

- SUBJECT:** Banning the use of seclusion discipline in public schools
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 8 ayes — Sadler, Dunnam, Grusendorf, Hardcastle, Hochberg, Oliveira, Olivo, Smith
- 0 nays
- 1 absent — Dutton
- WITNESSES:** For — Bonnie Armstrong; Tim Benton; Mike Bright, Charlene Comstock-Galagan, The ARC of Texas; Patti Derr, Texas Federation of Families for Children’s Mental Health; Mary Kelly Dietz, Patrick Herndon, ATC MHMR/Disability Committee; Colleen Horton, Texas Advocates Supporting Kids with Disabilities; Richard LaVallo, Advocacy Inc.; Michele Molter, Dianne Janicek Reed, Association of Texas Professional Educators; Barbara Murdock; Susan Payne; Kenneth Rogers; Susan Rogers, Dallas Federation of Families; Brenda Scheuermann; Ronnie Schleiss, Autism Society of Greater Austin; Jeff Sell, Autism Society of America; Susan Vaughn; Cheryl Wilson
- Against — Jane Allred, TCASE, Abilene ISD; Christopher Borreca, TCASE, Texas Association of School Administrators, Texas Association of School Boards; Steve Fleming, Tom Leyden, Texas Association of Secondary School Principals; Gene Schatz, Texas Association of Secondary School Curriculum
- On — Bill Carpenter, Houston ISD; Pamela Crawford, Texas Council of Administrators of Special Education, TASA, TASB; Holly Eaton, Texas Classroom Teachers Association; Edward Gooze; Kay Lambert, Advocacy Inc.; Vicki McCall, Arlington ISD Special Education Department; Penny Seay, Texas Center for Disability Studies
- BACKGROUND:** Many Texas schools use a practice referred to as “seclusion” or “seclusionary time-out” for discipline or behavior management. Seclusion is when a child exhibiting inappropriate behavior is isolated in a room, closet,

locked box, or other space away from the child's class and is forbidden to leave.

Education Code, ch. 37 sets forth guidelines for discipline in the Texas public schools, including the appropriate use of alternative settings for behavior management.

DIGEST:

CSHB 692 would add a section to the Education Code regarding the use of confinement, restraint, seclusion, and time-out in public schools, including charter schools. It specifically would prohibit confinement of a student with a disability in a locked box, closet, or other space as a discipline or behavior management technique.

“Restraint” would be defined to mean the use of physical force or a mechanical device to restrict a student’s free movement. “Seclusion” would mean confining a student in a locked box, closet, or room designed solely to seclude a person that had less than 50 square feet of space. “Time-out” would mean separating a student from other students for a limited period, in a setting that was not locked and did not physically prevent the student from leaving, to provide the student with an opportunity to regain self-control.

The bill would forbid an employee, volunteer, or independent contractor of a school district from placing a student in seclusion. The prohibition would not apply to facilities covered by the federal Children’s Health Act of 2000 and regulations adopted thereunder, Texas Administrative Code (TAC) provisions applicable to Department of Protective and Regulatory Services 24-hour care licensing, or TAC provisions regarding mental health community services standards, which contain detailed guidelines on use of restraint and seclusion.

The bill would require the commissioner by rule to adopt procedures for the use of restraint and time-out for students receiving special education services. The procedures would have to:

- ! be consistent with professionally-accepted practices and standards of student discipline and techniques for behavior management and with relevant health and safety standards; and

! identify any discipline or behavior management practice or technique that would require training prior to use.

In case of a conflict with rules adopted under TAC addressing special education, the rules adopted under this bill would prevail.

The bill expressly would not prevent the locked, unattended confinement of a student in an emergency situation while awaiting the arrival of law enforcement personnel, if the student possessed a dangerous weapon such as a firearm, knife, or a club, and confinement was necessary to prevent the student from causing bodily harm to the student or another person.

An open enrollment charter school also would be subject to the terms of this bill.

The bill would take effect September 1, 2001.

SUPPORTERS
SAY:

Time-out and restraint. The bill would allow appropriate use of time-out and restraint under rules established by the commissioner. Some children may need a quiet area — not a locked box — to regain their composure, process information, or regain control of their feelings. However, many current uses of restraints are inappropriate. For example, strapping a non-aggressive child into a chair and locking up the child unattended, unrelated to disruptive behavior, would be inappropriate. Experts have found that the chronic use of restraints often is unrelated to violence or disruption and is more for educational provider convenience. Statewide guidelines are necessary to ensure that these techniques are used appropriately.

Current use of seclusion is abusive. No statistics exist that document how extensively seclusion is used. However, some allege that schools use seclusion in an abusive manner. In one instance, a student repeatedly was locked in a white six-by-six room with a tile floor and no window. In another, a student was locked in a closet with no door handle on the inside, with the window covered over. “Seclusion rooms” often are no more than locked supply closets with no water and no light, or even plywood boxes. Students in seclusion generally are not permitted leave for any reason, even to use the bathroom. Certain students have been placed in seclusion repeatedly, and some schools have built seclusion boxes for a specific student. Some

schools handcuff children who are placed in seclusion. One of these boxes was a 35-by-40 inch closet with two deadbolt locks, which the school district spent \$3,500 to build. Teachers and students referred to this box as “[name]’s cage.” At least one school district has constructed additional seclusion facilities during the current school year.

Seclusion is ineffective for behavior management. No professional standards recommend the use of seclusion for students. No data supports seclusion as an effective behavior management technique. Implementation of sound classroom management and early intervention practices, including positive behavior intervention and supports, would help to prevent students from becoming out-of-control. The goal of behavior management should be to prevent acting-out behavior, not to focus on what sanctions when a student does act out. Seclusion often is used in place of treatment or consultation with a school district behavior management specialist.

Emergencies should be defined narrowly. The bill appropriately would define an “emergency,” authorizing the use of seclusion in only an extremely narrow class of cases. This would prevent this provision from being a giant loophole. A broader definition of emergency would allow schools to document their way out of the commissioner’s rules by defining the student’s behavior as an emergency. Seclusion is used as a convenience for teachers who are unable to effectively manage their classrooms. By locking a child up, the teacher can ignore that child and focus on the rest of the class. A majority of anecdotal evidence demonstrates that seclusion is used to get students “out of the way,” not to control emergency situations. Some students have been locked up for minor infractions, such as for shoving a chair under a desk too hard or using profanity. Any teacher could create an “emergency” by dealing with student behavior inappropriately. Some schools do have “crisis plans” to deal with a true emergency, but often the teachers are not instructed in what constitutes an emergency and what the crisis plan is. If available, a locked room becomes the behavior control method of choice. Seclusion is not “treatment,” and it is not educational. Teachers do not have the appropriate knowledge or training, and should not be permitted to use seclusion.

Seclusion is an inappropriate behavior management technique for out-of-control students. A student who is out-of-control would not walk voluntarily into a seclusion room or facility and is likely to be physically aggressive if forced to do so. This increases the chance that the student, or another individual, could be injured. A student who willingly enters seclusion probably does not need to be there. In addition, seclusion tends to escalate the behavior of an out-of-control student. This underscores the need for state guidelines for the use of restraint so that it is used safely and correctly, and neither student nor staff safety is compromised. There are more effective behavior management techniques than seclusion that would not provide the same safety threat. The bill still would permit use of restraint, but would require guidance from the commissioner to ensure appropriate use.

Special needs students; seclusion in IEPs. Seclusion is inappropriate for special education students, autistic students, and students with physical disabilities. A disproportionate number of students who are subjected to seclusion are special education students. Many of these students have brain-based, biologically-caused, difficult behavior. Seclusion also can add to the stigma of being a special education student. Under the federal Individuals with Disabilities Education Act (“IDEA”), each special education student in a public school is educated according to an Individualized Education Plan (“IEP”). The IEP includes appropriate behavior management techniques for that student. Each component of the IEP must have a purpose, and must help to support and educate the child and get the child’s needs met. Schools are obligated by law to comply with a student’s IEP. A school, school district, the state, or any other entity cannot prescribe a behavior management technique for a special education student unless that technique was approved in the student’s IEP. Seclusion is particularly inappropriate for an autistic child, who may be overstimulated easily and need assistance filtering input. Autistic children are not as high-functioning as other students and may have difficulty explaining to parents and caretakers that they were placed in seclusion. Seclusion is inappropriate for many children with physical disabilities, as the seclusion area often does not meet their physical needs. For example, students who need access to speech communication devices find themselves unable to communicate when placed in seclusion. Students with medical conditions such as shunts and scoliosis may find their conditions worsened due to seclusion. Seclusion is inappropriate for many

other children as well, for example, those who had been locked up previously by abusive parents.

Seclusion is dangerous and traumatic. Secluded children often panic, later describing physical symptoms medically identified with panic attacks. Secluded students, particularly those with mental health problems such as autism, may be confused and not understand why they are being secluded. They may scream or thrash about seeking a way out of the seclusion space. A secluded child may injure himself, and if the child is not monitored, he will not receive appropriate immediate care. Secluded children have suffered concussions from hitting walls and floors and have been cut by glass from broken closet light bulbs or windows. A significant number of children kill themselves while in seclusion or just after experiencing seclusion. These problems are exacerbated because staff who administer seclusion are not trained and usually do not monitor the secluded child. Many children also exhibit less serious behavior problems related to being placed in seclusion. Children in therapy sometimes experience regression after seclusion requiring additional therapy. Seclusion also creates stress and may cause a child to avoid school. Seclusion harms children physically and emotionally and impedes academic progress.

Seclusion presents a fire hazard. The state fire marshal has advised that seclusion is an inherently dangerous practice and violates existing rules promulgated by the Texas Insurance Commissioner. Also, the state fire marshal stated that he knew of no local fire code that would permit locked seclusion rooms. National safety standards require that a secluded child be constantly monitored, and that locks, if used, must retract within 30 seconds of a fire alarm. Psychiatric hospitals use a magnetic touch system, where the locks only remain locked if a monitor's hand remains on the system. There is no evidence that any schools have retrofitted their closet locks or installed special equipment. In a fire situation, adrenaline often takes over. A teacher or administrator is unlikely to remember the child in seclusion, particularly if that child is out of sight, and the child may be forgotten as the building is evacuated. Upon hearing the fire alarm, a child in seclusion may panic and injure himself as he attempts to escape. Unless the seclusion room also is fitted with flashing light sensors, a deaf child may not know there is a fire. Smoke from a building fire can cause serious damage and health problems

after even a few minutes, and a child in a locked room with no windows probably would be seriously injured or killed.

State guidelines should pre-empt local control. Local control does not work. In the absence of state guidelines, a significant number of schools have adopted ad hoc policies without specific guidelines. Schools and districts are not required to notify parents of a seclusion policy, use of seclusion, or condition of seclusion facilities or devices. Parents also are not entitled to be notified when their child is going to be, or has been, placed in seclusion. Local control has led to different seclusion, restraint, and time-out policies for every district. The state has authority over use of seclusion in other potentially-abusive situations and should have authority over use of seclusion in schools as well. Schools would be able to use time-out and restraint in accordance with the commissioner's rules, which would have to be consistent with professionally-accepted practices and standards of student discipline and techniques of behavior management. Districts following guidelines in current behavior management literature should not be worried about implementing the commissioner's rules.

Parents oppose use of seclusion. Not only are parents not told about seclusion, some schools will not permit parents to remove their child from the school setting while he is in seclusion. A parent who locked his child in a janitor's closet repeatedly would be accused of child abuse, or at the very least, investigated by Child Protective Services. Many parents, upon learning of the use of seclusion in their child's school, have contacted the Texas Education Association ("TEA") for assistance in filing a complaint, only to find that TEA is unable to help them stop use of seclusion in their schools. Use of seclusion is state-sanctioned aggression. Schools should not be legally authorized to do what parents may not.

Mental health facilities rarely use seclusion. The bill would address mental health facilities because some school districts provide educational services to school age children in mental health facilities. Mental health facilities currently are allowed to use seclusion, restraint, and time-out under limited circumstances, following stringent guidelines. Seclusion is heavily regulated and rarely used. The Department of Protective and Regulatory Services ("DPRS") and Mental Health and Mental Retardation ("MHMR") both have accepted rules for use of seclusion. Persons using

seclusion must have appropriate training, and the secluded child must be monitored at all times. In addition, there are specific requirements for seclusion rooms, including the size of the room and a person's access to water.

OPPONENTS
SAY:

Out-of-control students sometimes need seclusion. While seclusion is not the ideal behavior management technique, it is sometimes necessary to deal with out of control children, some of who may be physically larger, intoxicated or under the influence of a controlled substance, or violent. Seclusion protects teachers and other students. This bill would prevent schools from isolating a student who was presenting a danger to people on campus and yet did not have a weapon. Banning the use of seclusion would lead to additional police referrals. Seclusion often is preferable to restraining an out-of-control student.

Instead of banning it, the bill should provide rules for use of seclusion. Courts have upheld a district's use of seclusion when it is part of an IEP, when parents are directly involved and have consented, when used as a last resort, when the seclusion area is explained and shown to both parents and student, when the secluded student is directly supervised and is secluded for no longer than 30 minutes, when the use of seclusion is documented and the seclusion room itself is clean, well lit, of an appropriate temperature, and has been approved by the fire marshall. Locked seclusion should be permitted if it is part of a behavior management or an intervention plan, and for use in a crisis or emergency situation. The bill would have unintended consequences, because IDEA requires students to be educated in the least-restrictive environment. Students who otherwise would not be in public schools due to severe emotional disabilities are now in our schools, and schools must designate a tremendous amount of time and resources to educating that child in the least-restrictive environment. Banning locked seclusion rules, even if provided for in an IEP, would force students out of public schools and back into residential centers.

Use of seclusion should remain an issue of local control. Some districts have well-appointed, appropriate seclusion rooms, and firm policies requiring constant monitoring. Arlington, for example, has a substantial number of "time-out rooms" it uses for seclusion built right into its classrooms. These districts should not be forced to stop using seclusion

based on the bad behavior of other districts. Districts should be permitted to determine whether to use seclusion on a case-by-case basis.

Mental health issues in schools create a need for seclusion. Increasingly, schools are seeing serious psychological problems in students. This is, in part, due to the deinstitutionalization movement that began about 25 years ago. Schools also may receive students who would be in the state hospital but for a lack of bed space. They often are required to deal with the same behaviors as state mental health facilities and should be permitted to use the same range of non-medical alternatives. In a limited number of cases, a teacher may be unable to handle a student any other way.

The bill should not limit rule-making authority to the commissioner. School districts should have more leeway to adopt their own policies or to provide a committee to review the commissioner's rules and regulations. The bill should create a supervisory system so that everyone can live with the rules and ensure that they do not cost school districts too much money.

OTHER
OPPONENTS
SAY:

The bill would not provide enough penalties or enforcement. It should provide penalties for school districts and school employees, volunteers, or contractors who used seclusion or violated the rules for restraint and time-out promulgated by the commissioner. Without training, it may be safer for a teacher to clear the rest of the students out of the classroom and lock the door than to try to restrain a student or put him in time-out. Without an enforcement mechanism, the bill would not prevent school districts from continuing to use seclusion. The bill should provide additional accountability measures, including reports from school districts on the frequency of use of seclusion, time-out, and restraint.

The bill should require training for school staff in use of restraint and time-out, including de-escalation techniques and notice that seclusion is inappropriate. Schools that implement such training have reported dramatic decreases in the use of special procedures for behavior management. The training should be required for uncertified teachers as well, because there are so many uncertified teachers with no classroom management training. The costs of providing this training would be minimal when compared to the potential costs of a lawsuit, injuries to a child, or injuries to a teacher or other person.

NOTES:

The bill as filed would have prohibited the use of seclusion without addressing restraint and time-out. The committee substitute would prohibit seclusion, but would provide an exception for an emergency situation where a student had a weapon and was a danger to himself or others, and the school was awaiting the arrival of law enforcement. The committee substitute added definitions for seclusion, restraint, and time-out. It also provided expressly that the bill would not affect facilities subject to other state and federal laws and rules regarding use of seclusion. The committee substitute required the commissioner to adopt procedures for use of restraint and time-out with special education students. It also provided that in case of a conflict between those rules and rules promulgated under the special education services statute, rules adopted under this bill would prevail.