDUC. WEEK (June 4, 2021) (describing how a sophomore at Logan High School who was the co-president of the Black Student Leaders student group in La Crosse, Wisconsin, expressed that SROs do not make her feel safe); Sawchuk, *supra* note 33 (“Having an SRO is like having a note on my back that says, ‘I’m not valuable,’”); Tonya Mosley, *School Systems Re-Evaluate School Police Following George Floyd Murder*, WBUR (June 14, 2021), <https://www.wbur.org/hereandnow/2021/06/14/school-resource-officers> [<https://perma.cc/XUZ3-5563>] (reporting that Chaya Davis, co-leader of Black Student Leaders in La Crosse, Wisconsin, says she feels “very intimidated” by SROs, who she says are more of “a threat than a protector”).

171. *See, e.g.*, Sawchuk, *supra* note 33 (explaining that surveys from Chicago educators and community members showed that “a third of students felt that SROs tried to build relationships with students while over half of teachers felt that way and three-quarters

In summary, current understandings of trauma and the effects of the use of physical force on children's behavior, sense of safety, learning, and well-being make clear that school corporal punishment, restraint, seclusion, and other applications of force on children are unreasonable, excessive, and unwarranted. The only exception is the use of restraint when a child's behavior poses an imminent threat of serious physical harm upon self or others.

*B. The Prevalence of School Brutality and Its Disproportionate Harm upon Black Children and Children with Disabilities*

*We ultimately envision corporal punishment being totally removed [from the district policies]. But we also had some pretty intense discussions. . . . Corporal punishment is ingrained in students and the culture of our area. In that conversation, we had students say, 'Yes, we need it.' And parents said, 'Yes, we need it.' It's been so much a part of [the culture]. So we were not going to strip it all the way out, but we reduced it.*

—Anonymous school administrator, Jackson, Mississippi<sup>172</sup>

How common is school brutality? School brutality remains widespread and under-reported.<sup>173</sup> Although no central database collects information about school brutality, public schools self-reported that they corporally punished K–12 students nearly 100,000 times in the 2017–18 school year.<sup>174</sup> They also reported restraining and/or secluding approximately 122,000 students during the 2015–16 school year, up from nearly 70,000 students during the 2013–14 school year.<sup>175</sup> Such self-reports are significant undercounts, however, and data from 2018–2019 shows that in many places, incidents of restraint and seclusion continue to rise.<sup>176</sup>

---

of administrators did . . . nearly 40 percent of teachers agreed that school police are necessary because 'too many students are out of control'").

172. Anne Buffington, Lisa Long & Ben Walker, PowerPoint Presentation, *Disciplinary Procedures in Mississippi's Public Schools: A Look at What Educators Have to Say* (Aug. 22, 2018) (on file with author).

173. See Mitchell, *supra* note 19 (explaining that the U.S. Government Accountability Office found that seclusion and restraint are chronically under-reported); Anderson, *supra* note 116 (reporting corporal punishment incidents have declined in recent years, but the practice is still widely in use).

174. Keierleber, *supra* note 19.

175. Mitchell, *supra* note 19.

176. See *id.*; Geoff Ward, Nick Peterson, Aaron Kupchik & James Pratt, *Historic Lynching and Corporal Punishment in Contemporary Southern Schools*, 68 SOC. PROBS. 41, 58

Regarding corporal punishment, existing data shows that during the 2013–14 school year, eleven percent of U.S. school districts practiced corporal punishment.<sup>177</sup> On average, in the schools that practiced corporal punishment, the rate of students struck at least once was 5.6 percent that school year.<sup>178</sup> However, the rates of corporal punishment were as high as 9.3 percent of students in Mississippi; 7.5 percent in Arkansas; 6.1 percent in Missouri; 5.9 percent in Alabama; and 5.6 percent in Oklahoma.<sup>179</sup> The top twenty-five school districts with the highest corporal punishment rates in 2013–14 corporally punished from 20.1 percent to 56.8 percent of their student populations.<sup>180</sup>

Eighty percent of school corporal punishment occurs in seven, mostly Southern states: Mississippi, Texas, Alabama, Arkansas, Georgia, Tennessee, and Oklahoma.<sup>181</sup> Mississippi alone accounted for almost a quarter of all corporal punishment in the United States in 2013–14;<sup>182</sup> state employees subjected students to such punishment 28,000 times in 2017–18.<sup>183</sup>

On a county level, urbanized counties and “counties with larger college-educated populations have a lower prevalence and incidence of corporal punishment . . . while counties with higher poverty rates have a higher corporal punishment prevalence.”<sup>184</sup> Corporal punishment occurs more often in rural areas, areas with greater concentrations of Republican voters, and places where Evangelical Protestantism thrives.<sup>185</sup>

The federal government requires all public schools to report incidents of seclusion and restraint, but investigations, media accounts, and testimony from lawmakers have revealed that schools chronically under-report such incidents.<sup>186</sup> To illustrate, in June 2019, the U.S. Government Accountability Office (GAO) found that “70 percent

---

(2021) (stating that incidents of corporal punishment are under-reported); Keierleber, *supra* note 19; *see, e.g.*, Abamu & Manning, *supra* note 16 (“incidents of restraint and seclusion are on the rise in Vancouver”).

177. Johnson, *supra* note 78, at 9–10 (reporting that in 2015–16, 5.3 percent of students were struck in schools that practice corporal punishment).

178. Johnson, *supra* note 78, at 13.

179. Johnson, *supra* note 78, at 10, 13.

180. *Id.* at 15.

181. Dick Startz, *Schools, black children, and corporal punishment*, BROOKINGS (Jan. 14, 2016), <https://brookings.edu/blog/brown-center-chalkboard/2016/01/14/schools-black-children-and-corporal-punishment> [<https://perma.cc/EHM7-Y4YR>].

182. Johnson, *supra* note 78, at 9 (explaining data from 2013–14 year).

183. Keierleber, *supra* note 19.

184. Ward, Peterson, Kupchik & Pratt, *supra* note 176, at 50, 52.

185. *Id.* at 47, 50; *see also* Gershoff & Font, *supra* note 21, at 410–11 (finding greater support for corporal punishment in Evangelical Protestantism and states that Republican candidates won in the 2012 elections).

186. Abamu & Manning, *supra* note 16.

of the more than 17,000 school districts in the U.S. reported zero incidents of restraint and zero incidents of seclusion” for school year 2015–16.<sup>187</sup> However, the GAO found “substantial evidence that nine of the 30 largest districts (those with more than 100,000 students) inaccurately reported zero [incidents] when they actually had incidents or did not have the data.”<sup>188</sup> For instance, Fairfax County Public Schools in Virginia reported zero incidents of restraint and seclusion in 2015–16, but it later acknowledged, after an investigation by NPR, that it had over 1,600 such incidents in 2017–18.<sup>189</sup> The GAO has concluded that school district reporting on seclusion and restraint incidents “does not accurately or completely reflect all incidents of restraint and seclusion of public school students.”<sup>190</sup>

Regarding police actions at school, the increased involvement of law enforcement officers in school discipline suggests that more children will be handcuffed, and children will continue to be assaulted by these officers.<sup>191</sup> SROs, which are police officers who have the authority to arrest children, were rare before the Columbine High School massacre in 1999.<sup>192</sup> Since then, the federal government has invested more than \$1 billion to subsidize the placement of police in schools, resulting in approximately 46,000 SROs in elementary and secondary public schools.<sup>193</sup> “As of 2020, nearly 60 percent of all schools and 90 percent of high schools now have a law enforcement officer [such as an SRO] at least part-time.”<sup>194</sup> Accordingly, six million students attend schools with police, but no school psychologists; 1.7 million students attend schools with police, but no school counselor; 10 million students attend schools with police, but no social workers.<sup>195</sup>

---

187. U.S. GOV'T ACCOUNTABILITY OFF., *Letter from Jacqueline M. Nowicki to U.S. Representatives Patty Murray, Rosa DeLauro, and Tom Cole* 1, 3 (June 18, 2019), <https://www.gao.gov/assets/gao-19-551r.pdf> [<https://perma.cc/4X27-NNUM>].

188. U.S. GOV'T ACCOUNTABILITY OFF., *K–12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data* (July 11, 2019), <https://www.gao.gov/products/gao-19-551r> [<https://perma.cc/E4LN-EDQG>] (last visited Apr. 7, 2022).

189. *See id.*

190. *Id.*

191. *See* Barnum, *supra* note 43.

192. Darby, *supra* note 65.

193. Macklin Reid, *Police in schools: Ridgefield school board makes no comment*, THE RIDGEFIELD PRESS (Oct. 24, 2020, 7:27 PM), <https://www.theridgefieldpress.com/news/article/Police-in-schools-Ridgefield-school-board-makes-15664781.php#:~:text=%E2%80%9C9C%20Since%201999%20the%20federal%20government%20has%20invested%20more,elementary%20and%20secondary%20public%20schools%20across%20the%20nation> [<https://perma.cc/D8YW-UMKU>].

194. Karen Dolan, Cecelia Scheuer & Uma Nagarajan-Swenson, REIMAGINING SCHOOL SAFETY, INST. POL'Y STUD. 6 (Sept. 2020), <https://ips-dc.org/report-reimagining-school-safety>; *see* Darby, *supra* note 65.

195. Dolan, Scheuer & Nagarajan-Swenson, *supra* note 194; *see also* S. 2125, 117th Cong. §§ 2(17), (18), (20), (21) (2021) (recording that professional standards recommend

More police officers in schools means more arrests of children in school. To illustrate, in 2017–18, 61.4 percent of all U.S. public schools and 72.3 percent of all U.S. high schools had a sworn law enforcement officer, such as an SRO, present and carrying a firearm at school at least once a week.<sup>196</sup> Of those public schools, 51 percent had officers who participated in school discipline, and the addition of each officer to a public school led to approximately two and a half extra in-school arrests annually of children under the age of fifteen.<sup>197</sup> “[S]chools with a designated law enforcement officer on duty arrested students at 5 times the rate of comparable schools without such an officer.”<sup>198</sup> In other words, the unfortunate “explosion in the number of officers in schools . . . has resulted in skyrocketing numbers of students being arrested at school for nonviolent infractions,” which schools previously addressed through detention and other non-carceral methods.<sup>199</sup>

Meanwhile, incidents of mass school violence, such as mass shootings, remain rare.<sup>200</sup> The over-involvement of law enforcement officers in schools has caused many students to feel that school is a prison-like environment.<sup>201</sup>

Unfortunately, while data is collected about school arrests of children, a lack of data exists regarding how children are treated by law enforcement officers and security guards at school. News reports have uncovered beatings and other cruel applications of force by such state agents against children,<sup>202</sup> especially children of color,<sup>203</sup> but more research is needed to determine how often school brutality by these state agents is occurring; the extent to which these state agents are involved in regular school discipline matters; the demographics of the children impacted; the extent of the use of force by these state agents; and the extent of physical and emotional

---

at least one counselor and one social worker for every 250 students and at least one psychologist for every 700 students).

196. NAT’L CTR. FOR EDUC. STATS., Table 233.70, [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_233.70.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_233.70.asp) [<https://perma.cc/EN28-9QEW>] (last visited Apr. 7, 2022).

197. U.S. DEP’T OF EDUC., POLICIES OUTLINING THE ROLE OF SWORN LAW ENFORCEMENT OFFICERS IN PUBLIC SCHOOLS (May 2020), <https://nces.ed.gov/pubs2020/2020027.pdf> [<https://perma.cc/TD5G-HC3R>]; Emily Owens, *Testing the School-to-Prison Pipeline*, 36 J. POL’Y ANALYSIS & MGMT. 11, 29 (2017).

198. S. 2125, 117th Cong. § 2(5) (2021).

199. Darby, *supra* note 65.

200. Barnum, *supra* note 43.

201. See Darby, *supra* note 65.

202. See, e.g., Deliso & Ghebremedhin, *supra* note 37 (describing how a school resource officer audibly slammed the head of a sixteen-year-old Black girl onto the ground, knocking her unconscious, and causing memory loss, headaches, blurry vision, sleep deprivation, and depression).

203. S. 2125, 117th Cong. § 2(1) (2021).

injuries from their use of force. In particular, research is needed to assess why and how educators involve security guards and law enforcement officers into school discipline matters.

Despite problems in reporting of school brutality, data indicates that school brutality disproportionately afflicts Black children and children with disabilities.<sup>204</sup> Specifically, research shows that Black students receive corporal punishment 2.5 times more often than other students, and students with disabilities are about two times more likely to receive corporal punishment than their peers.<sup>205</sup> Regarding restraint and seclusion, even though children with disabilities make up only approximately 13 percent of the total student population at K–12 schools, they constitute more than 80 percent and 77 percent of the students who are restrained and secluded, respectively.<sup>206</sup> Black girls are 2.17 times more likely than white girls to be restrained, and Black boys are 1.58 times more likely than white boys to be restrained.<sup>207</sup> Boys with disabilities are also disproportionately harmed: 83 percent and 84 percent of the students with disabilities who are restrained and secluded, respectively, are male.<sup>208</sup>

## II. LEGAL STRUCTURES LEGALIZING AND FACILITATING SCHOOL BRUTALITY

Multiple legal structures facilitate and legalize school brutality upon children. This section describes the structures and identifies ways to improve the law to end school brutality.

### *A. Teacher Privilege: The Colonial Root of the Legalization of School Brutality*

The legalization of school corporal punishment is rooted in an outdated tort law privilege that originated during colonial times.<sup>209</sup>

---

204. Ashley MacSuga-Gage, Nicholas Gage, Antonis Katsyannis, Shanna E. Hirsch & Hannah Kisner, *Disproportionate Corporal Punishment of Students with Disabilities and Black and Hispanic Students*, 32 *J. DISABILITY POL'Y STUD.* 212, 220–21 (2021).

205. Gershoff & Font, *supra* note 21, at 413; MacSuga-Gage, Gage, Katsyannis, Hirsch & Kisner, *supra* note 204, at 217.

206. U.S. DEP'T EDUC., OFF. C.R., 2017–18 CIVIL RIGHTS DATA COLLECTION: THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K–12 SCHOOLS 2, 6–7 (2020) [hereinafter *CIVIL RIGHTS DATA*].

207. GEORGETOWN L. CTR. POVERTY & INEQUALITY, *Data Snapshot: 2017–2018 National Data on School Discipline by Race and Gender* (2020), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/12/National-Data-on-School-Discipline-by-Race-and-Gender.pdf> [https://perma.cc/6ZW4-QW7L].

208. *CIVIL RIGHTS DATA*, *supra* note 206, at 13–14.

209. *See* *Ingraham v. Wright*, 430 U.S. 651, 660 (1977); Keierleber, *supra* note 19 (“To

Ordinarily, tort and criminal law give the greatest protection to physical security of persons.<sup>210</sup> “Intentional and negligent physical interference with persons are both ordinarily tortious in the absence of a good justification,” enabling victims of such interference to “recover for all her reasonably connected damages, including reasonable damages for emotional harm.”<sup>211</sup> School brutality would normally encompass the torts of battery, assault, false arrest, false imprisonment, and intentional infliction of emotional distress.<sup>212</sup> Similarly, criminal law typically would punish the hitting of another person, physically forcing another person to the ground, keeping someone in a room involuntarily, and preventing a person from moving as crimes.<sup>213</sup> Both tort and criminal law deter wrongful conduct and confirm and reinforce public standards of behavior.<sup>214</sup> Criminal law protects the public interest by enabling the state to protect the health, safety, welfare, well-being, and tranquility of the community.<sup>215</sup>

As recognized by the U.S. Supreme Court in 1977 in *Ingraham v. Wright*, however, common law provided teachers with a tort law privilege to impose “reasonable but not excessive force to discipline a child.”<sup>216</sup> This privilege arose from the historical use of corporal punishment in schools since the colonial period.<sup>217</sup> The U.S. Supreme Court commented,

Although the early cases viewed the authority of the teacher as deriving from the parents, the concept of parental delegation has been replaced by the view—more consonant with compulsory education laws—that the State itself may impose such corporal

---

its detractors, corporal punishment in schools is an antiquated and damaging vestige of the past.”).

210. See Dan E. Dobbs et al., *HORNBOOK ON TORTS* 5–6 (2d ed. 2015) (“Legal rules give the greatest protection to physical security of persons and property.”).

211. *Id.* at 5.

212. Cf. *Peterson v. Baker*, 504 F.3d 1131, 1134, 1137, 1140 (11th Cir. 2007) (describing when a parent sued for battery and intentional infliction of emotional distress after a teacher grabbed and squeezed her son’s neck as he tried to leave the teacher’s classroom, but the court held that the student’s misconduct justified some corporal punishment, and the amount of force used was “reasonably related to the need for punishment”).

213. See, e.g., *TEX. PENAL CODE ANN.* § 22.01 (making a criminal offense “intentionally, knowingly, or recklessly causing bodily injury to another” or “physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative”).

214. See Dobbs et al., *supra* note 210, at 6; MATTHEW LIPPMAN, *CONTEMPORARY CRIMINAL LAW: CONCEPTS, CASES, AND CONTROVERSIES* 1–2 (2018) (explaining that crimes are conduct that result in the “formal and solemn pronouncement of the moral condemnation of the community”).

215. See LIPPMAN, *supra* note 214, at 1–2.

216. *Ingraham v. Wright*, 430 U.S. 651, 661 (1977).

217. *Id.* at 660.

punishment as is reasonably necessary “for the proper education of the child and for the maintenance of group discipline.”<sup>218</sup>

The prevalent rule in America, the Court concluded, “privileges such force as a teacher or administrator ‘reasonably believes to be necessary for the child’s proper control, training, or education.’”<sup>219</sup> According to the common law, to the extent that the force used was reasonable in light of its purpose, it was not wrongful, but rather “justifiable or lawful.”<sup>220</sup> The Supreme Court also concluded that the justifiability of reasonable corporal punishment in school was recognized in the laws of most states because in 1977, most states authorized corporal punishment in school.<sup>221</sup> Since then, however, as described in Section II.B, most states decided to prohibit the use of corporal punishment in school.<sup>222</sup>

Nevertheless, in the last five years, despite *Ingraham* concluding that the teacher privilege to corporally punish children no longer derives from delegation of parental authority,<sup>223</sup> courts in states that permit school corporal punishment still express the traditional view that public school teachers “stand *in loco parentis*, ‘in the place of a parent’ with respect to students in their classrooms who they must supervise and control.”<sup>224</sup> They have held that teachers accordingly “owe a general duty of supervision to the students placed within [their] care . . . . This parent-like role encompasses authority to discipline children.”<sup>225</sup> Because parents are authorized via common law to discipline their children “using reasonable physical punishments,” some state courts have concluded that teachers do not commit a

218. *Id.* at 662 (quoting F. HARPER & F. JAMES, LAW OF TORTS 292 (1956)).

219. *Id.* at 661 (quoting RESTATEMENT (SECOND) OF TORTS § 147(2) (AM. L. INST. 1965)).

220. *Id.* Scientific research now robustly shows that the application of physical force upon school children is virtually never necessary for a child’s proper control, training, or education. *See supra* Section I.A.

221. *See Ingraham*, 430 U.S. at 661.

222. Gershoff & Font, *supra* note 21, at 408.

223. *See Ingraham*, 430 U.S. at 662 (1977).

Although the early cases viewed the authority of the teacher as deriving from the parents, the concept of parental delegation has been replaced by the view more consonant with compulsory education laws that the State itself may impose such corporal punishment as is reasonably necessary “for the proper education of the child and for the maintenance of group discipline.”

*Id.* (quoting F. HARPER & F. JAMES, LAW OF TORTS 292 (1956)).

224. *See, e.g.,* *Morris v. State*, 228 So. 3d 670, 672 (Fla. Dist. Ct. App. 2017); *Barocas v. State*, 949 N.E.2d 1256, 1258 (Ind. Ct. App. 2011); *Cleveland v. Pembroke*, No. 2005-CRB-39185, 2006 WL 6846157 (Cleveland Mun. Ct. June 21, 2006). Some states, such as Indiana, codified the tort privilege and the *in loco parentis* doctrine. *See* IND. CODE § 20-33-8-8(b).

225. *See, e.g.,* *Morris*, 228 So. 3d at 673 (quoting *Rupp v. Bryant*, 417, So. 2d 658, 666 (Fla. 1982)).

crime or tort by inflicting corporal punishment on a child subject to their authority.<sup>226</sup>

The Florida District Court of Appeal, for instance, held in 2017 that, “[j]ust as parents are privileged to administer corporal discipline to their children and touch them non-abusively against their will, ‘the law permits, by privilege, a simple battery in the administration of discipline’ by [other persons with] authority over a child.”<sup>227</sup> The court held that the “parental corporal discipline privilege extends specifically to teachers and school personnel acting *in loco parentis*, negating their potential liability for committing simple battery.”<sup>228</sup> With this reasoning, the Florida District Court of Appeal reversed the conviction of a teacher’s aide for misdemeanor battery for slapping and pulling the leg of a four-year-old child.<sup>229</sup> Courts applying tort common law have generally been unsympathetic to assault and battery claims after school brutality incidents.<sup>230</sup>

Aspects of the teacher privilege have even seeped into some states’ criminal law. Some state appellate courts have held that, to convict a teacher of criminal assault, prosecutors must prove beyond a reasonable doubt that the corporal punishment inflicted upon a pupil is “unreasonable and . . . not reasonably necessary to preserve discipline.”<sup>231</sup> Other courts have reasoned that, in addition to “the presumption of innocence shared by all criminal defendants,” they also presume teachers “do their duty when punishing a student.”<sup>232</sup>

The teacher privilege to corporally punish children is built on the notion that schools stand in the place of a parent, but this notion has been eroded by multiple U.S. Supreme Court decisions and compulsory education laws.<sup>233</sup> As recognized by *Ingraham v. Wright*, the fact that education is now compulsory in every state means that children must receive an education even if their parents do not want one for them.<sup>234</sup> Accordingly, school staff do not stand in place of the parent when it cannot be assumed that all parents agree with

226. See, e.g., *id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. See, e.g., *Barocas*, 949 N.E.2d at 1261; *Cleveland*, No. 2005-CRB-39185, 2006 WL 6846157 (Cleveland Mun. Ct. June 21, 2006); DAVID DOVERSPIKE & W. HENRY CONE, *THE PRINCIPAL AND THE LAW* 6 (1992).

231. See, e.g., *State v. Hoover*, 450 N.E.2d 710, 714 (Ohio Ct. App. 1982).

232. See, e.g., *Littleton v. State*, 954 N.E.2d 1070, 1077 (Ind. Ct. App. 2011); *Barocas*, 949 N.E.2d at 1258 (Ind. Ct. App. 2011); *Cleveland*, No. 2005-CRB-39185, 2006 WL 6846157 (Cleveland Mun. Ct. June 21, 2006).

233. See Timothy Garrison, *From Parent to Protector: The History of Corporal Punishment in American Public Schools*, 16 J. CONT. LEGAL ISSUES 115, 117 (2007).

234. See *Ingraham v. Wright*, 430 U.S. 651, 662 (1977).

sending their child to school.<sup>235</sup> The U.S. Supreme Court also weakened the *in loco parentis* doctrine by indicating that the doctrine does not immunize school officials from having to respect the constitutional rights of schoolchildren.<sup>236</sup>

In particular, in 1985, in *New Jersey v. T.L.O.*, the Court held that the argument, based on the *in loco parentis* doctrine, that teachers and school administrators' dealings with students are not subject to the limits of the Fourth Amendment is "in tension with contemporary reality and the teachings of this Court."<sup>237</sup> The Court held that "[i]n carrying out searches and other disciplinary functions pursuant to [publicly mandated educational and disciplinary policies], school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment."<sup>238</sup> The Supreme Court held in *T.L.O.* that the Fourth Amendment prohibition on unreasonable searches and seizures applies to searches conducted by public school officials.<sup>239</sup>

Consistent with that holding, the U.S. Supreme Court in 2009 chose not to apply the *in loco parentis* doctrine to justify an assistant principal's strip search of thirteen-year-old Savana Redding, who was suspected of secretly holding drugs in *Safford Unified School District No. 1 v. Redding*.<sup>240</sup> The Court held in *Redding* that the search, which involved "exposing [the child's] breasts and pelvic area [to school staff] to some degree," violated the child's Fourth Amendment rights.<sup>241</sup>

Justice Thomas's dissent asserted that "[i]f the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of Redding would stand."<sup>242</sup> Justice Thomas's dissent complained that the majority's opinion granted judges "sweeping authority to second-guess the measures that [school officials] take to maintain discipline in . . . schools."<sup>243</sup> He argued that the Court should return to the

235. See Garrison, *supra* note 233, at 117.

236. See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (concluding without mentioning the *in loco parentis* doctrine that school officials unconstitutionally suppressed students' freedom of expression by suspending students until they stopped wearing armbands that silently protested the Vietnam War and holding that "[s]chool officials do not possess absolute authority over their students.").

237. *New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985).

238. *Id.* at 336–37.

239. *Id.* at 337.

240. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009).

241. *Id.* at 368–69 (looking for pills, a school nurse and assistant principal had Savana remove her outer clothing, pull her bra out and shake it, pull out the elastic on her underpants).

242. *Id.* at 399.

243. *Id.* at 382–83.

doctrine of *in loco parentis*, under which “the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order.”<sup>244</sup>

Increasing judicial reluctance to apply the *in loco parentis* doctrine is positive because the prevailing notion that school officials act as representatives of the state who enact “publicly mandated educational and disciplinary policies” means that school officials have a greater likelihood of adhering to practices that are supported by scientific evidence, rather than practices supported primarily by tradition.<sup>245</sup> School brutality can end when courts stop relying on the *in loco parentis* doctrine or the colonial teacher privilege to justify corporally punishing schoolchildren.

### *B. Limitations in Constitutional Law Protections Against School Brutality*

Unfortunately, constitutional law’s current capacity to end school brutality perpetrated by teachers and school administrators is very limited because it has supported the tort teacher privilege to corporally punish students.<sup>246</sup> However, claims under the Fourth Amendment have succeeded in vindicating the rights of children who have been handcuffed by sworn law enforcement officers at school.<sup>247</sup> Parents whose children have died or been injured from school brutality have pursued causes of action under the Eighth, Fourteenth, and Fourth Amendments, while using 42 U.S.C. § 1983 as their basis, but these causes of action have generally been unsuccessful except Fourth Amendment claims against handcuffing by law enforcement officers.<sup>248</sup>

---

244. *Id.* at 383 (internal quotations omitted).

245. *See* *New Jersey v. T.L.O.*, 469 U.S. 325, 336–37 (1985).

246. *Ingraham v. Wright*, 430 U.S. 651, 693 (1977) (White, J., dissenting) (“Although the respondent school authorities provide absolutely *no* process to the student before the punishment is finally inflicted, the majority concludes that the student is nonetheless given due process because he can later sue the teacher and recover damages if the punishment was ‘excessive.’”).

247. *See* *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1170, 1181–82 (E.D. Cal. 2010).

248. *See* 42 U.S.C. § 1983. It provides that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

*Id.*; Susan Ostrander & Amy Halpert, *The Crisis of Trauma and Abuse in Our Nation’s Schools*, COUNCIL PARENT ATT’YS & ADVOCS., INC. 14 (2020), [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020\\_docs/restraint\\_and\\_seclusion\\_pape.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020_docs/restraint_and_seclusion_pape.pdf) [<https://perma.cc/EG56-YRAJ>] (stating that parents can seek constitutional law remedies in state

### 1. Eighth Amendment Claims

In 1977 in *Ingraham v. Wright*, the U.S. Supreme Court rejected the notion that the Eighth Amendment’s prohibition against cruel and unusual punishment applies to school corporal punishment because the Eighth Amendment is historically applied only to cases involving criminal conviction and incarceration.<sup>249</sup>

### 2. Fourteenth Amendment Claims

As to the Fourteenth Amendment’s Due Process Clause, *Ingraham* held that “where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, [then] Fourteenth Amendment liberty interests are implicated.”<sup>250</sup> Specifically, the Court held that the Fourteenth Amendment protects a minor student’s liberty interest in being free from, and to obtain judicial relief for, unjustified intrusions on personal security.<sup>251</sup> Such liberty interest encompassed “freedom from bodily restraint and punishment.”<sup>252</sup> The Court concluded that “[i]t is fundamental that the state cannot hold and physically punish an individual except in accordance with due process of law.”<sup>253</sup>

Nonetheless, the U.S. Supreme Court left largely intact the common law privilege permitting teachers to inflict reasonable, but not excessive force or corporal punishment on children in their care for purposes of “control, training, or education.”<sup>254</sup> The Court found that “[t]o the extent that the force is excessive or unreasonable, the educator in virtually all States is subject to possible civil and criminal liability.”<sup>255</sup>

Specifically regarding two paddling instances at a public high school in Dade County, Florida—one of an eighth grader and one of a ninth grader—the Court was reassured that Florida’s common law, “strengthened by statute,” recognized the right of a child not to be

---

or federal court, but neither path has proven fruitful); *see, e.g.*, *T.O. v. Fort Bend Indep. Sch. Dist.*, 2 F. 4th 407, 414 (5th Cir. 2021) (listing numerous cases of severe school brutality, including the slamming of a student to the ground by a police officer and dragging him along the floor after the student disrupted class, about which the Fifth Circuit dismissed substantive due process claims); *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1307 (11th Cir. 2006).

249. *Ingraham*, 430 U.S. at 669.

250. *Id.* at 674.

251. *Id.* at 673–74.

252. *Id.* at 674.

253. *Id.*

254. *Id.* at 661, 674.

255. *Ingraham*, 430 U.S. at 661.

subjected to “excessive corporal punishment in school.”<sup>256</sup> The Court concluded that the risk that any substantive rights would be violated by corporal punishment at school is “minimal” because the Court found that corporal punishment is rarely severe at schools, schools are “open” to public scrutiny, and common-law safeguards—namely civil and criminal liability for excessive punishment—already exist.<sup>257</sup> The Court held that state common law “constraints and remedies,” which are civil and criminal proceedings and liability for severe corporal punishment, satisfy the Fourteenth Amendment’s requirement of procedural due process, even though the process due occurs *after* a punishment occurs.<sup>258</sup>

Demonstrating the implications of *Ingraham*’s holding regarding procedural due process for school corporal punishment under the Fourteenth Amendment, the Fifth Circuit held in 1990 that “injuries sustained during corporal punishment, *irrespective* of the severity of these injuries or the sensitivity of the student, do not implicate the due process clause *if* the forum state affords adequate post-punishment civil or criminal remedies for the student to vindicate legal transgressions.”<sup>259</sup>

Regarding substantive rights under the Due Process Clause of the Fourteenth Amendment, *Ingraham* left open the possibility that school corporal punishment could violate such rights.<sup>260</sup> The majority of circuits took the opportunity to hold that corporal punishment of a student can violate the student’s substantive due process rights, while a few circuits have not yet addressed the issue.<sup>261</sup> The circuits holding that corporal punishment can violate substantive due process rights drew their standards from case law regarding excessive use of force by police upon adult criminal suspects who were in police custody.<sup>262</sup>

---

256. *Id.* at 676.

257. *Id.* at 682.

258. *Id.* at 683.

259. *Fee v. Herndon*, 900 F.2d 804, 808 (5th Cir. 1990) (first emphasis added).

260. *Ingraham*, 430 U.S. at 679 n.47 (indicating that the Court had “no occasion to decide whether or under what circumstances corporal punishment of a public school child might give rise to an independent federal cause of action to vindicate substantive rights under the Due Process Clause” of the Fourteenth Amendment).

261. *See Mortorano*, *supra* note 54, at 489–90 (showing that the Second, Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits have held that school corporal punishment can violate students’ substantive due process rights; the Ninth and Seventh Circuits have applied the Fourth Amendment to school corporal punishment cases without addressing substantive due process rights; and the First and D.C. Circuits have not yet addressed the issue); *Woodard v. Los Fresnos Indep. Sch. Dist.*, 732 F.2d 1243, 1246 (5th Cir. 1984) (holding that corporal punishment in public schools “is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.”).

262. *Cf. Ingraham*, 430 U.S. at 661 (the Court found rights grounded in cases dealing

Such standards are inappropriate for interactions between government agents and children in schools, however, because most of the government agents in school are educators whose main role is to support the development of children, rather than police, whose main role is to prevent and stop crime.<sup>263</sup> Further, children at school are generally not suspected of committing crimes, and they are developmentally much more vulnerable than adults to the use of force.<sup>264</sup> Children at school need more protection than what the legal standards from excessive use of force by police cases can provide.

Nevertheless, the leading case regarding substantive due process rights and school corporal punishment is *Hall v. Tawney*.<sup>265</sup> In *Hall*, the Fourth Circuit held that a student's substantive due process rights have been violated by corporal punishment in school if "the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience."<sup>266</sup> The Fourth Circuit arrived at this standard after reviewing cases involving excessive use of force by police upon adult criminal suspects.<sup>267</sup> The court reasoned, "[c]learly recognized in persons charged with or suspected of crime and in the custody of police officers, we simply do not see how we can fail also to recognize it in public school children under the disciplinary control of public school teachers."<sup>268</sup> Most other circuits have standards similar to *Hall's* for violations of student due process rights.<sup>269</sup>

When conducting a substantive due process inquiry, federal courts analyze most uses of force by educators, including seclusion and restraint, as corporal punishment that is "capable of being construed as attempt to restore order, maintain discipline, or protect a student from self-injurious behavior."<sup>270</sup> Further, revealing the continued

---

with excessive force claims arising in the law enforcement area); *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir. 1980).

263. See Sawchuk, *supra* note 33 ("[E]ven school safety experts wrestle with the philosophical question of whether the hierarchical, command-and-control nature of policing can be squared with the culture of schools, which is supposed to be nurturing.").

264. See Tuchinda, *supra* note 23, at 799 ("Due to [the] vulnerability of the developing nervous system to extreme and chronic stress, children's brains are impacted disproportionately by trauma.").

265. See Mortorano, *supra* note 54, at 490–91 (describing how "[t]he majority of the circuits examine factors that are the same as or similar to *Hall's* four-factor test").

266. *Hall*, 621 F.2d at 613 (citation omitted).

267. *Id.*

268. *Id.*

269. See Mortorano, *supra* note 54, at 490–91; see, e.g., *Wise v. Pea Ridge Sch. Dist.*, 855 F.2d 560, 564 (8th Cir. 1988) (establishing a four-factor test that is similar to *Hall's* test); *Neal v. Fulton Cnty. Bd. of Educ.*, 229 F.3d 1069, 1075 (11th Cir. 2000).

270. See *T.W. ex rel. Wilson v. Sch. Bd. of Seminole Cty.*, 610 F.3d 588, 598–99 (11th

influence of the tort teacher privilege, courts “give school administrators substantial deference in matters such as school discipline and maintaining order.”<sup>271</sup> Most circuits also minimize the significance of injuries sustained during corporal punishment as long as the punishment is not “arbitrary, egregious, *and* conscience-shocking.”<sup>272</sup>

Accordingly, the fact-intensive “shock the conscience” threshold by which most circuits find a violation of substantive due process rights is so difficult to reach that observers have concluded that claims under the standard are “shortsighted” and “severely limited at best” because they are “rarely successful and only address the most egregious forms of corporal punishment in schools.”<sup>273</sup>

### 3. *Fourth Amendment Claims*

Causes of action under the Fourth Amendment are usually unavailing with regards to the use of force by teachers, but they have helped some students who have been harmed by handcuffing by

---

Cir. 2010) (quoting *Neal*, 229 F.3d at 1073) (analyzing alleged verbal abuse, physical abuse, and sadistic sexual behavior as corporal punishment because “[t]he key inquiry is not what form the use of force takes but whether the use of force is ‘related to [the student’s] misconduct at school and . . . for the purpose of discipline.’”).

271. *Golden v. Anders*, 324 F.3d 650, 654 (8th Cir. 2003).

272. *See, e.g., T.W. ex rel. Wilson*, 610 F.3d at 598–99 (11th Cir. 2010) (emphasis added) (holding that the alleged sadistic sexual behavior with and verbal and physical abuse of a student with autism did not violate the Fourteenth Amendment’s substantive due process standard); *Wise*, 855 F.2d at 565 (“Minor discomfort and hurt feelings do not make a federal case. The conduct must be shocking to the conscience and amount to a severe invasion of the student’s personal security and autonomy.”); *Smith ex rel. Smith v. Half Hollow Hills Cent. Sch. Dist.*, 298 F.3d 168, 170, 173 (2d Cir. 2002) (finding no substantive due process violation when a teacher slapped seventh-grade student in the face “at full-force with an open hand, allegedly causing [the child] both great physical pain and severe emotional pain for which he underwent psychotherapy”); *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 635 (8th Cir. 2010) (finding that a teacher’s allegedly excessive use of restraints and seclusion that were part of student’s IEP do not plausibly violate her substantive due process rights); *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 847–48 (9th Cir. 2015) (holding that no violation of clearly established rights occurred where teacher placed student with autism in prolonged isolation in a small, dark room as a punishment which violated student’s IEP); *London v. Dirs. of DeWitt Pub. Sch.*, 194 F.3d 873, 876–77 (8th Cir. 1999) (holding that a school coach did not violate substantive due process when he dragged a 13-year-old student 15 feet and banged his head against a metal pole, because the coach’s actions were not shocking to the conscience); *Daniels v. Lutz*, 407 F. Supp. 2d 1038, 1046 (E.D. Ark. 2005) (holding that a teacher’s hitting of a 15-year-old student in the eye with a folder, causing long-term injury, in an effort to establish order in the classroom did not shock the conscience); *Brown v. Johnson*, 710 F. Supp. 183, 183 (E.D. Ky. 1989) (denying substantive due process relief after a student was paddled seven times with enough force to bruise her buttocks severely).

273. *Mortorano*, *supra* note 54, at 484, 493; *accord Ostrander & Halpert*, *supra* note 248, at 24 (“Constitutional claims are frequently unsuccessful, and plaintiffs typically lose . . . seemingly no matter how egregious the conduct on the part of school officials.”).

SROs.<sup>274</sup> Most of the circuits have either not addressed claims of Fourth Amendment violations regarding school brutality incidents or have generally held that a use of force by an educator upon a student was not an unreasonable seizure in violation of the Fourth Amendment.<sup>275</sup>

For instance, the Seventh Circuit held that a teacher or administrator who seizes a student does so in violation of the Fourth Amendment only when the restriction of liberty is unreasonable under the circumstances “then existing and apparent.”<sup>276</sup> The Seventh Circuit held that “[d]epending on the circumstances, reasonable action may certainly include the seizure of a student in the face of provocative or disruptive behavior.”<sup>277</sup> Applying this standard to the grabbing of a sixteen-year-old student by the elbow and wrist in order to “quell the disruption” caused by the student’s obscenities and invitation to fight another student, the court held that the teacher’s actions were reasonable because they were proportionate “to the interference with the educational process that the situation presented.”<sup>278</sup> Similarly, the Third Circuit has held that the “momentary use of physical force by a teacher in reaction to a disruptive or unruly student does not effect a ‘seizure’ of the student under the Fourth Amendment.”<sup>279</sup>

The outcomes of Fourth Amendment claims against sworn law enforcement officers who have handcuffed children at school have been better, however.<sup>280</sup> For instance, the Eleventh Circuit held that the handcuffing of a “compliant, nine-year-old girl for the sole purpose of punishing her was a violation of [her] Fourth Amendment rights.”<sup>281</sup> Similarly, a U.S. District Court in Kentucky held that the test of

---

274. See, e.g., *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1770, 1181–82.

275. Mortorano, *supra* note 54, at 493, 496 (“most courts have either not addressed [Fourth Amendment claims] or held that corporal punishment is not an unreasonable seizure”); see C.C. Swisher, *Constitutional Abuse of Public School Students: An Argument for Overruling Ingraham v. Wright*, 8 WHITTIER J. CHILD & FAM. ADVOC. 3, 45 (2008) (“circuits diverge over whether victimized students can make a claim under the Fourth Amendment, but no circuit has ever found that a victimized student has presented a compensable claim.”); see, e.g., *Wallace ex rel. Wallace v. Batavia Sch. Dist.* 101, 68 F.3d 1010, 1014 (7th Cir. 1995). *But see* *Preschooler II v. Clark Cnty. Sch. Bd. of Tr.*, 479 F.3d 1175, 1178 (9th Cir. 2007) (holding that if the allegations that the teacher physically abused a four-year-old child with a neurological disorder by hitting the child repeatedly in the head are proven true, then they would violate the Fourth Amendment).

276. *Wallace*, 68 F.3d at 1014.

277. *Id.*

278. *Id.* at 1011, 1015.

279. *Gottlieb ex rel. Calabria v. Laurel Highlands Sch. Dist.*, 272 F.3d 168, 172 (3d Cir. 2001).

280. See, e.g., *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1770, 1174, 1180–82 (E.D. Cal. 2010) (holding that handcuffing a calm, sitting 11-year-old student in public was excessively intrusive, given the child’s age and the fact that it was not done to protect anyone’s safety, and denying qualified immunity).

281. *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1307 (11th Cir. 2006).

reasonableness under the Fourth Amendment requires “careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”<sup>282</sup> After recognizing that Kentucky law prohibits all school personnel, including SROs, from using mechanical restraints on students, the court applied the Fourth Amendment test to an SRO’s fifteen-minute handcuffing of an eight-year-old boy who had been kicking adults and the handcuffing of a nine-year-old girl on two occasions after she had been kicking and hitting adults.<sup>283</sup> The court held that the SRO’s handcuffing of the two children was an unconstitutional seizure and excessive force.<sup>284</sup>

Given the positive outcomes for handcuffing cases, the Fourth Amendment may be helpful for other types of school brutality committed by law enforcement officers. Otherwise, given the continued influence of teacher privilege, constitutional law has generally not been helpful in protecting children from school brutality.<sup>285</sup>

### C. State Statutes Regarding School Corporal Punishment

*[I remember] the swoosh of the paddle, the sound it made as it connect[ed] with [his] body . . . the sobs for mercy. . . . The reasons a kid could be yanked out of class . . . were inconsistent and petty.*

—Liz Dwyer, South Bend, Indiana<sup>286</sup>

*[T]he truth is this: paddling students in the American South is so commonplace that simply challenging the practice is unthinkable.*

—Tate Henderson, Teacher<sup>287</sup>

“Between the 1980s and the mid-1990s, corporal punishment in . . . schools declined rapidly due to waning public acceptance, increased litigation against school boards and educators regarding its use, and legislative bans.”<sup>288</sup> As a result, in contrast to 1977, now most states

282. *S.R. v. Kenton Cnty. Sheriff’s Off.*, 302 F. Supp. 3d 821, 832 (E.D. Ky. 2017).

283. *Id.* at 824–30, 832–33.

284. *Id.* at 834.

285. See Swisher, *supra* note 275, at 60–61.

286. Anderson, *supra* note 116.

287. Tate Henderson Aldrich, *You’d Think We Would Stop Paddling Kids in School but You’d Be Wrong*, EDUC. POST (May 10, 2021), <https://educationpost.org/youd-think-we-would-stop-paddling-kids-in-school-but-youd-be-wrong> [https://perma.cc/AJ23-NE6S].

288. NAT’L ASSOC. SCH. PSYCH., *supra* note 67.

prohibit school corporal punishment. Specifically, twenty-eight states and the District of Columbia explicitly prohibit corporal punishment by school employees in their laws; seven states do not explicitly address school corporal punishment in their laws; and fifteen states, which are mostly southern and mountainous states, have laws that explicitly permit school employees to use corporal punishment or that explicitly provide immunity for school employees to use such punishment.<sup>289</sup>

Despite the progress of banning corporal punishment in schools, such banning lags behind the banning of corporal punishment in other childcare settings.<sup>290</sup> Almost all states have banned corporal punishment in center-based child care settings, foster care settings, and residential care settings, including group homes and institutions.<sup>291</sup> Most states have banned it in juvenile detention facilities.<sup>292</sup> Congress banned it “in facilities for juveniles convicted of federal

---

289. For laws explicitly permitting corporal punishment or explicitly providing immunity for school employees when applying such punishment, *see* ALA. CODE § 16-28A-1 (1995); ARIZ. REV. STAT. ANN. § 15-843(B)(2) (2021); ARK. CODE ANN. § 6-17-112(a)(1) (2019); FLA. STAT. § 1003.32(1)(k) (2021); GA. CODE ANN. § 20-2-731 (1977); KY. REV. STAT. ANN. § 158.4440(3) (requiring reporting of all incidents of corporal punishment); LA. ADMIN. CODE tit. 28, Pt CXV § 1315(A) (2017); MISS. CODE ANN. § 37-11-57(2) (2019); MO. REV. STAT. §§ 160.261(1), (10), § 563.061 (2014); N.C. GEN. STAT. §§ 115C-390.4(a), (b) (2011); OKLA. STAT. tit. 21, § 844 (1963); S.C. CODE ANN. § 59-63-260 (1962); TENN. CODE ANN. § 49-6-4103 (2007); TEX. REV. CIV. STAT. ANN. § 37.0011(b) (2011); WYO. STAT. ANN. § 21-4-308 (1997). For the examples of states where no state law explicitly authorizes or prohibits corporal punishment, *see* CONN. GEN. STAT. § 53a-18(a) (2021) (allowing the use of reasonable physical force to protect property from physical damage); S.D. CODIFIED LAWS § 13-32-2 (2018) (authorizing the use of reasonable and necessary physical force for supervisory control over students). For the 28 states banning corporal punishment, *see* ALASKA ADMIN. CODE tit. 4, § 07.010(c) (1989); CAL. CIV. CODE § 1708.9(a) (2015); CAL. EDUC. CODE § 11165.4 (1994); DEL. CODE ANN. tit. 14, § 702 (2014); D.C. Mun. Regs. tit. 5-E §§ 2401(12) (2002); HAW. REV. STAT. § 302A-1141 (2016); 105 ILL. COMP. STAT. 5/24-24 (1995); IOWA CODE § 280.21(1) (2020); IOWA ADMIN. CODE R. 281-103.3 (256B, 280) (2021); HAW. REV. STAT. § 302A-1141 (2016); MD. CODE ANN., EDUC. § 7-306(b) (2019); MD. CODE REGS. 13A.08.01.11; MASS. GEN. LAWS ch. 71, § 37G(a) (2000); MICH. COMP. LAWS § 380.1312(3) (2018); MINN. STAT. § 121A.58 (1998); MONT. CODE ANN. § 20-4-302(3) (1991); NEB. REV. STAT. § 79-295 (1996); NEV. REV. STAT. § 392.4633(1) (2007); N.H. REV. STAT. ANN. § 627:6 (2016) (does not explicitly mention corporal punishment); N.J. STAT. ANN. § 18A:6-1 (1967); N.M. STAT. ANN. § 22-5-4.3(B) (2017); N.M. CODE R. § 6.11.2.10 (2020); N.Y. COMP. CODES R. & REGS. tit. 8, § 19.5(a)(1) (2007); N.D. CENT. CODE § 15.1-19-02(1) (2009); OHIO REV. CODE ANN. § 3319.31(A) (2021); OHIO ADMIN. CODE 3301-35-15(C)(3) (2021); OR. REV. STAT. § 339.250(9)(a) (2019); OR. ADMIN. R. 581-021-0060 (1990); 22 PA. CODE § 12.5(a) (2005); 200-20-30 R.I. CODE R. § 2.2(A)(6)(a) (LexisNexis 2022); VT. STAT. ANN. § 1161a(c) (2019); VA. CODE ANN. § 22.1-279.1(A) (1995); WASH. REV. CODE § 28A.150.300 (2006); W. VA. CODE § 18A-5-1(e); Wis. STAT. § 118.31 (1999). The District of Columbia also banned corporal punishment. D.C. Mun. Regs. tit. 5-E, §§ 2401.12, 2403(2), 2403(3) (2002).

290. Gershoff, *supra* note 143, at 20.

291. *Id.* at 20.

292. *Id.*

crimes.”<sup>293</sup> The banning of corporal punishment in schools even lags behind bans of corporal punishment of adults in U.S. prisons and U.S. military training facilities, as well as bans in all states for beating “an animal so long or hard that” it becomes injured.<sup>294</sup> The lag may evidence the influence of the tort teacher privilege.<sup>295</sup> The bans of corporal punishment of children in settings other than schools, however, appears to reflect recognition that the practice is unnecessarily harmful and ineffective.<sup>296</sup>

No federal statute limits or prohibits school brutality, and no federal statute regulates the methods of corporal punishment, seclusion, or restraint in school.<sup>297</sup> Reflecting the fact that school discipline is regulated locally, state laws vary widely in whether and how they define or limit corporal punishment, seclusion, and restraint. Most states define corporal punishment as the infliction of physical pain or the use of physical force for purposes of maintaining discipline or order within public schools.<sup>298</sup> Some states, however, do not define corporal punishment, leaving local school districts to define it themselves.<sup>299</sup>

Adding to the complexity of local regulations affecting school brutality, in states that permit corporal punishment, some large urban school districts, such as the districts of Atlanta, Dallas, Houston, Miami-Dade, Tucson, and Memphis, have banned corporal punishment.<sup>300</sup> Despite the positive message sent by county bans on corporal punishment, local prosecutors loathe clashing with state law.<sup>301</sup> Prosecutors have dropped criminal charges against abusive teachers because they could not in good faith disagree with state law.<sup>302</sup>

293. *Id.*

294. Gershoff & Font, *supra* note 21, at 13.

295. *See* Gershoff, *supra* note 143, at 16.

296. *Id.* at 13.

297. *Id.* at 18.

298. *See, e.g.*, MO. REV. STAT. § 563.061 (2014) (allowing the use of physical force by a teacher against a minor to maintain “reasonable discipline in a school, class or other group”); TENN. CODE ANN. § 49-6-4103(a) (2007) (permitting any teacher or school principal to use corporal punishment “to maintain discipline and order within the public schools”); MISS. CODE ANN. § 37-11-57(2) (2019) (defining corporal punishment as “the reasonable use of physical force or physical contact . . . to maintain discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students”); CAL. EDUC. CODE § 49001(a) (1977) (defining corporal punishment as the “willful infliction of . . . physical pain on a pupil”).

299. *See, e.g.*, NEB. REV. STAT. § 79-295 (1996).

300. Anderson, *supra* note 116; Gershoff, *supra* note 143, at 20.

301. *See, e.g.*, David Ovalle & Colleen Wright, *Aide hit autistic pupil in past but allowed back into classroom*, MIAMI HERALD (May 22, 2019, 6:30 PM), <https://www.miamiherald.com/news/local/education/article230359234.html> [<https://perma.cc/22ES-42G5>].

302. *See, e.g., id.* (describing the dropping of a battery case against an abusive teacher by prosecutors; the teacher continues to teach—her only punishment was a letter of reprimand).

Because different states and localities approach the regulation or authorization of school corporal punishment in significantly different ways, corporal punishment law across states is a hodgepodge of distinctly different definitions, limitations, and authorizations of the practice.<sup>303</sup>

### *1. States that Ban Corporal Punishment in Schools*

Some states with the strongest corporal punishment bans, such as Pennsylvania, Virginia, and New York, also promote student safety by prohibiting “aversive behavioral interventions,”<sup>304</sup> which may include punishment for a manifestation of a student’s disability; “deprivation of basic human rights, such as withholding meals, water, or fresh air”;<sup>305</sup> denial of access to toilet facilities; verbal and mental abuse; “treatment of a demeaning nature”; and/or electric shock.<sup>306</sup>

Most of the states that outlaw some forms of corporal punishment still authorize the use of certain forms of force upon students or allow the use of physical force in certain circumstances. For instance, California prohibits public school employees from inflicting corporal punishment, defined as the willful infliction of physical pain on a pupil.<sup>307</sup> However, California’s law excludes “reasonable and necessary” force to quell a disturbance threatening damage to property from the definition of corporal punishment.<sup>308</sup> Similarly, Alaska prohibits corporal punishment,<sup>309</sup> but allows the use of “reasonable and necessary physical restraint” to “maintain reasonable order in the classroom” or to “protect property from serious damage.”<sup>310</sup> North Dakota prohibits corporal punishment, but allows the use of force “to quell a verbal disturbance.”<sup>311</sup> Hawaii’s law admonishes that “[n]o physical punishment of any kind may be inflicted upon any pupil,”<sup>312</sup> but it also allows a principal or teacher to use physical force to maintain reasonable discipline in a school or classroom.<sup>313</sup>

---

303. *See supra* note 237 and accompanying text.

304. N.Y. COMP. CODES R. & REGS. tit. 8, § 19.5(b) (2007).

305. 22 PA. CODE § 14.133(e) (2008).

306. *See* 8 VA. ADMIN. CODE §§ 20-750-30, 20-750-10 (2021) (prohibiting the use of “aversive stimuli,” which means “interventions intended to induce pain or discomfort for the purpose of punishing the student or eliminating or reducing maladaptive behaviors, such as” verbal and mental abuse; forced exercise when the student’s behavior is related to the student’s disability; and deprivation of necessities).

307. *See* CAL. EDUC. CODE § 49001 (1977).

308. *Id.* at § 49001(a).

309. ALASKA ADMIN. CODE tit. 4 § 07.010(c) (1989).

310. ALASKA ADMIN. CODE tit. 4 § 07.900 (1989).

311. N.D. CENT. CODE § 15.1-19-02(2)(b) (2009).

312. HAW. REV. STAT. § 302A-1141 (2016).

313. HAW. REV. STAT. §§ 302A-1141, 703-309(2) (2016).

Thus, at first glance, many states appear to have banned all corporal punishment in schools, but the laws of these states usually authorize the use of physical force against students in multiple scenarios and even for traditional purposes, such as maintaining discipline or order or quelling disturbances or disruptions.<sup>314</sup> Courts have relied upon such exceptions to reverse the convictions of school personnel who have brutalized students.<sup>315</sup> Therefore, while an explicit state law prohibition on corporal punishment sends the message that school employees should avoid such punishment, the existence of multiple exceptions to many prohibitions undermines efforts by prosecutors to hold such employees accountable for school brutality.<sup>316</sup> The exceptions thus challenge *Ingraham's* assumption that criminal proceedings will provide adequate remedies and deterrence to excessive corporal punishment in schools.<sup>317</sup>

No states that ban school corporal punishment make suing schools or school officials easier by explicitly providing a private right of action for violations of the ban.<sup>318</sup> Rather, some states that ban school corporal punishment, such as Montana, limit the criminal liability and amount of recovery that can be obtained if a person violates the prohibition.<sup>319</sup> The Montana statute establishes that a school employee who unreasonably or unnecessarily uses corporal punishment is guilty of a misdemeanor and cannot be fined more than \$500.<sup>320</sup>

## 2. States that Permit Corporal Punishment in Schools

States permitting corporal punishment tend to explicitly endow educators with significant authority for maintaining control and

---

314. See, e.g., IOWA ADMIN. CODE R. 281-103.2, 281-103.3, 281-103.4 (2021) (allowing “reasonable and necessary force” to quell a disturbance or to move a disruptive pupil from class and allowing reasonable “physical contact”).

315. See, e.g., *State v. Hoover*, 450 N.E.2d 710, 714, 716 (Ohio Ct. App. 1982) (reversing the conviction of a school administrator for criminal assault, the court relied on a statutory exception to the ban on corporal punishment to add a new element to the crime of assault that must be proven in school corporal punishment cases).

316. See, e.g., *id.*; *Cleveland v. Pembroke*, No. 2005-CRB-39185, 2006 WL 6846157 at \*1, 2, 4 (Cleveland Mun. Ct. June 21, 2006) (holding that an assistant principal was not guilty of the crimes of menacing and assault because “Ohio law still recognizes some degree of privilege to use force” and defendant did not use an excessive amount of force while pushing a student and asking, “Do you want to fight me?”).

317. See *Ingraham v. Wright*, 430 U.S. 651, 670 (1977) (“As long as the schools are open to public scrutiny, there is no reason to believe that the common-law constraints will not effectively remedy and deter excesses [in school corporal punishment.]”).

318. See, e.g., IND. CODE § 20-20-40-15(c) (2020); MONT. CODE ANN. § 20-4-302(7) (1991); UTAH CODE ANN. § 53G-8-303(3) (2019).

319. See MONT. CODE ANN. § 20-4-302(7) (1991).

320. MONT. CODE ANN. § 20-4-302(7) (1991).

order.<sup>321</sup> To illustrate, through its statutory law Mississippi requires superintendents, principals, and teachers to “hold the[ir] pupils to *strict* account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess.”<sup>322</sup> Mississippi law also requires local school boards to adopt “[p]olicies and procedures recognizing the teacher as the authority in classroom matters, and supporting that teacher in *any decision* in compliance with the written discipline code of conduct.”<sup>323</sup> Mississippi law explicitly establishes “the right of the teacher to remove from the classroom any student who, in the professional judgment of the teacher, is disrupting the learning environment.”<sup>324</sup> The law also specifically authorizes teachers to use physical force to deal with disruptive students.<sup>325</sup> Similarly, Missouri law requires and empowers its public school teachers to end disorder and disruption by students.<sup>326</sup>

Most of the states permitting corporal punishment in public schools also have statutes that explicitly provide immunity to school personnel from civil liability and, less commonly, criminal liability for administering such punishment in accordance with state law.<sup>327</sup> Such immunity that is specific to corporal punishment adds to the broad qualified or sovereign immunity that the state extends to all government employees exercising ordinary care within the scope of their employment.<sup>328</sup>

Usually, specific statutory immunity for school corporal punishment allows for a lower duty of care during the disciplining of students than the duty of care described in the statute providing immunity

321. *See, e.g.*, MO. REV. STAT. § 160.261(7) (2014) (authorizing all school district personnel “to hold every pupil strictly accountable for any disorderly conduct in school”); COLO. REV. STAT. ANN. § 22-32-109.1(2)(a)(I)(D) (2021) (specifically authorizing the use of physical force to deal with disruptive students); MISS. CODE ANN. § 37-11-57(2) (2019) (specifically authorizing the use of physical force to deal with disruptive students).

322. MISS. CODE ANN. § 37-9-69 (1954) (emphasis added).

323. MISS. CODE ANN. § 37-11-55(d) (2004) (emphasis added).

324. *Id.*

325. MISS. CODE ANN. § 37-11-57(2) (2019).

326. *Id.*; MO. REV. STAT. § 160.261(7) (2014).

327. *See, e.g.*, GA. CODE ANN. § 20-2-732 (1964) (providing immunity from civil and criminal liability); WYO. STAT. ANN. § 21-4-308 (1997) (providing immunity from civil and criminal liability); MISS. CODE ANN. § 37-11-57(2) (2019) (providing immunity from civil liability); MISS. CODE ANN. § 11-46-9(1)(b) (2016); MO. REV. STAT. § 160.261(10) (2014); ALA. CODE § 16-1-24.1 (1994) (providing immunity from civil liability); ARK. CODE ANN. § 6-17-112 (2019); MICH. COMP. LAWS § 380.1312(5) (2001); N.C. GEN. STAT. § 115C-390.3(c) (2011) (protecting from civil liability and stating that the “burden of proof is on the claimant to show that the amount of force used was not reasonable”). *But see* TENN. CODE ANN. § 49-6-4404(b) (1980) (stating explicitly that “[i]n any case in which the [corporal] punishment is excessive,” pupils “have the same civil and criminal remedies as any other pupil in the public schools.”).

328. *Cf.* MO. REV. STAT. § 537.610 (2009); MO. REV. STAT. § 160.261(10) (2021).

to all governmental employees.<sup>329</sup> To illustrate, ordinarily, in Mississippi, government employees are immune from civil liability if they are exercising ordinary care within the course and scope of their governmental employment, but when a teacher or principal is disciplining a child, they will not be liable unless they act “in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety.”<sup>330</sup>

Qualified immunity for school personnel and police officers, whether it is statutory or based upon state or federal case law, and statutory immunity for school personnel that is specific to school corporal punishment are significant barriers for parents and children who seek justice after an incident of school brutality. Appellate courts have prevented or reversed the imposition of civil or criminal liability upon many school personnel and school resource officers by holding that their actions fall within the scope of qualified or specific statutory immunity.<sup>331</sup> In fact, attorneys representing children and parents have found that the action of a governmental agent must fall “outside the scope of the actor’s employment to withstand a governmental immunity defense.”<sup>332</sup>

The death of George Floyd has intensified calls for the end of qualified immunity, as a growing chorus of criticism from lawyers, legal scholars, civil rights groups, politicians, and even judges who assert that such immunity is unjust because it has become “a nearly

---

329. See, e.g., *Pigford v. Jackson Pub. Sch. Dist.*, 910 So. 2d 575, 578–80 (Miss. Ct. App. 2005).

330. See *id.* at 579–80 (holding that a teacher’s disciplining of a child was protected by the specific statutory immunity regarding school discipline of children).

331. See, e.g., *Littleton v. State*, 954 N.E.2d 1070, 1072–73, 1080 (Ind. Ct. App. 2011) (dismissing criminal charges based on statutory qualified immunity after a teacher bound a child with autism to a Rifton chair and tipped him backward for several minutes); *Barocas v. State*, 949 N.E.2d 1256, 1257 (Ind. Ct. App. 2011) (reversing the criminal conviction of a teacher who flicked the tongue of a child with Down syndrome, causing the child to wail, based on qualified immunity “for reasonably necessary disciplinary acts”); *Pigford*, 910 So. 2d at 576, 578–80 (holding that sovereign immunity protects school personnel from a negligence action because their actions did not constitute “willful or wanton conduct” even when an autistic student sustained bruises as a result of their attempts to restrain the student during an anxiety attack); *Ex rel. E.W. v. Dolgos*, 884 F.3d 172, 184, 186–87 (4th Cir. 2018) (holding that the handcuffing of a calm, 10-year-old child three days after the child had an altercation with another child was unreasonable and violated the child’s Fourth Amendment rights, but qualified immunity applies because the officer did not have sufficient notice that her conduct was unlawful, so summary judgment was granted); *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 627, 628, 632 (8th Cir. 2010) (defendants held to be entitled to qualified immunity after allegedly using restraints and seclusion on developmentally delayed child); *J.H. ex rel. J.P. v. Bernalillo Cnty.*, 61 F. Supp. 3d 1085, 1093–94 (D.N.M. 2014) (holding that defendant is entitled to qualified immunity after allegedly arresting an eleven-year-old girl, handcuffing her, and transporting her to a juvenile detention center).

332. See, e.g., *Ostrander & Halpert*, *supra* note 248, at 14.

failsafe tool to let police brutality go unpunished and deny victims their constitutional rights.”<sup>333</sup> Indeed, qualified immunity and specific statutory indemnification of governmental agents who inflict school brutality must be reduced significantly, if not eliminated, if children are to enjoy their right at school to be free from unjustified intrusions on their personal security.<sup>334</sup>

Another barrier to justice is statutory exclusion of school brutality from definitions of child abuse. Two states, Missouri and Mississippi, permit corporal punishment in schools and have statutes that state that reasonably administered corporal punishment in school does not constitute child abuse.<sup>335</sup> Missouri law even declares that the state child protective services agency shall not have jurisdiction over or investigate any report of alleged child abuse related to the use of “reasonable force to protect persons or property” by school district personnel or any spanking administered in a “reasonable manner” by such personnel.<sup>336</sup>

Some states that authorize corporal punishment in schools impose certain requirements in attempts to make the practice safer and more deliberate. For instance, Florida requires the presence of another adult, and the student must be informed of the reason for the punishment.<sup>337</sup> Georgia prohibits punishment that is “excessive or unduly severe” or that is the “first line of punishment for misbehavior,” unless the punishment is for acts of misconduct that are “so antisocial or disruptive in nature as to shock the conscience.”<sup>338</sup> Georgia also allows parents to protect their child from corporal punishment by filing with a school principal a statement from a doctor indicating that corporal punishment is detrimental to a child’s mental or emotional stability.<sup>339</sup> North Carolina does not permit corporal

---

333. Andrew Chung, Lawrence Hurley, Jackie Botts, Andrea Januta & Guillermo Gomez, *For cops who kill, special Supreme Court protection*, REUTERS (May 8, 2020, 12:00 PM), <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus> [<https://perma.cc/45TE-YWMX>]; see Editorial, *How the Supreme Court Lets Cops Get Away With Murder* (May 29, 2020), <https://www.nytimes.com/2020/05/29/opinion/Minneapolis-police-George-Floyd.html> [<https://perma.cc/G6LD-MJ9Z>] (asserting that U.S. Supreme Court case law regarding qualified immunity provides police officers with “nearly limitless immunity from prosecution for actions taken while on the job.”).

334. See *Ingraham v. Wright*, 430 U.S. 651, 673–74 (1977); Ronnie Gipson, Opinion, *Why qualified immunity privilege is bad public policy and must be eliminated*, COMMERCIAL APPEAL (May 12, 2021, 4:00 PM), <https://www.commercialappeal.com/story/opinion/2021/05/12/why-qualified-immunity-privilege-should-eliminated/5056753001> [<https://perma.cc/WF5U-8M3W>] (“The qualified immunity privilege is both bad law and bad public policy and it must be eliminated.”).

335. MISS. CODE ANN. § 37-11-57(2) (2019); MO. REV. STAT. § 160.261(10) (2014).

336. MO. REV. STAT. § 160.261(10) (2014).

337. FLA. STAT. § 1002.20(4)(c)(1) (2021).

338. GA. CODE ANN. §§ 20-2-731(1)–(2) (1977).

339. *Id.* at § 20-2-731(5).

punishment in a classroom with other students present.<sup>340</sup> Arkansas law prohibits the use of “corporal punishment on a child who is intellectually disabled, non-ambulatory, nonverbal, or autistic.”<sup>341</sup> Mississippi, Louisiana, and Tennessee do not permit corporal punishment to be administered upon any student with a disability who is receiving special education.<sup>342</sup> Despite the good intentions manifested in these requirements, compliance with them is questionable; Louisiana employees hit special education students nearly 100 times in 2017–18.<sup>343</sup>

Some states, such as Texas and North Carolina, allow parents to opt out of the corporal punishment of their child at school by signing a statement prohibiting the use of such punishment.<sup>344</sup> The legal importance of such signed statements is unclear, however, given that the U.S. Supreme Court held in *Ingraham v. Wright* that parental consent to corporal punishment is not constitutionally required, and the authority that teachers have to corporally punish students derives from state compulsory education laws rather than the delegation of parental authority to schools.<sup>345</sup> Such conclusions, however, may not matter much to state courts that perceive the teacher privilege to corporally punish as deriving primarily from school employees standing *in loco parentis*.<sup>346</sup>

Demonstrating the subjugation of children’s rights, most of the states that permit adults to hit children in schools make it a serious, reportable offense for children to hit adults or other children in the same schools.<sup>347</sup> For instance, Mississippi statutory law requires educators to notify law enforcement officials about any “violent act” on educational property, but the meaning of “act” does not include violence committed by adults.<sup>348</sup> Tennessee similarly requires every teacher having knowledge of an assault or battery when “committed by a student” on school property to report such action to the principal

---

340. N.C. GEN. STAT. § 115C-390.4(b)(1) (2011).

341. ARK. CODE ANN. § 6-18-503(b)(3)(A) (2019).

342. MISS. CODE ANN. § 37-11-57(3) (2019); LA. STAT. ANN. § 17:416.1(B)(2) (2017); TENN. CODE ANN. § 49-6-4103(b) (2007).

343. See Keierleber, *supra* note 19.

344. See TEX. EDUC. CODE ANN. § 37.0011(c) (2011); N.C. GEN. STAT. § 115C-390.4(b)(6) (2011).

345. See *Ingraham v. Wright*, 430 U.S. 651, 662 n.22 (1977); *Baker v. Owen*, 395 F. Supp. 294, 301 (M.D.N.C. 1975), *aff'd*, 423 U.S. 907 (1975) (holding that the wishes of a parent cannot be permitted to restrict school officials’ discretion in deciding the “legitimate” and “essential” purpose of maintaining discipline at school).

346. See, e.g., *Morris v. State*, 228 So. 3d 670, 672 (Fla. Dist. Ct. App. 2017).

347. See, e.g., MISS. CODE ANN. § 37-11-57 (2019); MISS. CODE ANN. § 37-11-29 (2022).

348. See MISS. CODE ANN. §§ 37-11-57(1) (2019); MISS. CODE ANN. 37-11-29(1) (2022); see also MO. REV. STAT. § 160.261(2) (2014) (requiring the reporting of first- and second-degree assault and felonious restraint when committed by students, but not requiring the same when committed by adults).

of the school, who is required to report it to the local police department.<sup>349</sup> Some states that permit corporal punishment in schools have violence prevention programs that encourage nonviolent resolution of conflicts, but such programs do not focus on preventing violence by educators upon children.<sup>350</sup> Some states permitting school corporal punishment even have initiatives to make schools trauma-informed.<sup>351</sup> The policy contradictions evident in these state laws highlight desensitization to school brutality and the subordination of children's rights to be safe from violence by adults at school.

#### *D. State Statutes on Seclusion and Restraint*

*Please someone respond to me. . . . I'm sorry I ripped the paper. I overreacted. . . . Please just let me out. Is anyone out there?*

—A child in seclusion in Effingham, Illinois, 2018<sup>352</sup>

*I'd rather die. You're torturing me!*

—A child in seclusion in Central School, Springfield, Illinois, 2018<sup>353</sup>

*Having a law that allows schools to do something that is so traumatic and dangerous to students without having some sort of meaningful oversight and monitoring is really, really troubling . . . .*

—Zena Naiditch<sup>354</sup>

Almost all states restrict the use of seclusion or restraint in public schools in some way, and state regulation of these practices, which is often established through promulgation of administrative regulations by state departments of education, is increasing quickly.<sup>355</sup>

349. TENN. CODE ANN. § 49-6-4301(a) (2007).

350. *See, e.g.*, MO. REV. STAT. § 161.650(1) (2017).

351. *See, e.g.*, MO. REV. STAT. §§ 161.1050 (2017); MO. REV. STAT. 161.1055 (2016) (establishing the “Trauma-Informed Schools Initiative” and the “Trauma-Informed Schools Pilot Program”).

352. Richards et al., *supra* note 85.

353. *Id.*

354. *Id.*

355. *See* Butler, *supra* note 54 (showing how quickly laws regarding seclusion and restraint changed in the last 10 years); NAT'L CTR. LEARNING ENV'T, *supra* note 162 (last visited Apr. 7, 2022) (allowing visitors to review the laws regarding seclusion and restraint for each state); *see, e.g.*, D.C. Off. of the State Superintendent of Educ., Notice of Final Rulemaking for District of Columbia Municipal Regulations (DCMR), Title 5, Chapter 30: Special Education (Nov. 8, 2019) [hereinafter Notice of Final Rulemaking], <https://osse.dc.gov/publication/notice-final-rulemaking-district-columbia-municipal-regu>

Currently, only three states, Idaho, Nebraska, and South Carolina, and the District of Columbia have no state statutory or regulatory laws restricting the use of seclusion or restraints in public schools.<sup>356</sup>

Seven states ban seclusion in public schools.<sup>357</sup> Four of those states ban seclusion and only allow restraint when the student is in imminent danger of physically harming self or others.<sup>358</sup> Twenty-one states ban restraint and seclusion except when the student is in imminent danger of physically harming self or others.<sup>359</sup> Some states have regulations on seclusion or restraint, but they only apply in certain situations.<sup>360</sup> For instance, Louisiana, Minnesota, Nevada,

---

lations-dcmr-title-5-chapter-3-0 [https://perma.cc/NZ3Z-KYAT] (providing notice of proposed regulations of seclusion and restraint).

356. See NAT'L CTR. LEARNING ENV'T, *supra* note 162; 92 NEB. ADMIN. CODE § 10-011.01E (2011) (stating that “each school system has a seclusion and restraints policy approved by the school board or local governing body”); Brad Meurrens & Elliott Bulling, *At Risk with Only Guidance for Protection: Restraint and Seclusion Policy for Nebraska Students*, DISABILITY RTS. NEBRASKA 7 (2014), [http://www.disabilityrightsnebraska.org/file\\_download/f7ff74f0-ac6b-46c0-9966-eb8223e930b7](http://www.disabilityrightsnebraska.org/file_download/f7ff74f0-ac6b-46c0-9966-eb8223e930b7) [https://perma.cc/4SCM-5KHY]. *But cf.* MO. REV. STAT. § 160.263(4)(1) (2021) (providing very little state regulation of seclusion and restraint); MONT. CODE ANN. § 20-4-302(4)(a), (7), (8) (1991); MONT. ADMIN. R. 10.16.3346(2) (2015) (providing little state regulation of seclusion and restraint). The District of Columbia is in the process of establishing administrative regulations regarding the seclusion and restraint of children with disabilities. See Notice of Final Rulemaking, *supra* note 355.

357. See ALA. ADMIN. CODE r. 290-3-1-.02(2)(I) (2021); DEL. CODE ANN. tit. 14, § 4112F(b)(1)(b) (2018) (noting that the prohibition can be waived); GA. COMP. R. & REGS. 160-5-1-.35(2)(a) (2010); HAW. REV. STAT. § 302A-1141.3 (2016); 603 MASS. CODE REGS. 46.03(1)(a); 200-20-30 R.I. CODE R. § 2.2(20)(b) (LexisNexis 2022); TEX. EDUC. CODE ANN. § 37.0021(c) (2021).

358. ALA. ADMIN. CODE r. § 290-3-1-.02(2) (2021); GA. COMP. R. & REGS. 160-5-1-.35(1)(e), (2)(e) (2010); 603 MASS. CODE REGS. 46.03(1)(a), 46.03(1)(c); 200-20-30 R.I. CODE R. §§ 2.2(20)(b), 2.5(A), 2.4(A) (LexisNexis 2022).

359. See, e.g., ALASKA STAT. § 14.33.125(b) (2014); ARIZ. REV. STAT. ANN. § 15-105(A) (2015); CAL. EDUC. CODE § 49005.4 (2019); COLO. REV. STAT. § 26-20-103(1) (2017); CONN. GEN. STAT. § 10-236b(b), (d)(1) (2018); ILL. ADMIN. CODE tit. 23, § 1.285 (2021); IND. CODE §§ 20-20-40-13(a)(2)(B), (E) (2020); KAN. STAT. ANN. § 72-6153(a) (2013); 704 KY. ADMIN. REGS. 7:160(4)(2) (2021), 7:160(3)(3) (2019); LA. STAT. ANN. §§ 17:416.21(B)(1), (C)(1) (2017); MD. CODE REGS. 13A.08.04.05(A)(1), (B)(1) (2022); MICH. COMP. LAWS § 380.1307b(d), (f), (g), (I), (j), (k) (2018); MINN. STAT. §§ 125A.0941(b), (c), (g) (2020); MINN. STAT. §§ 125A.0942(3)(a) (2020); N.H. REV. STAT. ANN. §§ 126-U:5(I)(II) (2021), 126-U5-a(I) (2014); N.M. STAT. ANN. § 22-5-4.12(A) (2021); OHIO ADMIN. CODE 3301-35-15(D)(2), (E)(1) (2021); OR. REV. STAT. §§ 339.291(2)(a), (b) (2019); 7-1 VT. CODE R. §§ 12:4502.1, 12:4502.2 (2021); 8 VA. ADMIN. CODE § 20-671-650(1) (2015); 8 VA. ADMIN. CODE § 20-671-660(B) (2015); WASH. ADMIN. CODE § 392-172A-02110 (2016); WIS. STAT. §§ 118.305(2)(a), (3)(a) (2020). *But see* ILL. ADMIN. CODE tit. 23, § 1.285 (2021) (excluding from the definition of restraint “momentary periods of physical restriction” to remove a disruptive student); KAN. STAT. ANN. § 72-6152(g) (2016); 7-1 VT. CODE R. § 12:4500.3(7)(a)(ii) (2021) (excluding from the definition of physical restraint momentary periods of physical restriction to remove a disruptive student); WIS. STAT. § 118.31(3)(e) (1999) (allowing an agent of a school board to use reasonable and “necessary force to remove a disruptive pupil from school premises . . . or from school-sponsored activities”).

360. See, e.g., LA. STAT. ANN. § 17:416.21 (2017).

New Jersey, North Dakota, Pennsylvania, and Tennessee regulate seclusion and/or restraint only when these practices are used with children receiving special education.<sup>361</sup>

A few states explicitly authorize the seclusion or restraint of students in nonemergency circumstances, meaning that they authorize seclusion or restraint when a student is not in imminent danger of seriously physically harming themselves or others.<sup>362</sup> For instance, some states permit the seclusion or restraint of children when they are disruptive<sup>363</sup> or when they are being destructive to property.<sup>364</sup> North Carolina and Montana permit restraint to maintain order.<sup>365</sup> Some state statutes explicitly authorize the application of physical force in order to place students in seclusion.<sup>366</sup>

Some states explicitly limit civil or criminal liability for restraint or seclusion that complies with state law.<sup>367</sup> Unusually, Utah law states that “any school or individual” who “cooperates in an investigation by a school or authorized public agency concerning a violation” of regulations of physical restraint is “immune from any civil or criminal liability that might otherwise result by reason of those actions.”<sup>368</sup> Indiana regulations state that public school personnel have qualified immunity if their action regarding seclusion and restraint “is taken in good faith and is reasonable.”<sup>369</sup> Montana law establishes that a school district employee who uses physical restraint that is more than “reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor . . . shall be fined not . . . more than \$500.”<sup>370</sup> Montana law also explicitly states that “a defendant in an action brought under [the law regulating physical restraint] may assert as an affirmative defense that the use of physical restraint was reasonable or necessary,” and the trier of fact

---

361. See TENN. CODE ANN. § 49-10-1302(4) (2008); LA. STAT. ANN. § 17:416.21(B)(1) (2017); MINN. STAT. § 125A.0942(3)(a) (2020); NEV. REV. STAT. § 388.499 (2015); N.J. STAT. ANN. §§ 18A:46-13.5(a)(1), 18A:46-13.6(a)(1) (2018); N.D. CENT. CODE §§ 25-01.2–09 (2021); 22 PA. CODE § 14.133(c) (2008).

362. See, e.g., 005-18 ARK. CODE § 20.03(1) (2021).

363. See, e.g., 005-18 ARK. CODE R. § 20.03(1) (2021) (allowing seclusion for “severely disruptive” behavior); MONT. CODE ANN. § 20-4-302(4)(a)(I), (4)(v) (1991).

364. 005-18 ARK. CODE R. § 20-20.03.1 (2021); see KAN. ADMIN. REGS. § 91-42.2(a) (2017); 7-38 MISS. CODE R. § 38.13(4)(a)(ii) (2016); MONT. CODE ANN. § 20-4-302(4)(a)(vi) (1991); N.C. GEN. STAT. §§ 115C-391.1(c)(1)(g) (2011); UTAH ADMIN. CODE R. 277-609-4(3)(i)(B) (LexisNexis 2021).

365. MONT. CODE ANN. § 20-4-302(4)(a)(v) (1991); N.C. GEN. STAT. §§ 115C-391.1(c)(1)(b), (e)(1)(b) (2011).

366. See, e.g., 005-18 ARK. CODE R. § 20-20.03.3 (2021).

367. See, e.g., IND. CODE § 20-20-40-15(c) (2020).

368. UTAH CODE ANN. § 53G-8-303(3) (2019).

369. IND. CODE § 20-20-40-15(c) (2020).

370. MONT. CODE ANN. § 20-4-302(7) (1991).

must then determine whether the restraint was reasonable or necessary.<sup>371</sup> Iowa's regulations state that regulations of restraint and seclusion do not limit or eliminate any immunity conferred to governmental employees.<sup>372</sup> A few states, such as Alabama, Indiana, and North Carolina, have laws that specify that regulations of seclusion and restraint do not create a criminal offense or a private cause of action against a school official.<sup>373</sup>

On the other hand, many states have taken leadership to make restraint and seclusion safer.<sup>374</sup> Most states require documentation and reporting about each use of restraint or seclusion.<sup>375</sup> Most states require notification about a seclusion or restraint to a parent shortly after the practice is applied.<sup>376</sup> Kansas law explicitly gives parents a right to request a meeting to debrief the incident for purposes of preventing future incidents.<sup>377</sup> Some states also require governmental review of reports of seclusion and restraint incidents for purposes of minimizing the use of these practices.<sup>378</sup>

For instance, Virginia requires review of the use of restraint or seclusion, "particularly when there is repeated use for an individual

371. *Id.* at § 20-4-302(8).

372. IOWA ADMIN. CODE r. 281-103.7(4) (256B,280) (2021).

373. ALA. ADMIN. CODE r. 290-3-1-.02(2)(xiii) (2021); IND. CODE § 20-20-40-15(b) (2020); N.C. GEN. STAT. § 115C-391.1(k) (2011).

374. *See, e.g.*, ALA. ADMIN. CODE r. 290-3-1-.02(2)(vii)(V) (2021) (requiring the reporting of use of restraint or seclusion).

375. *See, e.g.*, ALA. ADMIN. CODE r. 290-3-1-.02(2)(vii)(V) (2021); ALASKA STAT. §§ 14.33.125(a)(3), (d), (f) (2014); ALASKA ADMIN. CODE tit. 4, § 06.175 (2015); ARIZ. REV. STAT. ANN. § 15-105(D) (2015); 005-18 ARK. CODE R. § 20-20.04.7 (2021); CAL. EDUC. CODE § 49006(a) (2021); COLO. REV. STAT. §§ 22-32-147(3)(a), 26-20-106(1) (2017); FLA. STAT. § 1003.573(7) (2021); 105 ILL. COMP. STAT. 5/10-20.33(h) (2021); 105 ILL. COMP. STAT. 5/34-18.20(h) (2021); IOWA ADMIN. CODE r. 281-103.7(5) (2021); 704 KY. ADMIN. REGS. 7:160(5) (2019); 05-071-101 ME. CODE R. § 33.8(1) (2022); 603 MASS. CODE REGS. 46.06(8); MICH. COMP. LAWS § 380.1307d (2018); 206-42 WYO. CODE R. § 7(c) (2017).

376. *See, e.g.*, ALA. ADMIN. CODE R. 290-3-1-.02(2)(vii)(II) (2021) (requiring notification about restraint within one day); ALASKA STAT. § 14.33.120(b) (2014) (requiring same-day notification of a restraint or seclusion); ARIZ. REV. STAT. ANN. § 15-105(D) (2015) (requiring same-day notification of a restraint or seclusion); CAL. EDUC. CODE § 56521 (2013) (applying to special education students); FLA. STAT. § 1003.573(7)(c) (2021) (requiring notification by end of day); GA. COMP. R. & REGS. 160-5-1-.35(2)(g)(2) (2010) (requiring notification within one school day); HAW. REV. STAT. § 302A-1141.4(c) (2016); IND. CODE § 20-20-40-13(a)(2)(H) (2020); IOWA ADMIN. CODE R. 281-103.7(1)(e)(b) (2021) ("as soon as practicable after the situation is under control, but no later than one hour after the incident or the end of the school day, whichever occurs first"); KAN. STAT. ANN. § 72-6154(a)(1) (2016); LA. STAT. ANN. § 17:416.21(I)(1) (2017) (applying to students with "exceptionalities"); 05-071-101 ME. CODE R. § 33.7(2)(A) (2022); 603 MASS. CODE REGS. 46.06(3).

377. KAN. STAT. ANN. § 72-6155(a) (2015).

378. ALASKA STAT. §§ 14.33.125(a)(2), (e) (2014); ARIZ. REV. STAT. ANN. § 15-105(D)(3) (2015); COLO. REV. STAT. §§ 22-32-147(3)(b), 26-20-107 (2017); GA. COMP. R. & REGS. 160-5-1-.35(2)(g)(5) (2010); HAW. REV. STAT. §§ 302A-1141.4(h), (j) (2016); 05-071-101 ME. CODE R. § 33.10(1) (2022); MICH. COMP. LAWS § 380.1307f(b) (2018); *cf.* FLA. STAT. § 1003.573(8) (2021) (requiring monitoring of seclusion and restraint).

child, multiple uses within the same classroom, or multiple uses by the same individual.”<sup>379</sup> Such review may, if appropriate, require a revision of behavioral strategies and the development of positive behavioral strategies.<sup>380</sup> If a school has used restraint or seclusion on a student, Virginia requires the school to develop a plan, “in consultation with the parent, for (i) teaching and supporting more appropriate behavior and (ii) determining positive methods to prevent behavioral escalations.”<sup>381</sup>

Similarly, for each incident of physical restraint or seclusion, Maine requires review of the incident to determine how to prevent future incidents, including a review with the student who was involved.<sup>382</sup> No state has a statute establishing penalties for inaccurate or untimely reporting, however.<sup>383</sup>

Many states generally require that staff receive training before they restrain a child,<sup>384</sup> while many other states require that school staff be trained on the use of physical restraint before or after applying the practice.<sup>385</sup>

Most states regulate the way in which a child can be restrained at school.<sup>386</sup> For instance, most states prohibit the use of prone restraints or restraints that impede a child’s ability to breathe.<sup>387</sup> Maine prohibits restraint that “relies on pain for control,” such as “joint hyperextension, excessive force, unsupported take-down (e.g. tackle), the use of any physical structure (e.g. wall, railing or post),

379. 8 VA. ADMIN. CODE § 20-671-660(B)(1) (2015).

380. *Id.*

381. *Id.* at § 20-671-660(B)(2).

382. 05-071-33 ME. CODE R. § 9(1)(A) (2021).

383. See NAT’L CTR. LEARNING ENV’T, *supra* note 162.

384. See, e.g., ALASKA STAT. § 14.33.125(b)(4) (2014); ARIZ. REV. STAT. ANN. § 15-105(B)(3) (2015); 105 ILL. COMP. STAT. 5/10-20.33(c) (2021); 105 ILL. COMP. STAT. 5/34-18.20(c) (2021); IOWA ADMIN. CODE r. 281-103.7(256B,280)(2)(a)(1) (2021); MD. CODE REGS. 13A.08.04.05(A)(1)(c), (B)(5); 603 MASS. CODE REGS. 46.05(1); 200-20-30 R.I. CODE R. § 2.6(A) (LexisNexis 2021).

385. See, e.g., ALA. ADMIN. CODE r. 290-3-1-.02(2)(vii)(I) (2021); 005-18 ARK. CODE R. § 20.4(10) (2021) (requiring personnel involved in implementing behavioral management procedures to be adequately trained and supervised); COLO. REV. STAT. § 26-20-105(1) (2017); GA. COMP. R. & REGS. 160-5-1-.35(2)(h) (2010); HAW. REV. STAT. § 302A-1141.4(d)(1), (g) (2016); IND. CODE § 20-20-40-13(2)(J) (2020); 513 IND. ADMIN. CODE 1-2-6(a) (2020); 704 KY. ADMIN. REGS. 7:160(6)(1)(a) (2019); MICH. COMP. LAWS § 380.1307g(a) (2018); TEX. ADMIN. CODE § 89.1053(d)(1)–(4) (2015); W. VA. CODE R. § 126-99-5(5).

386. See NAT’L CTR. LEARNING ENV’T, *supra* note 162.

387. See, e.g., ALA. ADMIN. CODE r. 290-3-1-.02(2)(ii) (2021); ALASKA STAT. § 14.33.125(c)(3) (2014); ARIZ. REV. STAT. ANN. § 15-105(B)(4) (2015); CAL. EDUC. CODE § 49005.8(a)(3)–(5) (2019); COLO. REV. STAT. § 26-20-104(1)(b) (2009); GA. COMP. R. & REGS. 160-5-1-.35(1)(d) (2010); HAW. REV. STAT. § 302A-1141.4(b) (2016); KAN. STAT. ANN. § 72-6153(f)(1) (2016); OHIO ADMIN. CODE 3301-35-15(D)(2)(b) (2021); S.D. CODIFIED LAWS § 13-32-20(2) (2018); MINN. STAT. § 125A.0942(4)(9) (2020) (applying to children with disabilities).

punching and hitting.”<sup>388</sup> Multiple states require the end of a restraint when the student is no longer in imminent danger of physically harming themselves or others.<sup>389</sup> Colorado requires release from a restraint within fifteen minutes,<sup>390</sup> Maryland requires release within thirty minutes.<sup>391</sup> Alaska requires the continuous monitoring of a restrained student in face-to-face contact.<sup>392</sup> Alabama, Georgia, Vermont, and Massachusetts require the end of a restraint when a student is observed to be in severe distress.<sup>393</sup> California requires educational providers to “use the least number of restraint points” and “afford . . . pupils who are restrained the least restrictive alternative and the maximum freedom of movement.”<sup>394</sup>

Almost all of the states that regulate restraint prohibit the use of mechanical restraint, which is the use of any device or material attached to or adjacent to a student’s body that is intended to restrict the normal freedom of movement and which cannot easily be removed by a student.<sup>395</sup> Kansas, Louisiana, Maryland, Mississippi, North Carolina, and Utah, however, permit the use of mechanical restraints, such as handcuffs, by law enforcement officers.<sup>396</sup> Almost all of the states that regulate restraint also prohibit the use of chemical restraint, which is the use of any medication that controls violent physical behavior or restricts the student’s freedom of movement that is not a prescribed treatment for the student’s medical condition.<sup>397</sup>

Regarding regulation of the purpose of restraint, multiple states explicitly prohibit the use of restraint for disciplinary purposes.<sup>398</sup>

388. See 05-071-33 ME. CODE R. § 6(2)(D) (2022).

389. *E.g.*, ALA. ADMIN. CODE r. 290-3-1.02(2)(vi) (2021); ALASKA STAT. § 14.33.125(b)(1) (2021); ARIZ. REV. STAT. ANN. § 15-105(B)(2) (2015); GA. COMP. R. & REGS. 160-5-1-.35(2)(f) (2010).

390. See COLO. REV. STAT. § 26-20-104(4) (2009).

391. See MD. CODE REGS. 13A.08.04.05(a)(1)(e)(ii).

392. See ALASKA STAT. § 14.33.125(b)(3) (2014); *accord* ARIZ. REV. STAT. ANN. § 15-105(A) (2015) (requiring continuous visual observation and monitoring during a restraint or seclusion).

393. See ALA. ADMIN. CODE r. 290-3-1-.02(2)(vi) (2021); GA. COMP. R. & REGS. 160-5-1-.35(2)(f) (2010); 603 MASS. CODE REGS. 46.05(5)(b); 7-1 VT. CODER. § 12:4502.5(a) (2019).

394. CAL. EDUC. CODE § 49005.8(a)(4)–(5), (c) (2019).

395. See ALA. ADMIN. CODE r. 290-3-1-.02(1)(f)(1)(ii), (2)(iii) (2021) (defining mechanical restraint); *see, e.g.*, ALASKA STAT. ANN. § 14.33.125(c)(2) (2014); COLO. REV. STAT. § 26-20-111(1) (2017); FLA. STAT. § 1003.573(3)(a) (2021); GA. COMP. R. & REGS. 160-5-1-.35(2)(c) (2010); MICH. COMP. LAWS § 380.1307b(f) (2018).

396. KAN. ADMIN. REGS. § 91-42-2(g)(6) (2017); LA. STAT. ANN. § 17:416.21(A)(2)(b)(ii) (2017); 05-071-33 ME. CODE R. § 6(5) (2022); 7-38 MISS. CODE R. § 38.13(4)(d) (2016); N.C. GEN. STAT. § 115C-391.1(c)(4) (2011); UTAH ADMIN. CODE r. 277-609-4(3)(v)(C) (Lexis-Nexis 2021).

397. *See, e.g.*, ALA. ADMIN. CODE r. 290-3-1-02(2)(iv) (2021); ALASKA STAT. ANN. § 14.33.125(c)(1) (2014); COLO. REV. STAT. § 26-20-111(1) (2017); GA. COMP. R. & REGS. 160-5-1-.35(2)(d) (2010); MICH. COMP. LAWS § 380.1307b(g) (2018).

398. *See, e.g.*, ALA. ADMIN. CODE r. 290-3-1.02(2)(v) (2021); CAL. EDUC. CODE § 49005.

For instance, Virginia prohibits physical restraint or seclusion for “disciplinary reasons, as a punishment or retaliation, or for staff’s convenience.”<sup>399</sup> Maine prohibits the use of restraint “as a therapeutic or educational intervention.”<sup>400</sup>

Regarding whether schools adjust restraint practices in response to parental input or a child’s special needs, Washington prohibits restraint unless it is authorized in advance by the child’s parent.<sup>401</sup> Kansas prohibits the use of restraint or seclusion when a parent has provided written documentation of “a medical condition that could put the student in mental or physical danger” as a result of the intervention.<sup>402</sup> Kentucky prohibits restraint if school personnel know that it is “contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.”<sup>403</sup> Meanwhile, research on trauma shows that restraint should be contraindicated for every child.<sup>404</sup>

To promote the safety of seclusion, several states require the continuous monitoring of a student who is in seclusion.<sup>405</sup> Some states provide limits to the number of minutes that a student can remain in seclusion.<sup>406</sup> Multiple states, including Arkansas, regulate the dimensions, lighting, ventilation, and locking of seclusion rooms.<sup>407</sup> Many states prohibit secluding children in locked rooms.<sup>408</sup> Illinois prohibits the confinement of students in a closet or box.<sup>409</sup> Wisconsin requires that the seclusion area be “free of objects or fixtures that may injure the pupil.”<sup>410</sup>

---

8(a)(1) (2019); COLO. REV. STAT. § 26-20-103(1.5)(a) (2021); 8 VA. ADMIN. CODE § 20-671-660(B)(3) (2015); GA. COMP. R. & REGS. 160-5-1-.35(2)(e)(1)(i) (2010); ILL. ADMIN. CODE tit. 23, § 1.285 (2021); 05-071-33 ME. CODE R. § 5(2)(A) (2022); 7-38 MISS. CODE R. § 38.13(2) (2016); N.H. CODE ADMIN. R. ANN. 126-U:5-a(I) (2014); N.C. GEN. STAT. § 115C-391.1(c)(3) (2011).

399. 8 VA. ADMIN. CODE § 20-671-660(B)(3) (2015).

400. 05-071-33 ME. CODE R. § 6(2)(E) (2022).

401. *See* WASH. REV. CODE § 9A.16.100 (1986).

402. KAN. STAT. ANN. § 72-6153(b) (2016).

403. 704 KY. ADMIN. REGS. 7:160(3)(2)(f) (2019).

404. *See* Sege et al., *supra* note 124, at 4, 6 (indicating that corporal punishment can be an adverse childhood experience).

405. *E.g.*, 005-18 ARK. CODE R. § 20-20.03 (2021); CAL. EDUC. CODE § 49005.8(b) (2019); MICH. COMP. LAWS § 380.1307h(e) (2018).

406. *E.g.*, 005-18 ARK. CODE R. § 20-20.04 (1)(A–C) (2021); MD. CODE REGS. 13A.08.04.05(B)(6)(c); UTAH CODE ANN. § 277-609-5(7) (LexisNexis 2021).

407. *E.g.*, 005-18 ARK. CODE R. § 20.04 (2021); IOWA ADMIN. CODE R. 281-103.9(256B,280) (2), (6), (7), (12) (2021).

408. *E.g.*, 005-18 ARK. CODE R. § 20.9(6) (2021); N.Y. COMP. CODES R. & REGS. tit. 8, § 200.22(c)(1)(i) (2014); UTAH ADMIN. CODE r. 277-609-5(5)(c) (LexisNexis 2021); 8 VA. ADMIN. CODE § 20-671-660(B)(7) (2015).

409. 105 ILL. COMP. STAT. 5/10-20.33(d)(2) (2021).

410. WIS. STAT. § 118.305(2)(c) (2020).

No state laws make it illegal to seclude or restrain a child multiple times in a year or make it harder to seclude or restrain children who are young, such as six years old.<sup>411</sup> Thus, individual children have been secluded almost 100 times in a single school year and restrained 745 times over seven years.<sup>412</sup> However, in a few states, such as Connecticut and Oregon, if restraint or seclusion is used on a student a certain number of times, such as five incidents in a school year, state law requires holding a meeting, including the parent of the student, for purposes of creating a behavioral intervention plan.<sup>413</sup>

Colorado, Kansas, and Kentucky provide an administrative private right of action for parents to formally complain about the use of restraint or seclusion to a hearing officer or local school board.<sup>414</sup> The filing of a complaint in Colorado requires the local school board to investigate the allegations of the complaint and make a formal determination about whether the law was violated.<sup>415</sup> The remedies provided by statute are not monetary; they are generally confined to corrective action by schools to become more compliant with the law.<sup>416</sup> Other states, such as Maine and New Hampshire, have a less formal complaint process in which parent complaints may trigger investigation and the development of a corrective action plan.<sup>417</sup> Remarkably, when a restraint or seclusion involves serious injury in New Hampshire, the complaint process may require a state investigator to refer complainant's allegations to law enforcement for investigation.<sup>418</sup>

Uniquely, California codified students' "inalienable right to attend classes on school campuses that are safe, secure, and peaceful"<sup>419</sup> and established that students have "the right to be free from the use

---

411. See NAT'L CTR. LEARNING ENV'T, *supra* note 162.

412. See Mary T. March, *Parents Sue Fairfax Schools Over Alleged Student Seclusion, Discrimination*, NPR (Oct. 9, 2019), <https://www.npr.org/local/305/2019/10/09/768593229/parents-sue-fairfax-schools-over-alleged-student-seclusion-discrimination> [<https://perma.cc/T6WC-D2KV>] (describing a child who had been secluded almost 100 times in a single school year).

413. *E.g.*, CONN. GEN. STAT. § 10-236b(g) (2018); OR. REV. STAT. § 339.294(5) (2013); 05-071-33 ME. CODE R. § 9(2)(B)(1) (2022).

414. See COLO. REV. STAT. § 22-32-147(4) (2017); KAN. STAT. ANN. § 72-6153(g)(2)(A)–(D) (2016); 704 KY. ADMIN. REGS. 7:160(2)(f) (2019).

415. COLO. REV. STAT. § 22-32-147(4) (2017); *cf.* KAN. STAT. ANN. § 72-6153(g)(2)(B) (2016).

416. See KAN. STAT. ANN. § 72-6153(g)(2)(C) (2016); 704 KY. ADMIN. REGS. 7:160(2)(f) (2019); *cf.* COLO. REV. STAT. § 22-32-147(4) (2017).

417. See 05-071-33 ME. CODE R. § 11 (2022); *see also* N.H. CODE ADMIN. R. ANN. EDUC. 1203.01–.03 (2021); OR. REV. STAT. § 339.303 (2013); 7-1 VT. CODE R. §§ 12:4507.1(a), 12:4508 (2021).

418. N.H. CODE ADMIN. R. ANN. EDUC. 1203.03(a)(1) (2021).

419. CAL. EDUC. CODE § 32261(a) (2012).

of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff.”<sup>420</sup>

Many states began regulating school seclusion or restraint in response to the death of a child.<sup>421</sup> While such incremental change is positive, the nation, as a whole, has learned enough about school brutality practices to now outlaw them across all states.

The above survey of state statutory and regulatory law regarding corporal punishment, seclusion, and restraint reveals that state lawmakers are generally more willing to restrict seclusion and restraint than corporal punishment.<sup>422</sup> This fact is likely due to the continued influence of the colonial teacher privilege to corporally punish students, as well as the fact that many states’ regulations of seclusion and restraint were promulgated by state departments of education rather than legislated by elected officials.<sup>423</sup> Policymakers at state departments of education may be more attuned to scientific evidence regarding the impacts of the use of physical force upon children than elected officials, who may be more attuned to popular opinion regarding corporal punishment.<sup>424</sup> News reporters and child advocates may also have been more successful in influencing public opinion about seclusion and restraint than they have been regarding corporal punishment.<sup>425</sup>

Regardless of the cause, to prevent school brutality, a state’s school corporal punishment, seclusion, and restraint laws must consistently prohibit the use of force upon children. Any state law that permits the use of any form of physical force upon schoolchildren opens the door to their physical abuse. More specifically, tight restrictions on school seclusion and restraint combined with relaxed

---

420. CAL. EDUC. CODE § 49005.2 (2019).

421. See SECLUSIONS & RESTRAINTS, *supra* note 81, at 10–11, 14–15 (describing the outlawing of particular physical discipline practices following the deaths of children in two states).

422. See *infra* Section D.

423. See Martin Gershman, *California’s Schoolhouse Child Abuse: New Law Would Stop Student Beatings*, L.A. TIMES (Aug. 31, 1986), <https://www.latimes.com/archives/la-xpm-1986-08-31-op-15230-story.html> [<https://perma.cc/U3WP-VUL9>]; NAT’L CTR. LEARNING ENV’T, *supra* note 162.

424. See Caitlin Stein, *Accountability and Transparency in Public Administration*, AM. SOC’Y PUB. ADMIN. (Mar. 19, 2019), <https://patimes.org/accountability-and-transparency-in-public-administration> [<https://perma.cc/WD5B-NYN7>]; Sege et al., *supra* note 124, at 1, 4, 6 (indicating that corporal punishment can be an adverse childhood experience); Emily Cuddy & Richard Reeves, *Hitting kids: American parenting and physical punishment*, BROOKINGS (Nov. 6, 2014), <https://www.brookings.edu/research/hitting-kids-american-parenting-and-physical-punishment> [<https://perma.cc/TR5M-YSSU>].

425. Compare Cuddy & Reeves, *supra* note 424, with Allison Norlian, *Parents, advocates question seclusion and restraint guidelines*, NBC (Oct. 19, 2016), <https://www.nbc12.com/story/33427804/parents-advocates-question-seclusion-and-restraint-guidelines> [<https://perma.cc/BJJ5-N6U9>].

restrictions on school corporal punishment create ambiguities in the law that facilitate school brutality.

Wisconsin law is an illustrative example. Wisconsin law prohibits the use of restraint or seclusion unless a “pupil’s behavior presents a clear, present, and imminent risk to the physical safety of the pupil or others and it is the least restrictive intervention feasible.”<sup>426</sup> Wisconsin law also prohibits corporal punishment in schools.<sup>427</sup> Confusingly, however, the prohibition of school corporal punishment has multiple exceptions, including authorizing school personnel to use “reasonable and necessary force” to remove a disruptive pupil from school premises, quell a disturbance, and protect property.<sup>428</sup>

Another exception is using “reasonable physical contact designed to maintain order and control.”<sup>429</sup> Not only do these exceptions undermine the prohibition on corporal punishment, they also make uncertain the otherwise strong restrictions on seclusion and restraint. Such weaknesses in the law provide unclear guidance to school employees regarding the level of force they can use with students, and school employees can effectively shield themselves from criminal and civil liability by pointing to the plain language of the exceptions.

### *E. State Statutes Regarding Police in Schools*

Only six states—California, Indiana, Kansas, Kentucky, Pennsylvania, and Texas—have statutes or regulations that function to reduce the likelihood of school brutality by law enforcement officers.<sup>430</sup> Indiana and Texas require SROs to comply with state laws regarding seclusion and restraint that apply to teachers.<sup>431</sup> For instance, Indiana requires SROs to comply with the prohibition against seclusion and restraint in schools unless the student’s behavior poses imminent risk of injury to self or others and other less restrictive interventions are ineffective.<sup>432</sup>

---

426. WIS. STAT. § 118.305(2)(a) (2020).

427. WIS. STAT. § 118.31(2) (1999).

428. WIS. STAT. § 118.31(3)(a), (d), (e) (1999).

429. *Id.* at § 118.31(3)(h).

430. *See* CAL. EDUC. CODE §§ 56521.2 (2013); 513 IND. ADMIN. CODE 1-2-4 (2020); KAN. STAT. ANN. § 72-6153 (2016); 704 KY. ADMIN. REGS. 7:160 (2019); TEX. EDUC. CODE ANN. § 37.0021 (2021).

431. TEX. EDUC. CODE ANN. §§ 37.0021(c), (d), (h) (2021); *see also* 513 IND. ADMIN. CODE 1-2-4(b) (2020); IND. ADMIN. CODE 1-2-11(a)(1)(A), (B) (2018) (including in the definition of physical restraint contact between a student and an SRO and restricting the use of physical restraint). *But see* TEX. EDUC. CODE §§ 37.0021(g), (h) (2021) (failing to require law enforcement officers to comply with laws regarding school corporal punishment).

432. *See* 513 IND. ADMIN. CODE 1-2-4(b) (2020); 513 IND. ADMIN. CODE 1-2-11(a)(5)(B) (2018).

Regarding reporting, Indiana and Kansas require timely reporting of every incident of restraint or seclusion, including those involving an SRO, to the student's parent.<sup>433</sup> Kentucky requires reporting to the state department of education and local law enforcement when physical restraint or seclusion results in death, substantial risk of death, extreme physical pain, obvious disfigurement, or impairment of a bodily organ.<sup>434</sup> Kentucky also requires the collection of data regarding the number of instances in which an SRO "or other sworn law enforcement officer is involved in the physical restraint or seclusion of a student."<sup>435</sup>

Pennsylvania and California require SROs and school security guards to receive training before working on school campuses.<sup>436</sup> Such training is consistent with the recommendation by the National Association of School Resource Officers to train every SRO for at least forty hours on topics including building positive relationships with students and staff.<sup>437</sup>

California also prohibits local educational agencies from authorizing, consenting to, or paying for interventions that are designed to or likely to cause physical pain or subject an individual to verbal abuse, ridicule, or humiliation, "or that can be expected to cause excessive emotional trauma."<sup>438</sup> This California law suggests that security guards and law enforcement officers that work for a California school district would not be permitted to brutalize schoolchildren.

In contrast, many other states' laws increase the likelihood of school brutality by law enforcement officers.<sup>439</sup> Numerous states' laws explicitly establish that regulations of seclusion, restraint, or corporal punishment do not apply to the actions of law enforcement officers in schools.<sup>440</sup> For instance, a North Carolina statute states, "Nothing

---

433. See 513 IND. ADMIN. CODE 1-2-7(c) (2018); KAN. STAT. ANN. § 72-6154(b) (2016).

434. 704 KY. ADMIN. REGS. 7:160(1)(13), 7:160(2)(1)(e) (2019).

435. 704 KY. ADMIN. REGS. 7:160(7) (2019).

436. See CAL. EDUC. CODE § 38001.5(a) (2020); 24 PA. CONS. STAT. §§ 1313-C(a.1), 1314-C(b) (2019).

437. NAT'L ASS'N SCH. RES. OFFICERS, *Training Courses*, <https://www.nasro.org/training/training-courses> [<https://perma.cc/5N73-RMB2>] (last visited Apr. 7, 2022).

438. CAL. EDUC. CODE §§ 56521.2(a)(1), (4) (2013).

439. See Ryan King & Marc Schindler, *A Better Path Forward for Criminal Justice: Reconsidering Police in Schools*, BROOKINGS (Apr. 2021), <https://www.brookings.edu/research/a-better-path-forward-for-criminal-justice-reconsidering-police-in-schools> [<https://perma.cc/TEE5-KDRX>].

440. See, e.g., ARIZ. REV. STAT. ANN. § 15-105(E) (2015) (authorizing SROs to respond without using the reporting and review protocol if facing a case of imminent danger); ARK. CODE ANN. § 6-10-128(a) (2021) (permitting law enforcement to "assist with school security, safety, emergency preparedness, emergency response, or any other responsibility assigned to the [SRO] by the school or law enforcement agency"); CONN. GEN. STAT. §§ 10-236b(q), 46a-152(g) (2018); 14 DEL. ADMIN. CODE § 610(9.4) (2018); KAN. STAT. ANN.

in this subsection [regulating physical restraint] shall be construed to prevent the use of force by law enforcement officers . . . .”<sup>441</sup> Vermont statutory law goes even farther by prohibiting government agencies from regulating, such as through promulgation of administrative regulations, the use of restraint and seclusion on school property by SROs.<sup>442</sup>

A few states that allow corporal punishment in schools have used the law to expand policing at schools.<sup>443</sup> Missouri empowers school districts to appoint *school administrators and teachers* as school protection officers, who are permitted to carry a firearm on campus and have “the same authority to detain or use force against any person on school property” as any other law enforcement officer.<sup>444</sup> Other states, such as Mississippi, require police officers in schools to get deeply involved in school discipline by requiring them to be “subjected to the duties of a constable for the purposes of *preventing all* violations of law on school property . . . and for preserving order and decorum.”<sup>445</sup> Florida requires that every school in the state have at least one SRO who is required to make arrests for law violations on school campuses.<sup>446</sup>

In the wake of George Floyd’s murder, thirty-three school districts removed SROs from their campuses by ending contracts with police

---

§ 72-6153(i)(1)–(2) (2016) (exempting SROs from regulations of school seclusion and restraint, but requiring school security officers to comply with such regulations); 704 KY. ADMIN. REGS. 7:160 (2019) (permitting “the lawful exercise of law enforcement duties by sworn law enforcement officers”); 05-071-33 CODE ME. R. § 6(5) (2013) (exempting law enforcement officers from being subject to regulations on restraint); MD. CODE REGS. 13A.08.04.03(C)(2) (permitting law enforcement personnel to “exercise[] their responsibilities, including the physical detainment of a student . . . alleged to have committed a crime”); 603 MASS. CODE REGS. 46.04(4)(b) (applying also to school security personnel); 7-38 MISS. CODE R. § 38.13(5)(g) (2016); N.C. GEN. STAT. §§ 115C-391.1(c)(4), (d)(3), (e)(4) (2011); N.M. STAT. ANN. § 22-5-4.12(G) (2017); TEX. EDUC. CODE ANN. § 37.0021(g)(1) (2021); UTAH CODE ANN. § 53G-8-302(6) (2019) (exempting law enforcement officers from the ban on corporal punishment); *cf.* COLO. REV. STAT. § 26-20-102(1)(b)(II) (2021) (excluding law enforcement agencies from the meaning of “agencies,” which have to comply with the regulations). As mentioned previously, Kansas, Louisiana, Maryland, Mississippi, North Carolina, and Utah also permit the use of handcuffs as a mechanical restraint by law enforcement officers. KAN. ADMIN. REGS. § 91-42-2(g)(6) (2017); LA. STAT. ANN. § 17:416.21(A)(2)(b)(ii) (2017); 05-071 ME. CODE R. § 6(5) (2021); 7 MISS. CODE R. § 38.13(4)(d) (2016); N.C. GEN. STAT. § 115C-391.1(b)(7) (2011); UTAH ADMIN. CODE R. 277-609-4(3)(l)(v)(C) (LexisNexis 2016).

441. N.C. GEN. STAT. § 115C-391.1(c)(4) (2011).

442. VT. STAT. ANN. tit. 16, § 1167(a) (2014).

443. *See, e.g.*, Jess Clark, *Where Corporal Punishment Is Still Used in School, Its Roots Run Deep*, NPR (Apr. 12, 2017, 6:00 AM), <https://www.npr.org/sections/ed/2017/04/12/521944429/where-corporal-punishment-is-still-used-its-roots-go-deep> [https://perma.cc/6Y34-V3AJ].

444. MO. REV. STAT. § 160.665(3) (2014).

445. MISS. CODE ANN. § 37-7-323 (2006) (emphasis added).

446. FL. STAT. § 1006.12(2)(b) (2019).

departments, and others changed their relationships with security personnel.<sup>447</sup> Some of the removals are also a response to years of organizing by youth of color to remove police from schools.<sup>448</sup> An example is in Madison, Wisconsin, where four restorative justice coordinators replaced four SROs.<sup>449</sup> The coordinators train educators on restorative justice approaches, which emphasize resolving interpersonal conflicts and repairing relationships.<sup>450</sup> The Madison teachers' union advocated for more school counselors and social workers in schools.<sup>451</sup> Other districts are using the money saved by removing SROs to hire social workers and implement restorative justice practices.<sup>452</sup>

*F. How School Systems Are Closed to Public Scrutiny and the Need for New Private Rights of Action*

Investigations in multiple states show that states brutalize students in violation of their own laws, and schools tend to hide and make light of illegal incidents of school brutality.<sup>453</sup> Such investigations refute *Ingraham's* assumptions that corporal punishment is rarely severe at schools, schools are "open" to public scrutiny, and common-law safeguards adequately protect children from excessive corporal punishment at school.<sup>454</sup> Given the lack of meaningful governmental oversight of incidents of brutality and lack of enforcement of the law by state officials, parents and children need either new private rights of action or fewer barriers to access justice through tort and criminal law actions.

Many schools corporally punish children in violation of state law.<sup>455</sup> For instance, "[a]bout a dozen school districts in states where corporal punishment is banned reported using it on students more than 300 times during the 2017–18 school year."<sup>456</sup> Louisiana, which prohibits paddling students with disabilities, reported hitting special education students nearly 100 times in 2017–18.<sup>457</sup> A video of a principal paddling a six-year-old girl in a Florida county that banned corporal punishment sparked outrage in early 2021.<sup>458</sup> Officials at

---

447. See Schwartz et al., *supra* note 170.

448. See *id.*

449. See *id.*

450. See *id.*

451. *Id.*

452. *Id.*

453. Keierleber, *supra* note 19.

454. See *Ingraham v. Wright*, 430 U.S. 651, 689 (1977).

455. Keierleber, *supra* note 19.

456. *Id.*

457. *Id.*

458. Mark Keierleber, *It's barbaric: some US children getting hit at school despite*

state departments of education have indicated that school districts are supposed to investigate instances of improper corporal punishment and correct them, but sometimes the only punishment for teachers who violate corporal punishment bans is a letter of reprimand.<sup>459</sup>

Investigations also reveal school seclusion and restraint in violation of state law.<sup>460</sup> To illustrate, since 1993, Illinois law has prohibited “slapping, paddling or prolonged maintenance of students in physically painful positions.”<sup>461</sup> Illinois law only permits the use of seclusion when students pose a safety threat to themselves or others; seclusion can never be used as a form of discipline or punishment.<sup>462</sup> Physical restraint is only permitted when the student’s behavior presents “an imminent danger of serious physical harm to the student or others and less restrictive and intrusive measures have been tried and proven ineffective in stopping the imminent danger of serious physical harm.”<sup>463</sup>

Nevertheless, in 2013–14, Illinois had more incidents of seclusion than any other state.<sup>464</sup> An investigation into 20,000 seclusion incidents in 2017–18 by ProPublica Illinois and the Chicago Tribune demonstrated that Illinois school officials secluded children for “refusing to do classwork, for swearing, for spilling milk, for throwing Legos.”<sup>465</sup> Teachers, social workers, and security personnel secluded children for convenience, out of frustration, or as punishment, sometimes referring to seclusion as “serving time.”<sup>466</sup> Investigators found that in more than a third of 12,000 documented incidents of seclusion, school workers documented no safety reason for the seclusion.<sup>467</sup> State education officials were unaware of the repeated violations because they did not monitor schools’ use of seclusion; state law requires schools to file a detailed report about each use of seclusion, but no one is required to read the reports.<sup>468</sup> Parents were often told little about what happened to their children.<sup>469</sup>

Similarly, a ProPublica “analysis of more than 15,000 physical restraints in 100 Illinois school districts from August 2017 to early

---

*bans*, GUARDIAN (May 19, 2021, 6:00 AM), <https://www.theguardian.com/education/2021/may/19/us-children-corporal-punishment-schools> [<https://perma.cc/A4VX-VJMB>].

459. *See, e.g.*, Keierleber, *supra* note 19.

460. *Id.*

461. *See* 105 ILL. COMP. STAT. 5/24-24 (1995).

462. ILL. ADMIN. CODE tit. 23, § 1.285 (2021).

463. *Id.*

464. Richards et al., *supra* note 85.

465. *Id.*

466. *Id.*

467. *Id.*

468. *Id.*

469. *See id.*

December 2018 found that about a quarter of the interventions began without any documented safety reason.<sup>470</sup> “Instead, [physical restraints] often happened after a student was disrespectful, profane, or not following rules.”<sup>471</sup> For instance, a girl in the Chicago suburbs reported being “smashed to the floor” during a thirty-two minute restraint that began when she refused to return to a seclusion room after a bathroom break.<sup>472</sup> “[S]chool workers waited for her to stop moving.”<sup>473</sup>

As a result of the 15,000 physical restraints in Illinois, children suffered cuts on their hands; scratches on necks and noses; sore collarbones; knots on their heads; split lips; and sore ankles and wrists.<sup>474</sup>

“In at least [twenty-four] incidents, schools called for an ambulance for a child.”<sup>475</sup> School employees also were injured while children “sometimes bit, hit, or kicked while trying to get free.”<sup>476</sup> The study found that schools across Illinois were using prone restraints, which are “particularly dangerous because they can cut off a child’s ability to breathe.”<sup>477</sup> Especially disturbing is the likelihood that without ProPublica’s analysis of the reports on restraints, the illegal school brutality upon Illinois children would have remained hidden.

Similarly, in Washington, D.C., regulations prohibit the corporal punishment of children, including shoving, hitting, and “unreasonable restraint.”<sup>478</sup> A Disability Rights DC investigation of a 2016 restraint revealed that D.C. Public Schools’ (DCPS) staff punched and pulled the hair and ripped the clothing of a seventeen-year-old child during a restraint.<sup>479</sup> The punch, hair pulling, and ripped clothing were not reported in a school incident report, and a DCPS investigation in response to a complaint concluded that no action was warranted.<sup>480</sup> In other words, DCPS failed to adequately report the level of physical violence during the restraint and failed to take any accountability

---

470. Richards et al., *supra* note 85.

471. *Id.*

472. *Id.*

473. *Id.*

474. *Id.*

475. *Id.*

476. Richards et al., *supra* note 85.

477. *Id.*

478. D.C. Mun. Regs. tit. 5-E, § 2403.3 (2002) (prohibiting corporal punishment, defined as “the use, or attempted use, of physical force upon, or against, a student, either intentionally or with reckless disregard for the student’s safety, as a punishment, or discipline” and prohibiting “unreasonable restraint”).

479. DISABILITY RTS. D.C., *supra* note 86 (describing how staff at a Washington, D.C. public school failed to describe the restraint in incident reports and no legal recourse occurred).

480. *Id.* at 3.

for such violence.<sup>481</sup> The fact that D.C. law did not prohibit restraint or seclusion at public schools did not help the child.<sup>482</sup>

Disability Rights DC also found that in the winter of 2019, a D.C. public charter school staff member, who had never received training on seclusion, secluded a six-year-old child on multiple occasions without documenting, reporting, or informing the child's parents of the seclusions.<sup>483</sup> The child began "experiencing recurring nightmares as a result of [the] seclusions."<sup>484</sup>

In Oregon, "an investigation by Oregon Public Broadcasting found several parents in Vancouver Public Schools . . . who [said that] school officials rarely notified them when their children had been restrained," demonstrating that even when state law requires that schools report restraint or seclusion to parents, such reports do not always occur.<sup>485</sup>

The investigations of school brutality in Illinois, the District of Columbia, and Oregon demonstrate how existing prohibitions on school brutality are not fully effective, and schools are not "open" for supervision by the community, as the U.S. Supreme Court assumed in *Ingraham v. Wright*.<sup>486</sup> School systems are not good at regulating or revealing their own use of violence against children. These systems are not inclined to accurately report illegal incidents to themselves or parents or to stop violations on their own.<sup>487</sup> School systems have yet to demonstrate that they can meaningfully review incidents of school brutality and act to decrease such incidents.<sup>488</sup> Further, prosecutors are also often reluctant to bring charges against educators.<sup>489</sup>

Thus, community supervision is relegated to parents, who will not get the information that they need to exercise their Fourteenth

---

481. *See id.* at 4, 9.

482. *See id.* at 3.

483. DISABILITY RTS. DC, *The Need for Oversight and Restriction of the Seclusion and Restraint of District Youth Attending DC Public Schools* 4–5 (Oct. 2019), <http://www.uls-dc.org/media/1185/2019-seclusion-restraint-report.pdf> [<https://perma.cc/2HES-KJQD>].

484. *Id.* at 4.

485. *See* Abamu & Manning, *supra* note 16 (explaining how the mother of a child with autism in Vancouver, Oregon, complained in a lawsuit that her son's school did not tell her about all the restraints that were performed on her son).

486. *See Ingraham*, 430 U.S. at 670 (1977) ("As long as the schools are open to public scrutiny, there is no reason to believe that the common-law constraints will not effectively remedy and deter excesses [in school corporal punishment]").

487. *See* DISABILITY RTS. D.C., *supra* note 86, at 7–8.

488. *See id.*

489. *See, e.g.,* Lateshia Beachum, *Florida principal caught on video paddling 6-year-old student won't face criminal charges, state attorney's office says*, WASH. POST (May 9, 2021, 2:46 PM), <https://www.washingtonpost.com/nation/2021/05/09/florida-principal-paddled-no-charges> [<https://perma.cc/CXT2-Q4JN>] (reporting that prosecutors decided not to bring criminal charges against a school principal who violated a county prohibition on school corporal punishment in part because there was "'no evidence or indication of great bodily harm, permanent harm or permanent disfigurement' to the child").

Amendment right to procedural due process unless laws are enforced to ensure accurate and complete reporting of school brutality incidents.<sup>490</sup> In addition, parents cannot exercise their constitutional procedural due process rights when teachers are overly protected by statutes that indemnify them for physically harming students.<sup>491</sup> Unless immunity for teachers is reduced when they corporally punish children, parents need new private rights of action with which to protect their children.

### III. SOLUTIONS

This Article described numerous legal structures that legalize or facilitate school brutality, including the continued influence of the colonial teacher tort privilege;<sup>492</sup> *Ingraham*'s erroneous assumptions about the openness of schools, community supervision of schools, and the adequacy of state civil and criminal proceedings and remedies;<sup>493</sup> limited rights for children at school under the U.S. Constitution's Fourth, Eighth, and Fourteenth Amendments;<sup>494</sup> ambiguous state statutes that permit school corporal punishment, seclusion, and/or restraint practices;<sup>495</sup> independent regulation of each practice;<sup>496</sup> qualified immunity and statutory indemnity for school corporal punishment;<sup>497</sup> exclusions of school corporal punishment from state definitions of child abuse;<sup>498</sup> statutory expansions of police powers in schools;<sup>499</sup> federal funding for the regular presence of police in schools;<sup>500</sup> inaccurate and incomplete reporting of school brutality incidents;<sup>501</sup> and lack of meaningful review of incident reports.<sup>502</sup>

To protect children from school brutality, then, multiple legal structures and resources must be reformed. To begin with, legislators and judges must eliminate the tort privilege that enables principals to hit children in schools, given that the *in loco parentis* doctrine is

---

490. See, e.g., *supra* note 484 and accompanying text (giving the example of one teacher using seclusion on a six-year-old without documenting or reporting its use, nor notifying the parents).

491. See *supra* Section II.C.2.

492. See *supra* Section II.A.

493. See *id.*

494. See *supra* Section II.B.

495. See *supra* Section II.C.2.

496. See *id.*

497. See *id.*

498. See *id.*

499. See *supra* Section II.E.

500. See *id.*

501. See *supra* Section II.F.

502. See *id.*

inconsistent with compulsory school attendance laws and the privilege is unreasonable in light of research on the effects of corporal punishment and trauma.<sup>503</sup> Legislators and judges should also extend tort protections against battery, assault, and false imprisonment to children at schools. Statutes that indemnify school personnel and police officers from civil and criminal liability for school brutality must be replaced with statutes indicating that such brutality creates civil and criminal liability. Unless governmental officials become less shielded from civil and criminal liability, new private rights of action must be provided to parents and children so that they can exercise their Fourteenth Amendment procedural due process rights.<sup>504</sup>

Assault and false imprisonment of children at school should be crimes, to the same extent that they are for adults. Legal definitions of child abuse should include the excessive use of physical force by governmental employees in public schools, and the standards regarding child abuse in foster homes should apply to school settings. All states should stop separating the regulation of seclusion and restraint from the regulation of corporal punishment, or at least ensure that regulations are consistent across all three practices. Moreover, all states or the federal legislature should ban the use of any form of physical force by any adult government employee or contractor in public schools with the exception of allowing restraint when a child's behavior poses an imminent risk of serious physical harm upon themselves or others.

State and federal legislators should prevent police officers from having a regular presence in public schools and prevent them from participating in school discipline.<sup>505</sup> State and federal legislators should restrict the use of force by law enforcement officers and security guards in schools. Instead of funding the placement of police officers in schools, funds should be directed at placing counselors in schools and training educators and school security guards about school climate and behavior-management strategies that do not use physical force.<sup>506</sup> Nonpunitive approaches to addressing problematic behaviors, including restorative justice, positive behavioral interventions and strategies, and trauma-responsive approaches, should be emphasized. School safety should be addressed as a public

---

503. *See supra* Section II.A.

504. *See supra* Section II.B.

505. DIGNITY IN SCH., *supra* note 105 (explaining that parents, students, and over 100 other organizations from across the country have called for the end of the regular presence of law enforcement in schools); Dolan, Scheuer & Nagarajan-Swenson, *supra* note 194, at 19 (calling for the end of the regular presence of law enforcement in schools).

506. DIGNITY IN SCH., *supra* note 105, at 2; Dolan, Scheuer & Nagarajan-Swenson, *supra* note 194, at 5.

health issue, rather than an issue to be addressed through law enforcement and surveillance.<sup>507</sup> Specifically, schools should promote safety through promoting healthy relationships between adults and children at schools, supporting students' sense of belonging and safety at school, and the provision of adequate, trauma-informed mental health supports.

Moreover, local and state educational agencies, legislators, and the public must support educators, security guards, and police officers as they make the cultural shift from traditional approaches to discipline to trauma-informed and evidence-based approaches to modifying such behavior. Such support should involve collaborating with and listening to educators and safety officers to identify barriers to change and providing resources to overcome such barriers. Barriers to change are likely to include the effects of childhood and adult trauma upon educators and safety officers themselves;<sup>508</sup> implicit and explicit biases that cause adults to fear or devalue certain children or groups of children;<sup>509</sup> a lack of understanding regarding behavioral and other disabilities;<sup>510</sup> a lack of skills and practice regarding alternative approaches to addressing problematic behaviors;<sup>511</sup> feelings of overwhelm and isolation in the classroom or school when children misbehave;<sup>512</sup> and inadequate resources in the classroom and school.<sup>513</sup> When asking educators to become trauma-responsive, school systems should also become trauma-responsive to educators, including by providing in-school mental health and professional development support to educators.

At the same time, federal, state, and local prosecutors should be given more resources to uncover and charge state employees for

507. See KRISTIN HENNING, *THE RAGE OF INNOCENCE* 313 (2021).

508. Lombardo & Abamu, *supra* note 40 (including one teacher saying they “would lock [them]self in the bathroom at work and cry, and I know that I wasn’t the only one,” when facing using restraint or seclusion on students).

509. See Wesley Wright, *Fear of black students, unfair treatment rampant in Denver schools, black educators say*, CHALKBEAT (Aug. 5, 2016, 11:09 AM), <https://co.chalkbeat.org/2016/8/5/21106311/fear-of-black-students-unfair-treatment-rampant-in-denver-schools-black-educators-say> [<https://perma.cc/JP2K-ASRG>] (describing how some educators feared Black students); Sharon R. Bailey, *An Examination of Student and Educator Experiences in Denver Public Schools Through the Voices of African-American Teachers and Administrators* 10–11 (2016), [https://celt.dpsk12.org/wp-content/uploads/sites/52/Dr.-Bailey-Report-FULL-2.pdf?fbclid=IwAR3uQ7HAxcZWPM3Q7ZkRXXwP1s6tQ5GtSSvERB\\_oTkRNSYR9K2yCuHvWfjs](https://celt.dpsk12.org/wp-content/uploads/sites/52/Dr.-Bailey-Report-FULL-2.pdf?fbclid=IwAR3uQ7HAxcZWPM3Q7ZkRXXwP1s6tQ5GtSSvERB_oTkRNSYR9K2yCuHvWfjs) [<https://perma.cc/PKW8-4T8A>]; HENNING, *supra* note 507, at 303 (“[W]e must act now to repair the harms of racial trauma and create new opportunities for Black youth to succeed in the face of demonizing stereotypes that cause others to fear and devalue them”).

510. See *supra* Section I.B.

511. See *id.*

512. See *id.*

513. See *id.*

committing school brutality, and the U.S. Department of Education should continue educating school leaders on the traumatizing effects of school brutality and better methods to address misbehavior.

Given the slow, piecemeal reform of state laws regarding corporal punishment, seclusion, and restraint and uncertainty regarding when and how the U.S. Supreme Court might rule on another school corporal punishment case, the most efficient and effective first step for reducing school brutality would be federal legislation to end school corporal punishment, seclusion, and almost all forms of restraint; end qualified immunity or at least immunity for school brutality; eliminate the regular presence of police at schools; and provide educators with training and resources to change their disciplinary practices. A few federal bills are poised to achieve many of these goals.<sup>514</sup>

The George Floyd Justice in Policing Act (H.R. 1280), for instance, which was passed by the U.S. House of Representatives in March 2021, would eliminate federal qualified immunity for local law enforcement officers.<sup>515</sup> This bill, as well as state legislation to end qualified and specific statutory immunity for school personnel and law enforcement officers regarding use of force in schools, would significantly improve the ability of parents and children to vindicate their rights in school brutality cases.<sup>516</sup>

The Counseling Not Criminalization in Schools Act (H.R. 4011 and S. 2125) would direct \$2.5 billion in federal grants away from supporting the presence of police in schools and toward evidence-based and trauma-informed services and personnel, including social workers and counselors.<sup>517</sup>

The act would support decisions by local educational agencies to dissolve or disband district-based police departments or end contracts with local law enforcement agencies.<sup>518</sup> Specifically, the act would prohibit the appropriation of federal funds for hiring, maintaining, and training SROs and law enforcement officers who are employed, contracted, or assigned to work at a public elementary or secondary school.<sup>519</sup> The act would provide grants to replace such

---

514. See, e.g., Gomez, *infra* note 515.

515. Henry J. Gomez, *Here's what the George Floyd Justice in Policing Act would do*, NBC NEWS (Apr. 21, 2021, 1:13 PM), <https://www.nbcnews.com/politics/congress/here-s-what-george-floyd-justice-policing-act-would-do-n1264825> [<https://perma.cc/P53D-FRV2>]; H.R. 1280, 117th Cong. § 102 (2021).

516. See *id.*

517. Cayla Bamberger, *Sen. Chris Murphy, others reintroduce legislation to increase counselors in schools*, CTPOST (June 17, 2021, 11:15 AM), <https://www.ctpost.com/news/article/Sen-Chris-Murphy-others-reintroduce-legislation-16254885.php> [<https://perma.cc/A7YY-YUX8>]; S. 2125, 117th Cong. §§ 5(a), 6(a)(1), 6(d)(1) (2021).

518. S. 2125, 117th Cong. §§ 3(2), 5(a), 6(1) (2021); S. 2125, 117th Cong. § 3(2) (2021).

519. *Id.* at § 5(a).

law enforcement officers with services and personnel, such as social workers, psychologists, counselors, community health workers, and trauma-informed personnel, that support mental health and trauma-informed services.<sup>520</sup>

Protecting Our Students in Schools Act (POSSA) (H.R. 3836 and S. 2029) and the Keeping All Students Safe Act (KASSA) (H.R. 3471 and S. 1858) would significantly reduce school brutality in public schools. POSSA defines corporal punishment as “a deliberate act which causes the student to feel physical pain for the purpose of discipline, including an act of physical force.”<sup>521</sup> POSSA prohibits the corporal punishment of any student “by [school] program personnel, a law enforcement officer, or school security guards under any program which receives Federal financial assistance.”<sup>522</sup> It provides a private right of action to students and parents of students who have experienced corporal punishment.<sup>523</sup> Students or parents can file a civil action in federal or state court for “attorneys’ fees, expert fees, injunctive relief, and compensatory damages.”<sup>524</sup> POSSA also authorizes the U.S. Attorney General to initiate a civil action against state agents who violate the law after receiving a complaint in writing signed by a parent.<sup>525</sup> Further, POSSA authorizes the U.S. Department of Education’s Office of Civil Rights to enforce the law by withholding federal payments to educational programs that violate the law.<sup>526</sup> POSSA provides grants to “[s]tate educational agencies to improve school climate and culture by implementing positive behavioral interventions and supports” and other non-exclusionary and aversive discipline practices.<sup>527</sup>

KASSA prohibits the seclusion or restraint of any student by a law enforcement officer, school security guard, or any school staff in any program receiving federal financial assistance.<sup>528</sup> The only exception to the prohibition is restraint when the “student’s behavior poses an imminent danger of serious physical injury to the student . . . or another individual” and “less restrictive interventions

---

520. *Id.* at § 6(d)(1).

521. Protecting Our Students in Schools Act of 2021, S. 2029, 117th Cong. § 3(1) (2021) (providing examples of acts of physical force, including “striking, spanking, or paddling, inflicted on a student’s body, requiring a student to assume a painful physical position, or the use of chemical sprays, electroshock weapon, or stun guns on a student’s body.”).

522. *Id.* at § 101(a).

523. *See id.* at § 101(b).

524. *See id.*

525. *Id.* at § 102.

526. *Id.* at § 103(c)(1).

527. S. 2029, 117th Cong. § 202(a) (2021).

528. S. 1858, 117th Cong. § 101(a) (2021).

would be ineffective in stopping such imminent danger.”<sup>529</sup> KASSA also provides a private right of action to any “student who has been subjected to unlawful seclusion or restraint . . . or the parent of such student.”<sup>530</sup> The action would be civil and it could be brought against the program, but not any individual school staff person, under which the violation is alleged to occur.<sup>531</sup> The listed possible remedies include compensatory relief, declaratory judgment, injunctive relief, attorneys’ fees, and expert fees.<sup>532</sup> KASSA also requires immediate notification about a restraint to a student’s parent.<sup>533</sup> Passage of KASSA, POSSA, The Counseling Not Criminalization in Schools Act, and The George Floyd Justice in Policing Act would help to save lives and promote educational achievement.

The enactment of any or all of the above federal bills, however, should be accompanied by an infusion of resources into public schools to support educators in transitioning from traditional methods of discipline to non-physical, evidence-based approaches. Such resources should address the barriers to change mentioned above and should include training; in-school trauma-responsive mental health support for adults, including counseling; training to address implicit and explicit bias and lack of knowledge about childhood disabilities; and other resources to address educators’ feelings of being overwhelmed and isolated in the classroom. While the provision of these resources will cost money, the resources are necessary to ensure an effective transition to school environments that more effectively improve behaviors, create a sense of safety for both children and adults, reduce child and adult injuries, improve educator satisfaction, and, ultimately, reduce costs for public schools.<sup>534</sup>

## CONCLUSION

Americans have become desensitized to the trauma that public schools inflict upon children, but the brutality endured by hundreds of thousands of children each year requires urgent attention. It is time for the nation to end its hidden, colonial habit of brutalizing children in school and thinking that such brutality is reasonable.

---

529. *Id.* at § 101(e)(1)(A)–(D) (providing additional requirements regarding training of the person administering the restraint, as well as the duration and method of the restraint).

530. *Id.* at § 101(c)(1).

531. *Id.* at § 101(c)(1)–(2).

532. *Id.* at § 101(c)(1).

533. *Id.* at § 101(e)(4)(A)(i).

534. *See, e.g.,* Abamu & Manning, *supra* note 16; Richards & Cohen, *supra* note 141.

Non-abusive alternatives exist, and new understandings of how corporal punishment causes trauma; worsens behavior and academic achievement; and disproportionately harms Black children and children with disabilities make the habit unacceptable and shameful.<sup>535</sup>

The speed with which states have recently begun regulating seclusion and restraint, and the desire to end excessive state applications of force in response to George Floyd's death have provided momentum to make public systems better. The public, legislators, and judges can save lives and improve educational achievement by eliminating school brutality. Will we continue to allow the government to continue violating children's physical safety at public schools? Or will we do what is necessary to end child abuse by adults at schools?

---

535. *See supra* Part I.