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HB3835, House Committee on Early Childhood and Human Services
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I. Introduction.

Chair Hartman, Vice Chair Nguyen, Vice Chair Scharf, and Members of the Committee, my name is Kim Knackstedt. I have a Ph.D. from the University of Kansas focused on special education policy, and I wrote my dissertation on seclusion and restraint in schools.¹ While I currently in Washington, DC, I grew up in Salem, Oregon and my family still resides in the Portland area. I was a special education teacher for four years, two of which were in a classroom for students with emotional and behavioral disabilities. I have first-hand experience with some of the issues in HB3835. After teaching, I led disability policy at the national level in the U.S. House of Representatives on the Committee on Education and Labor and in the U.S. Senate on the Health, Education, Labor, and Pensions Committee. I was then appointed as the first ever director of disability policy on the Domestic Policy Council in the White House for President Biden.

II. Why this bill makes Oregon the worst in the country and does not help children.

As I read through this bill, accompanying materials, and many of the written testimonies, I found myself struggling to figure out what problem this bill is trying to solve. The opening of the legislation makes clear there is a crisis in access to youth behavioral health which led me to believe this bill would help to solve that problem. The “Whereas” statements even go as far to say that Oregon ranks last in the nation in access to youth behavioral health care.

Yet, reading this bill, I have to say that Oregon will be kept firmly in last place, and likely pulled further back in other areas as well. Put frankly, I believe this bill undermines and eliminates current seclusion and restraint practices, of which Oregon was merely meeting what many would consider minimum standards.

It is not shocking providers have come to you asking to lower standards. But lowering standards is not a way to get more providers. You can get more providers with evidence-based support, better recruitment, and retention practices. This bill lowers standards to a point that you do not want providers engaging in such practices around children.

If this bill were to advance, sadly, Oregon will be harming children in schools, putting educators at risk, and jeopardizing the health and safety of children in the care system.

¹ Knackstedt, K. (2017). Seclusion and restraint in schools: Connecting research, policy, and practice. <https://kuscholarworks.ku.edu/server/api/core/bitstreams/e1431452-092b-4bc9-8305-f49568ea7448/content>

Restraint and seclusion: Policies on restraint and seclusion are difficult to compare state by state. Yet some core elements stand out to know a “good” restraint and seclusion policy: a few include - clear definitions, strong data collection, straight forward procedures, notification, and follow up after an event.

On definitions, this bill falls short. Not only are the definitions confusing, the bill strips protections of students. Physical restraint and seclusion should ONLY be used in emergencies. When an adult places their hands on children – you further escalate a situation.²

When strip away when restraint and seclusion will occur from the definitions, you take away data collection, oversight, and good practice and allow for abuse and harm.

To be clear, there are no bad kids. Merely behaviors that adults may not like in that situation. There are evidence-based practices to manage such behaviors.³ Restraint and seclusion are NOT behavior management techniques.

Restraint may need to happen when breaking up a fight, stopping a child from hurting themselves, or preventing a student from running into the street. Those are examples of emergencies that may require restraint - then you document. It is no one’s “fault” – documentation occurs, and procedures are followed. Kansas has gone as far as actually defining restraint and seclusion as “Emergency Safety Interventions” or “ESIs” to ensure that all stakeholders involved understand that restraint and seclusion shall only be used in an emergency situation.⁴

² NPR. (2024). “I’m Not Safe Here”: Schools Ignore Federal Rules on Restraint and Seclusion.

[https://www.npr.org/sections/health-shots/2024/01/16/1224837120/im-not-safe-here-schools-ignore-federal-rules-on-restraint-and-](https://www.npr.org/sections/health-shots/2024/01/16/1224837120/im-not-safe-here-schools-ignore-federal-rules-on-restraint-and-seclusion#:~:text=For%20more%20than%20a%20decade,died%20or%20suffered%20serious%20injury.)

[seclusion#:~:text=For%20more%20than%20a%20decade,died%20or%20suffered%20serious%20injury.](https://www.npr.org/sections/health-shots/2024/01/16/1224837120/im-not-safe-here-schools-ignore-federal-rules-on-restraint-and-seclusion#:~:text=For%20more%20than%20a%20decade,died%20or%20suffered%20serious%20injury.)

National Library of Medicine. (2016) Strategies to De-escalate Aggressive Behaviors in Psychiatric Patients.

<https://www.ncbi.nlm.nih.gov/books/NBK379388/#:~:text=The%20use%20of%20restrictive%20intervention s,only%20further%20escalate%20the%20situation.&text=More%20serious%20agitation%20may%20require ,to%20regain%20control%20of%20behavior.>

³ Northwest PBIS. What is Positive Behavior Interventions and Supports (PBIS)?

https://pbisnetwork.org/resources/introduction-to-swpbis/?gad_source=1&gclid=CjwKCAjwnPS-BhBxEiwAZjMF0na9Wbwuhg91_z5VZpzxV-DNJ_YCLruRE_TX29B750ed6CTQGh1vTBoC3u0QAvD_BwE.

Center on PBIS. Restraint and Seclusion. <https://www.pbis.org/topics/restraintseclusion>.

SMART Center at University of Washington. School Mental Health Assessment, Research, & Training Center.

<https://smartcenter.uw.edu/programs-services/training-and-technical-assistance-core-tacore/>.

SWIFT Center. MTSS Starter Kit. <https://swiftschools.org/docs/mtss-starter-kit/>.

⁴ Kansas Administrative Regulations, https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=91-42-2#:~:text=%E2%80%94Emergency%20Safety%20Interventions&text=91%2D42%2D2..ability%20to%20effec t%20physical%20harm.

Kansas State Department of Education. (2023). ESI Reporting Guidance.

<https://www.ksde.gov/Portals/0/ECSETS/ESI/ESI-ReportingGuidance.pdf>.

The removal of types of restraint and seclusion from the definition and calling some “wrongful” and others OK, creates ambiguity in what can and cannot occur.

If Oregon wants to hide what is really happening in the shadows and go back decades, this bill is a great way to do it. Research tells us transparency, open dialogue, training, and data collection allow for safety for both students and educators.⁵

Out of state placements: I’ll briefly mention another issue in the bill – out of state placements. Oregon has a troubled history with out of state placements. It is known nationally that Oregon is not leading by example in this space. The troubled teen industry has capitalized on Oregon and other states having weak policies and practices around out-of-state placements, taking children late at night, subjecting them to physical restraint, seclusion, chemical restraint, and abuse with no oversight.

While I believed Oregon was taking proactive steps to right the wrongs committed against so many students placed in these settings, it seems this bill would open the door to continue and expand this disturbing trend.

This bill allows for placements that are not licensed and does not make clear how any laws will be enforcement on an out of state placement to ensure the safety of children. It appears that information collected is more about the *rate charged* as compared to the abuse inflicted.

III. Oregon would be an outlier on the West Coast.

As a native Oregonian and national expert on issues of seclusion and restraint, I’ve prided myself with touting the progress of the West Coast on many key policy issues, including education and disability policy.

Unfortunately, should this bill advance, it would put Oregon far below its sister states – Washington and California. While the other two states have their own challenges, they have baseline protections and have been actively engaging in conversations to strengthen protections around seclusion and restraint, not weaken them. This bill would set Oregon far apart and as an outlier on the west coast in the lack of protections for children in nearly all settings.

Further, Oregon would be moving in the opposite direction of Federal Legislation championed by your state Senators Wyden and Merkley. I worked closely with Senator

⁵ Center on PBIS. (2022). Strategies for De-escalating Student Behavior in the Classroom. https://cdn.prod.website-files.com/5d3725188825e071f1670246/632ccb7a3756f3529d3a7391_Strategies%20for%20De-escalating%20Student%20Behavior%20in%20the%20Classroom.pdf.

U.S. Department of Education. (2012). Restraint and Seclusion: Resource Document. <https://www.ed.gov/sites/ed/files/policy/seclusion/restraints-and-seclusion-resources.pdf>.

Merkley's staff on such legislation to strengthen protections for children on the national level.⁶

To be very clear, members of the committee, this bill is so deeply flawed it cannot be amended. While new amendments were offered prior to testimonies, the amendments do not make significant enough modifications to protect children in these settings. To state again – this bill is incredibly flawed. I strongly urge the committee to reject this bill and begin again.

Look to other states and do not roll back the clock on progress. In the appendix you will find examples of seclusion and restraint policies. While it is hard to define a “perfect” seclusion and restraint policy, they may provide direction as you seek a rewrite to HB3835. As noted above, Kansas may be a policy model to consider as they deem restraint and seclusion as “emergency safety interventions” and have extensive trainings statewide as well as implementing guidelines. In 2022, Washington state underwent a crisis response working group (something Oregon may want to consider), gathering stakeholders to discuss ways to address many of the issues Oregon is facing today. While not yet passed into law, the report linked in the Appendix may provide direction and includes suggestive legislative text. California has undergone recent changes to its seclusion and restraint policies. Their law is included as well as oversight from Disability Rights California. Finally, Fairfax County School District in Virginia faced a lawsuit that gained national attention due to their use of seclusion and restraint. Although Virginia has seclusion and restraint guidelines, Fairfax County implemented more rigorous guidance to address the issues. The link is provided in the appendix and may provide a model. In addition the footnotes throughout this testimony provide support for positive interventions BEFORE a seclusion or restraint incident would ever occur. There is a behavioral health crisis and need, but lowering standards and subjecting students to dangerous practices is never the answer.

IV. **Conclusion.**

Thank you for your time today. I urge you to not advance this bill and consider other options to protect children in these settings. I hope you have found my testimony useful as you consider HB3835.

⁶ Public Law 118-194. (2024). Stop Institutional Child Abuse Act.

<https://www.congress.gov/118/plaws/publ194/PLAW-118publ194.pdf>.

Senators Introduce Bipartisan Legislation to End Children's Abuse in Residential Treatment Centers. (2023).

<https://www.merkley.senate.gov/merkley-cornyn-tuberville-khanna-and-carter-introduce-bipartisan-legislation-to-end-childrens-abuse-in-residential-treatment-centers/>.

APPENDIX

Recommended State Policies to Consider

In addition to the citations throughout the testimony, the following are state policies to consider in a **complete strike and replace** of language in HB3835.

- Kansas statute, [Emergency Safety Interventions](#) (law)
- Washington state [Crisis Response Working Group](#) (2022) with suggested legislative text.
- [California AB2657](#) (law as of 2019), note [Disability Rights CA](#) follow up report and further recommendations.
- After a lawsuit, [Fairfax County Public Schools](#) implemented new regulations beyond those of Virginia, effective as of the 2022-23 school year.

While a few years outdated, the following report may be helpful finding additional state laws and guidance as examples: <https://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.