

# Keeping All Students Safe Act

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"Please,  
please,  
please open  
the door.  
Please, I'll  
be good.  
Open the  
door and I'll  
be quiet."

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## Thank you

### **S.1858 - Keeping All Students Safe Act**

Sen. Murphy, Christopher [D-CT] (Introduced 05/26/2021) Currently 14 Cosponsors

### **H.R.3474 - Keeping All Students Safe Act**

Rep. Beyer, Donald S., Jr. [D-VA-8] (Introduced 05/25/2021) Currently 91 Cosponsors



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**LIVES  
IN THE  
BALANCE**



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION



National  
Initiative  
to End  
Corporal  
Punishment

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**ALLIANCE  
AGAINST**

**SECLUSION  
RESTRAINT**





U S ALLIANCE  
TO END THE HITTING OF CHILDREN

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# Creating Opportunities Protecting Rights Changing Lives

The Council of Parent Attorneys and Advocates





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## Protecting the Legal and Civil Rights of Students

WITH DISABILITIES AND THEIR FAMILIES SINCE 1998

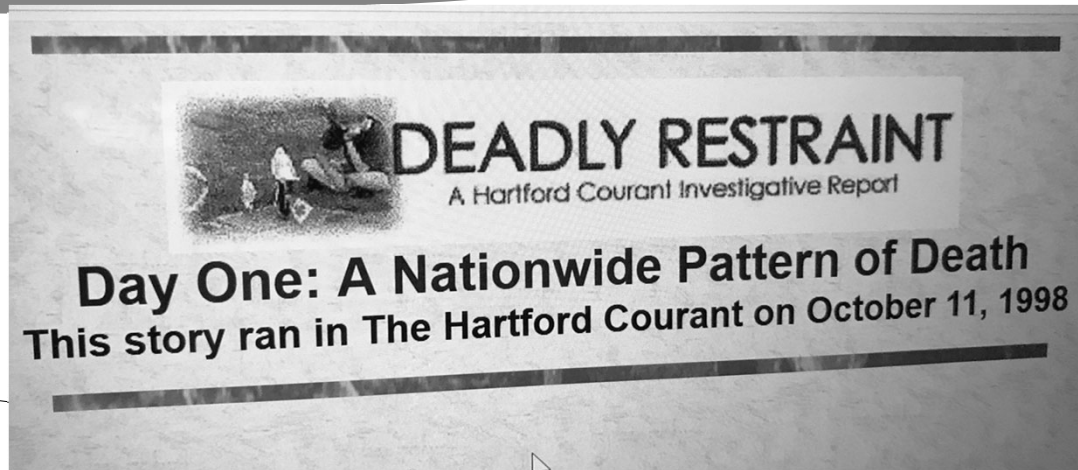
- Nationwide Peer-to-Peer Network
- Empowering Parents, Practitioners
- Impact Litigation, Amicus Curiae Briefs



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## 1998 - A Nationwide Pattern of DEATH



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## Children's Health Act of 2000

### Title V – Part H

- '(a) IN GENERAL. A **public or private general hospital, nursing facility, intermediate care facility, or other health care facility, that receives support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency**

### Title V – Part I

- (a) PROTECTION OF RIGHTS.—“(1) IN GENERAL.—A **public or private non-medical, community-based facility for children and youth** (as defined in regulations to be promulgated by the Secretary)



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Schools were not included.  
Schools continue to be the only  
environment in which children are  
not protected from dangers of  
Seclusion and Restraint

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*“In most mental health settings, the use of restraints and seclusion has plummeted due to federal regulations, staff education, and concerted effort of national and local leadership.” ~ W. Mohr, Tied Up and Isolated in the Schoolhouse (2012)*

**The school paradigm needs to shift from  
reactive punitive strategy – to preventative,  
constructive, evidence-based strategies  
that support students to be safe and remain  
in the least restrictive environment to  
receive maximum educational benefit.**

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## What exactly are we talking about?

- Seclusion
- Restraint

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**Seclusion**  
Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.



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# NOT Talking about Timeout



**Inclusion**  
in the classroom



**Exclusion** outside the  
classroom



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## Risks Associated with Seclusion

- ❖ **Potential Death, Trauma, Injury:**
  - ❖ Lack of Supervision
  - ❖ Inadequate Safety of environment
- ❖ **No evidence Therapeutic & many times actually Escalate Behavior**
- ❖ **Students consistently perceive seclusion as punishment**
- ❖ **Overuse results in lack of access to instruction, denial of FAPE**
- ❖ **Potential for Disparate Treatment**

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## Physical Restraint






A physical restraint is defined as any method of one or more persons restricting another person's freedom of movement, or physical activity. It is a means for regaining behavioral control so as to prevent injury to that person or others.

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## What are Restraints?

Mechanical		Use of any device (tape, tie downs) to limit an individual's body movement.
Chemical		Use of medication to control behavior or restrict a patient's freedom of movement
Physical (Ambulatory)		Use of one or more people using their bodies to restrict another's movement.

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## Risks Associated with Restraint


<p><b>Positional Asphyxia</b> Predisposed when in prone (face down) position</p> <p><b>Aspiration</b> Predisposed when in supine (face up) position</p> <p><b>Blunt Trauma to the Chest</b> Cardiac arrhythmia leading to sudden death</p> <p><b>Catecholamine Rush</b> Result of escalating agitation producing heart rhythm disturbances</p> <p><b>Rhabdomyolysis</b> Break down in muscle cells due to strenuous exertion.</p>	<p><b>Psychotropic Medications</b> Neuroleptics increase risk of sudden death (2.39 times)</p> <p>Antidepressants increase QT interval associated with Sudden Death</p> <p>Many medications inhibit body's cooling mechanisms</p> <p><b>Thrombosis</b> Fatal pulmonary embolism due to being immobile for long periods of time</p> <p><b>Psychological Trauma</b></p> <p><b>Physical Injury (Staff &amp; Students)</b> (Moore, Petti &amp; Mohr, 2003)</p>
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## No evidence, Ample Harm

- Restraint and seclusion have resulted in physical injury, psychological trauma and death to children in public and private schools.
- Children are **subject to physical restraint and seclusion at higher rates** than adults.
- Research shows that physical restraints and seclusion are **not** therapeutic nor are they an effective means to calm a child or teach a child; often having the opposite effect which decreases a child's ability to learn.



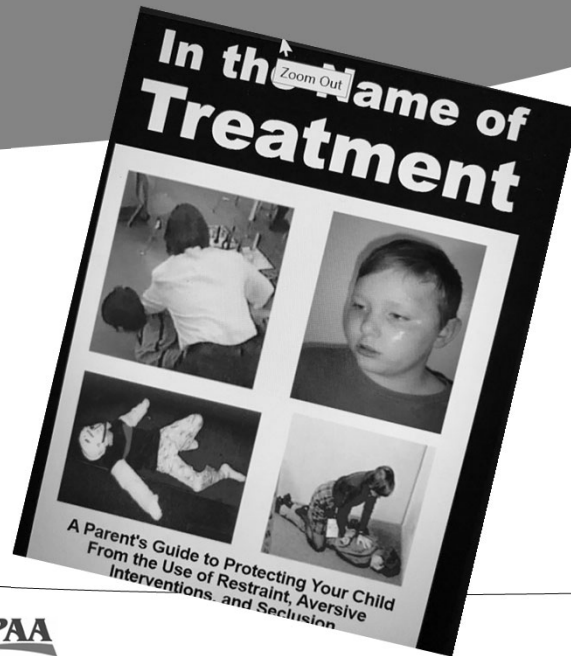
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## APRAIS - 2005

The Alliance to Prevent  
Restraint, Aversive  
Interventions and Seclusion

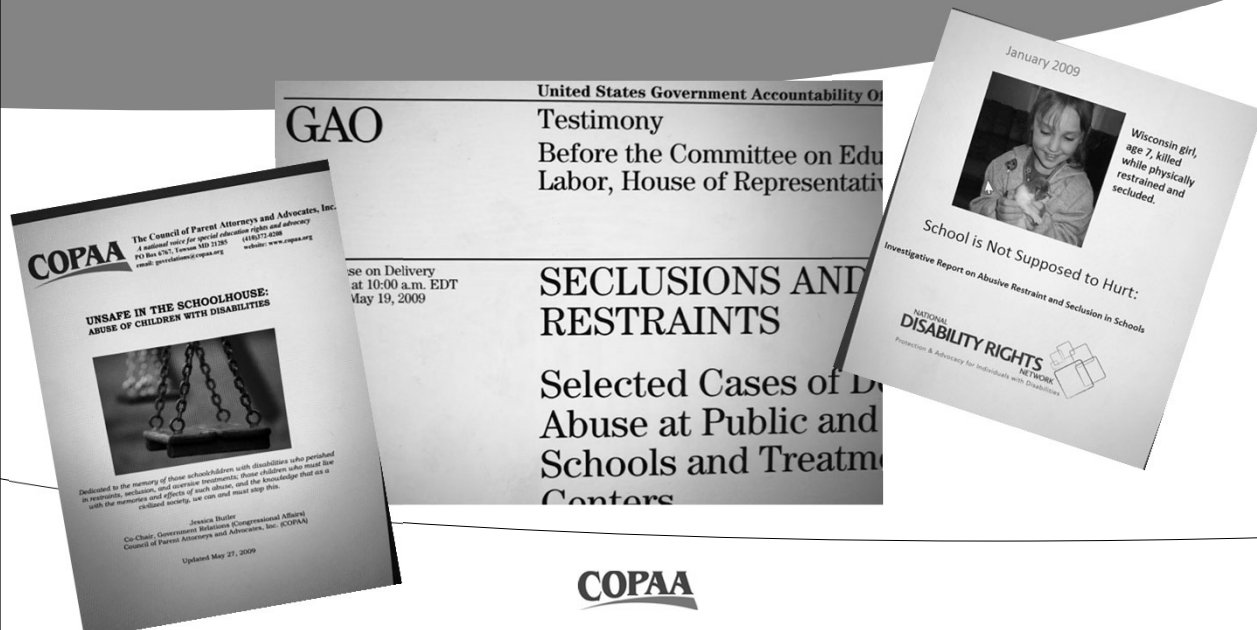
*The purpose of this publication is to help parents and families learn more about the dangers of the use of aversive interventions, restraint, and seclusion, and to assist them in keeping children safe while dealing in a positive way with challenging or inappropriate behaviors.*

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And the reports kept coming...



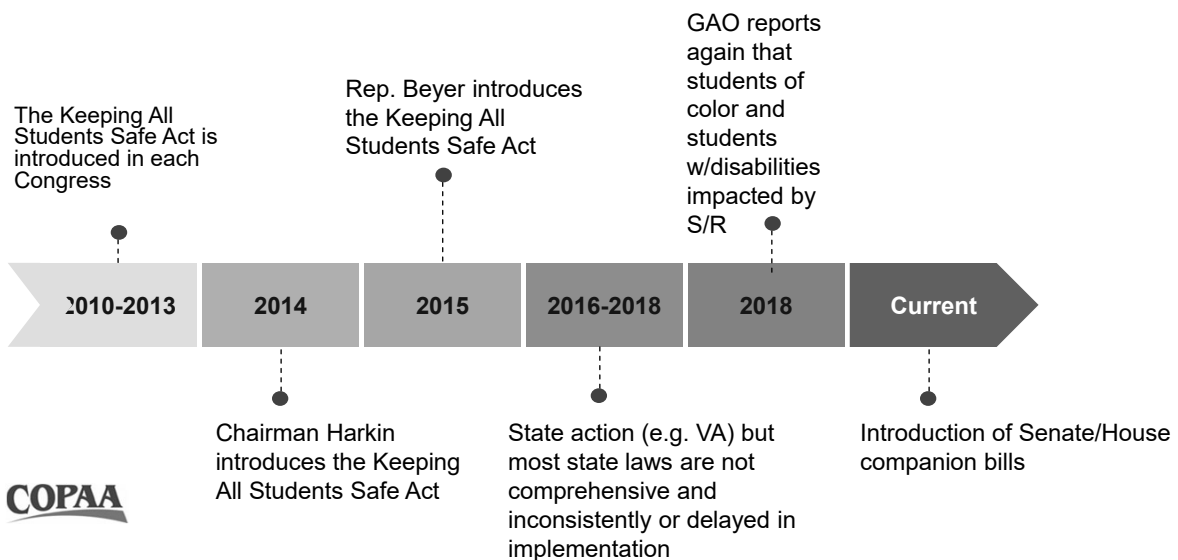
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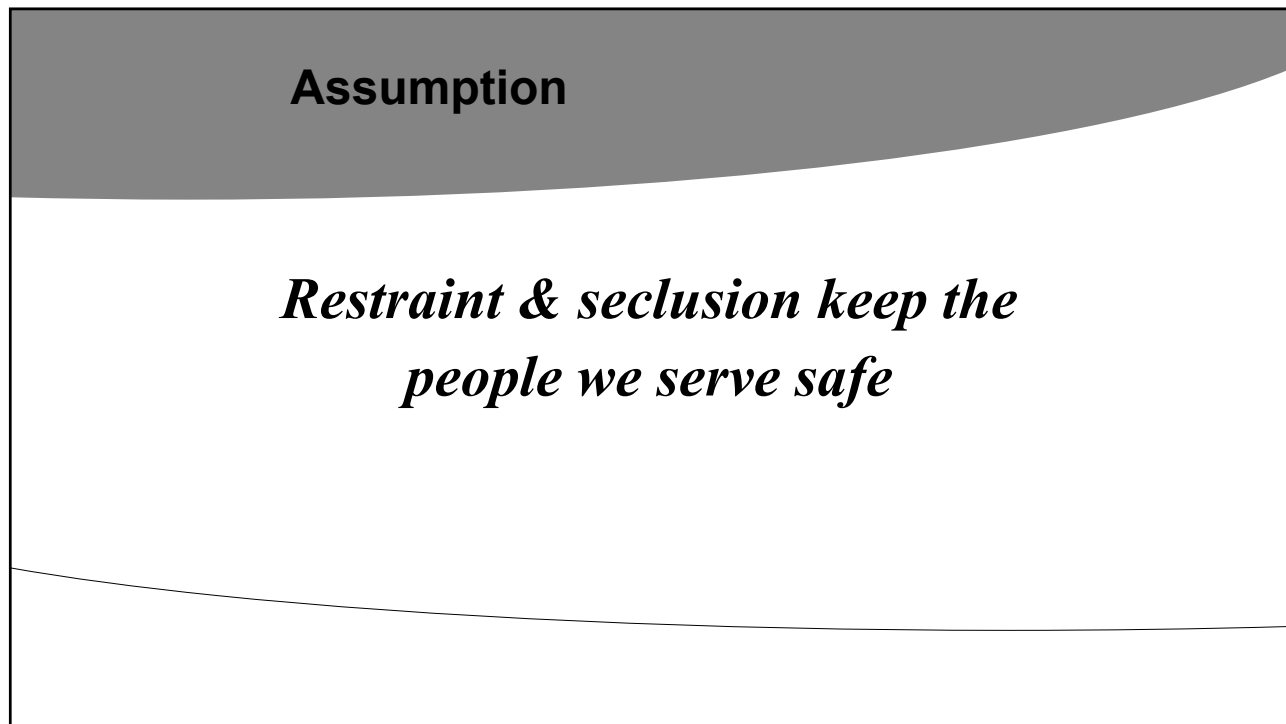


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## History Of Keeping All Students Safe Act



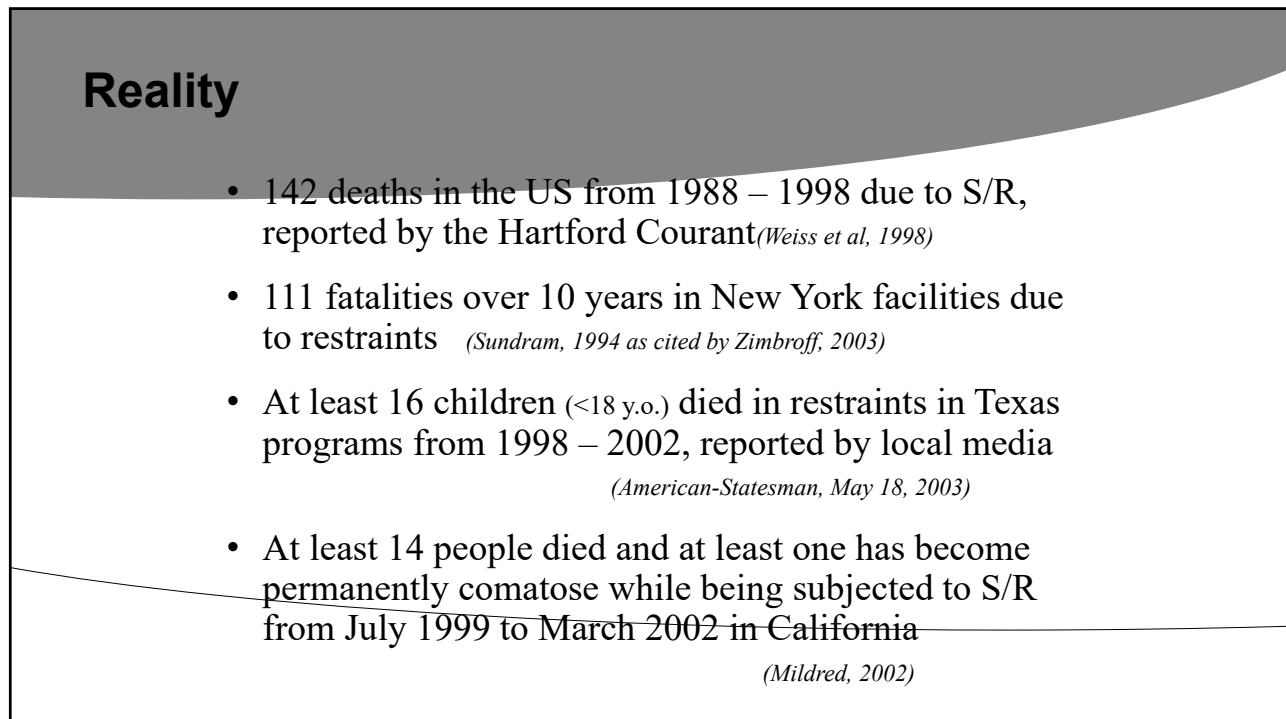
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**Assumption**

*Restraint & seclusion keep the people we serve safe*

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**Reality**

- 142 deaths in the US from 1988 – 1998 due to S/R, reported by the Hartford Courant (Weiss et al, 1998)
- 111 fatalities over 10 years in New York facilities due to restraints (Sundram, 1994 as cited by Zimbardo, 2003)
- At least 16 children (<18 y.o.) died in restraints in Texas programs from 1998 – 2002, reported by local media (American-Statesman, May 18, 2003)
- At least 14 people died and at least one has become permanently comatose while being subjected to S/R from July 1999 to March 2002 in California (Mildred, 2002)

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## Reality

- 50 to 150 deaths occur in the US each year due to S/R estimated by the Harvard Ctr. for Risk Analysis  
(NAMI, 2003)
- Federal Office of the Inspector General identified 42 of 104 (42%) SR deaths from 08/99 – 12/04 were not reported. (OIG, 2006)

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## Reality

- On **Tanner Wilson's, 9**, first day at a program his leg was broken when staff physically restrained him. After surgery, he returned to the program with a walker. His leg was later broken a 2<sup>nd</sup> time.



Eighteen months after being admitted, Tanner died while being restrained in a "routine physical hold." He died of asphyxiation – he suffocated. He was 11 years old.

Retrieved from <http://www.inclusiondaily.com/news/institutions/ia/iowa.htm>

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## Assumption

***Restraint & seclusion ARE  
NECESSARY TO keep the  
people we serve safe***

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## Reality

- Lack of empirical evidence that is true
- The U.S. Department of Education has stated that there “continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”
- GAO - Students have suffered a range of injuries as a result of restraint and seclusion, including physical, psychological, social, and emotional harms. Physical harms include death from cardiorespiratory arrest, fatal cardiac dysrhythmia, strangulation, or crushing; as well as serious bodily injury such as muscle injuries, blunt trauma to the head, lacerations, broken bones, and abrasions. Psychological harms include lifelong trauma and fear.

U.S. Dep't of Educ., *Restraint and Seclusion: Resource Document*, at 10 (2012)

U.S. Gov't Accountability Office, GAO-09-719T, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009)

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## Assumption

***Restraints are only used  
when absolutely necessary  
and for safety reasons***

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## Reality

- **Andrew McClain** was 11 years old and weighed 96 pounds when two aides at Elmcrest Psychiatric Hospital sat on his back and crushed him to death.
- *Andrew's offense?*
- Refusing to move to another breakfast table



*Other student offenses – singing too loud, blowing bubbles in milk, refusing to stop playing basketball, refusing to sit still.....*

(Lieberman, Dodd, & DeLuca, 1999)

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## Reality

- Ray, Myers, and Rappaport (1996) reviewed 1,040 surveys received from individuals following their New York State hospitalization
- Of the 560 who had been restrained or secluded:
  - 73% stated that at the time they were not dangerous to themselves or others
  - $\frac{3}{4}$  of these individuals were told their behavior was inappropriate (not dangerous)

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## Assumption

***Staff know how to recognize  
potentially violent situations***

*(Mohr & Anderson, 2001)*

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## Reality

- Holzworth & Wills (1999) conducted research on nurses' decisions based on clinical cues of patient agitation, self-harm, inclinations to assault others, and destruction of property
- Nurses agreed only 22% of the time

*(Holzworth & Wills, 1999)*

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## Assumption

***Staff know how to  
de-escalate potentially  
violent situations***

*(Mohr & Anderson, 2001)*

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## Reality

- Duxbury (2002) analyzed 221 reported incidents of aggression and violence over a 6 month period in 3 acute psychiatric units
- She found that de-escalation was used as an intervention less than 25% of the time
- Semistructured interviews identified lack of training

*(Duxbury, 2002)*

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## Assumption

***Restraint and seclusion are not  
used as, or meant to be,  
punishment***

*(Mohr & Anderson, 2001)*

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## Reality

- 41 patients who had been secluded during their hospitalization were interviewed
  - One year after discharge, they were asked to draw pictures related to their hospitalization
  - 20 of 41 spontaneously drew pictures of their seclusion room experience – none were specifically asked to do this
  - Revealed themes associated with fearfulness, terror, and resentment

*(Wadeson & Carpenter, 1976)*

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## Reality

- Feelings of bitterness and resentment toward seclusion prevailed at one year follow-up sessions
- Material interpreted from drawings of hallucinations while in seclusion contrasted sharply, reflecting:
  - excitement
  - pleasure
  - spirituality
  - distraction and
  - withdrawal into a reassuring inner world

*(Wadeson & Carpenter, 1976)*

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## Reality

### Cambridge Hospital Child Assessment Unit

- Eliminated mechanical restraint, medication restraint and seclusion.
- Analyzed 28 episodes of physical restraint (“holds”) under 5” over 3-month period
- 68% of holds < 1”
- Children perceive duration: 5” – 1 hour
- Interviewed much later, the intensity of affect (fear, rage) returns *(Regan, 2004)*

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## Reality

- Research study found that people who were secluded experienced: vulnerability, neglect and a sense of punishment *(Martinez et al, 1999)*
- People who were secluded also stated that “anger and agitation were the result of being placed in seclusion” *(Martinez et al, 1999)*
- Secluded persons expressed feelings of fear, rejection, boredom and claustrophobia *(Mann, Wise, & Shay, 1993)*

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## Reality

- Analysis of six studies reported 58 – 75% conceptualized seclusion as punishment by staff
- Many persons believed:
  - Seclusion was used because they refused to take medication or participate in treatment program
  - Frequently, they did not know the reason for seclusion

*(Kaltiala-Heino et al, 2003)*

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## Assumption

***Seclusion and restraint are used  
without bias and only in response to  
objective behavior***

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## Reality

- Research indicates that cultural and social bias may exist.
- Those more likely to be secluded:
  - Black and Asian descent (*Price, David & Otis, 2004*)
- Those more likely to be restrained:
  - Younger and on more medications  
(*LeGris, Walters, & Browne, 1999*)
  - Younger, male gender, and Black or Hispanic descent  
(*Donovan et al, 2003; Brooks et al, 1994*)

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## Reality

- Fisher (1994) concluded that factors that had a greater influence on the use of seclusion than demographic and clinical factors were:
  - Clinical biases
  - Staff role perceptions, and
  - Administrator attitudes
- Supported by more recent research and case studies
- Cultural disparities exist

(*Fisher, 1994; Busch & Shore, 2000*)

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## Reality

- Magee & Ellis (2001) studied classroom interventions used with adolescents who had mental retardation. When physical restraint was used as a consequence for inappropriate classroom behavior, rates of the problem behavior increased in all sessions for each student. Student's play and positive behavior also decreased.

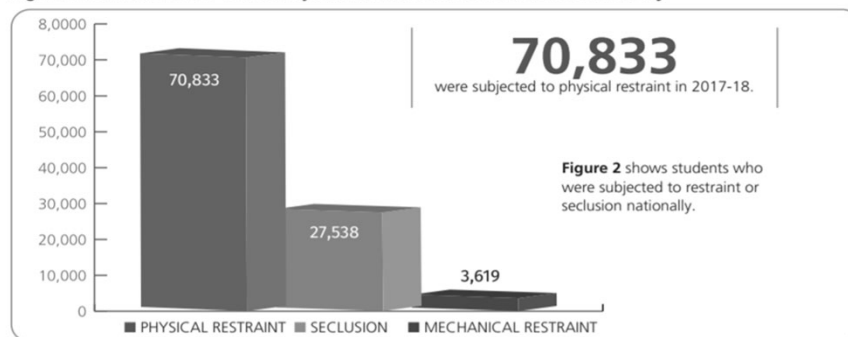
*(Magee & Ellis, 2001)*

- In schools, children pay the ultimate price for a behavioral disruption due to disability.

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## Reality

**Figure 2. Students who were subjected to restraint or seclusion nationally**



<sup>4</sup> The counts for students who were subjected to physical restraint, students who were subjected to mechanical restraint, and students who were subjected to seclusion are not mutually exclusive. For example, if a student was physically restrained and secluded, the student would be counted once in each category. Thus the total of 101,990 may not represent the actual number of individual students affected.

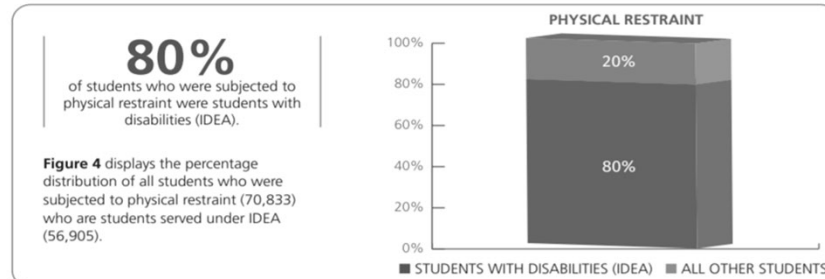
U.S. Department of Education | Office for Civil Rights | 5

U.S. Dep't of Educ. Office for Civil Rights. *2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools at 6, COPAA '20)*

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## Reality

**Figure 4. Percentage distribution of all students who were subjected to physical restraint, by disability (IDEA)**



<sup>5</sup> Students served only under Section 504 of the Rehabilitation Act of 1973 are not included in Students with Disabilities (IDEA) counts.

<sup>6</sup> The counts for students who were subjected to physical restraint, students who were subjected to mechanical restraint, and students who were subjected to seclusion are not mutually exclusive. For example, if a student was physically restrained and secluded, the student would be counted once in each category. Thus, the total of 101,990 may not represent the actual number of individual students affected.

<sup>7</sup> As used in this report, the term "students with disabilities (IDEA)" is used to refer to students who receive special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an Individualized Education Program, Individualized Family Service Plan, or service plan. 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. Part B of the IDEA addresses the obligations of states and local educational agencies (LEAs) to provide special education and related services to eligible children with disabilities. The Office of Special Education Programs (OSEP) in the Department's Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. The national percentages reported by OSEP may differ from those reported by OCR due to differences in the population of students included in the collection. For information about the IDEA, please see [osep.graids360.org](http://osep.graids360.org) and [www.ed.gov/osers/osep/index.html](http://www.ed.gov/osers/osep/index.html).

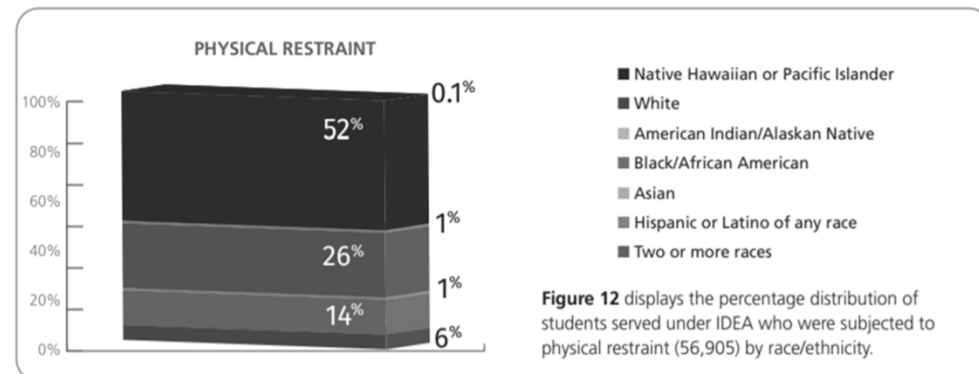
6 | U.S. Department of Education | Office for Civil Rights

U.S. Dep't of Educ. Office for Civil Rights. *2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools* at 6, 7 (Oct. 2020)

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## Reality

**Figure 12. Percentage distribution of students with disabilities (IDEA) who were subjected to physical restraint, by race/ethnicity**



U.S. Dep't of Educ. Office for Civil Rights. *2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools* at 6, 7 (Oct. 2020)

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## Reality: Effects on the Child

- It is the child who gets the blame.
- May develop new behaviors (*aggression, stereotypical behavior, running away, ripping clothes, self-injury, or tics*)
- Afraid of school
- Afraid of touch
- Terrified of new people who enter their lives because they are afraid of the unknown.
- Stripped of his or her dignity and the essence of who they are or might have been. (*71% of children 3-10 years old*)
  - *“This child will now require extensive therapeutic intervention to try to remediate and reverse the effects of these ill-conceived and damaging behavioral interventions. Who knows if we can locate the right mix of intervention to turn this around? This child's record is now nothing but red flags to any potential appropriate educational program.”*

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## Shirley:

*“It hurts your bones...”*

In total, over five years, staff restrained Shirley at least 96 times and put her in seclusion 146 times.



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## Cornelius: “I can’t breathe...”

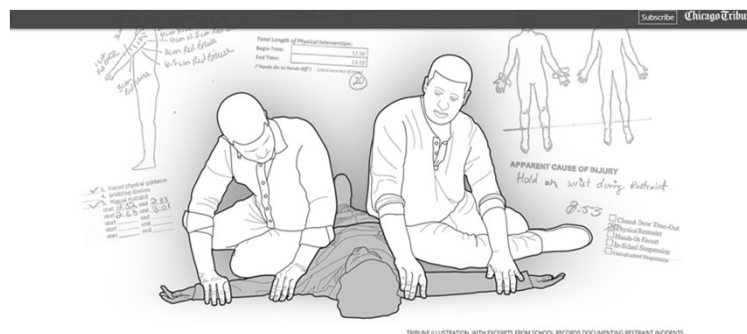
Students in Illinois schools said “I can’t breathe” while being restrained at least 30 times over the time period we investigated. (ProPublica, 2020)

A 16-year-old boy in Michigan, Cornelius, died in the spring of 2020 after workers pinned him to the floor at the residential facility where he lived — after he’d thrown a sandwich at lunch.

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## Reality: Illinois allows schools to physically restrain children. But workers often violated the rules in dangerous ways.

The Quiet Rooms investigation, published by the Chicago Tribune and ProPublica Illinois, found that in 100 public school districts, children were physically restrained more than 15,000 times between August 2017 and December 2018 (December, 2019)



## The Takedown

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## Reality: Other Individuals in the Classroom or Witnessing Are Traumatized

- Guilt for not being able to do something to help or protect
  - Confused about why a child is subject abusive treatment
  - Fear of common places and items that have been used inappropriately (bathrooms, old locker room, closets, kitchens, “sensory rooms,” storage areas, janitor’s closet, mats and the hallway.
- “How do I explain to my other children why their sister keeps coming home hurt from school.”*
- “I was the teacher in charge of said ED/BD classroom and I was traumatized.. I left my job mid year and will never work in a public school again! I just feel horrendous about how the children were abused – and those individuals promoting are still in charge.”*

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## Reality: Relationships Harmed

- Retaliation
- Lack of trust
  - parents of school
  - school of parents and students
  - Students of everyone who failed to protect
- Relationships are irrefutably harmed.

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## ***Reality: Parents -***

*“Consider living in fear every day of your life because you have to send your child to school.”*

~~~~~

*The school staff had me convinced for a while that my son would learn in the "safe room" (closet!) to better anticipate the consequences of his actions.*

*I feel very guilty about what happened*

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*“What happened to my daughter has brutally and needlessly devastated her life and our family.”*

~~~~~

*“Every breath of air we have is contingent on not seeing our principal roll her eyes at our son or other children with disabilities in the school or giving us messages, such as when she suspended our son, that we're just not giving him enough consequences.”*

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## Why is Federal Legislation Necessary?

There is a national crisis of trauma, injury and death.

Our children are stuck in a crisis with no management plan.

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**Ineffective**

**Deadly**

**Costly**

**Traumatic**

Eliminating Restraint  
Saves Lives, Builds a  
Safe, Productive Learning  
Environment for All

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### ELIMINATING RESTRAINT & SECLUSION

**Current State in the U.S.**

- 267,000+** Restraints were used at least 267,000 times each school year in schools.
- Only 12 States** have laws limiting seclusion for all children.
- 28 States** not only allow seclusion of children, but don't even require staff to watch the child to make sure they aren't hurt or killed.
- 18 States** limit restraint and seclusion for children with disabilities but not for all children.

**Restraints and Seclusions are:**

- Ineffective**
  - Can cause, reinforce and maintain aggression as well as:
  - Creates negative impact on relationships with those responsible for care, treatment, and education.
  - Creates negative school environment for all.
- Costly**
  - Leads to significant organizational costs related to workplace injuries, decreased productivity and recruitment/retention challenges.
  - \$29 billion** Is the cost of medical errors -- which include those resulting from the use of seclusion and restraint.

**Eliminating Restraint Saves Lives, Money, and Builds a Safe, Productive Learning Environment**

- People recover more quickly & experience greater success when violence is removed from the treatment setting.
- In 2004, Grafton issued a mandate to eliminate restraints without compromising employee or client safety.

**Traumatic**

- Result in emotional and physical trauma.
- Trauma is pervasive and far-reaching. The number of closed and neglected children in 2013 was enough to fill 7 1/2 football stadiums full of trauma victims.
- For individuals who have experienced traumatic events, the impact of re-experiencing that trauma can be devastating.

**Deadly**

- 20 public school children nationwide have reportedly died while being restrained or isolated over the past two decades.
- Currently, there is no reporting requirement for restraint related deaths.

**Within 10 years Grafton reduced the following by utilizing Ukeru's Restraint Free Crisis Intervention System:**

- The use of restraints by 99.8%.
- Workers' compensation policy costs and employee turnover for a total return on investment of over \$15 million.
- Client induced staff injuries by 60%.
- Staff injuries from restraints by 94%.

**ukeru**

Learn more about eliminating restraint & seclusion at [ukerusystems.com](http://ukerusystems.com)

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# Keeping All Students Safe Act

## Key Provisions

### • Establishes minimum safety standards

- Requires regulations from the Departments of Education and Health and Human Services
- Prohibits: seclusion, mechanical restraints, chemical restraints, physical restraint that restricts breathing or is life threatening, and any form of aversive behavioral interventions
- Requires certification of staff conducting physical restraint that meets the minimum standards
- Prohibits physical restraint as a planned intervention
- Requires parental notification and follow-up meetings if a physical restraint occurs

### • Supports states to provide training to better ensure the safety in schools and to establish monitoring and enforcement systems

### • Increases transparency, oversight, and enforcement to prevent future abuse and death



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## Federal Legislation (further explained)

- Prohibits K-12 school personnel/contractors from subjecting students to:
  - Seclusion
  - Mechanical or chemical restraint
  - Restraint except except to protect self or others from imminent danger of serious physical injury
  - aversive behavioral intervention that compromises student health and safety
  - physical restraint that is life-threatening or contraindicated based on the student's health or disability status and limits use of physical restraint.
  - prohibit any type of restraint that would restrict breathing or would otherwise cause serious physical injury or psychological harm or be life-threatening;



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## Federal Legislation (further explained)

- Prohibit the planned use of restraint in the form of interventions documented in a child's behavior plan, 504 Plan, or Individualized Education Program (IEP)
- Requirement for face-to-face monitoring to quickly detect physical or psychological distress, excepting circumstances where staff safety is significantly compromised , requiring direct visual monitoring;
- Requirement that restraint be implemented only by trained personnel and cease when there is no longer a threat of harm;



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## Support for School Staff

- Access to training in evidence-based practices to support a safe school environment for all.
- Direct students to a school counselor or other support services to address behavior and other needs.
- Use a "time out" which separates the student from the class/group, in a non-locked, accessible setting.
- Debrief with parents and/or school personnel lessen likelihood/prevent crisis in the future.
- Allow law enforcement to carry out their duties under applicable laws, with applicable limits.

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## Federal Legislation (continued)

- Requirement for debriefing after each incident, and completion/review of Functional Behavior Assessment or Plan. Continued use of restraint signifies the failure of programming;
- Requirement that notice be provided to parents within 24 hours of an incident;
- Providing a private right-of-action to families that may include declaratory judgement, injunctive relief, compensatory relief, attorneys' fees, or expert fees



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## Federal Legislation (continued)

- 
- Requiring all states to develop policies and procedures to eliminate the use of seclusion and reduce and prevent the use of lawful restraint
- Providing grants to states [and thereby districts] whose data show they are most in need of support and training of all district and school personnel
- Increasing data collection to improve transparency, oversight, and enforcement to prevent future abuse and death of students.



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We won't rest until  
we are...

**Keeping  
All  
Students  
Safe**