Findings from TNOYS Environmental Scan of Efforts to Reduce Use of Seclusion and Restraint Practices in Texas

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Introduction

Seclusion and restraint practices are traditionally used as punishment or to prevent or halt behavior that ranges from undesirable to posing a safety risk. Seclusion is generally described as forced separation from groups or activities, such as through time-out, confinement to a room, or solitary confinement. Restraint involves imposing physical restrictions on a person using devices such as belts, jackets, handcuffs or shackles, by holding the person restrictively, or by administering chemical substances such as pepper spray. The use of drugs that subdue emotions such as aggression and related behavior can also be considered chemical restraint.

Seclusion and restraint practices are used across a variety of human service, criminal justice, and other settings. Use of these practices occurs in public and private settings, including schools, foster care programs, juvenile detention facilities, jails, prisons, psychiatric hospitals, and nursing homes. For example, the hands or arms of a patient in the midst of a psychotic episode may be restrained to prevent self-injury or an attack on another person. Placement of prisoners into solitary confinement is used as a punishment for undesirable behavior. School children who are "out of control" may be placed in rooms alone, either to separate them from others whom they may injure or distract or in an attempt to help them calm down or to deter future challenging behavior. Students, as well as inmates, may be restrained with handcuffs, Tasers, and pepper spray. Elderly residents of nursing homes may be belted into beds or chairs to keep them immobile (sometimes to prevent falls) or restrained with sedatives or other drugs to keep them subdued. Seclusion and restraint practices are routinely used on children and adults, including those experiencing mental illness, and people who have physical or intellectual disabilities or dementia.

The use of seclusion and restraint practices risks harm to all parties involved. Seclusion or restraint may re-traumatize a person who has experienced trauma in the past and undermine his or her well-being. Physical injuries and even death can occur when patients, students or others fight restraint or resist seclusion, or when seclusion or restraint techniques are implemented inappropriately. Psychological harm or trauma may be inflicted on the person subject to the seclusion or restraint, as well as on staff who participate. In fact, these practices, especially the use of restraint, are associated with higher employee turnover and more staff injuries, which in turn can drive up organizational costs, including hiring, training and worker compensation.[1]

Many professions that use seclusion and restraint practices are increasingly recognizing their risks and seeing their proper use as safety-based rather than punitive. Many professionals in human services and other settings are working to minimize the use of seclusion and restraint practices. However, the perceptions of advocates and other stakeholders, the lived experiences of people who have been served by these professions, and even the comments of professionals

[1] As cited in "The Business Case for Preventing and Reducing Seclusion and Restraint Use" SAMHSA, 2011.

themselves, indicate that there is still work to be done in defining what is appropriate, ensuring that seclusion and restraint are not used inappropriately, and generally reducing the use of seclusion and restraint. Research and practice demonstrate that use of seclusion and restraint can be reduced, including through training front-line staff on understanding not just how to manage behavior but on why it occurs.

Legislative Initiatives to Reduce Use of Seclusion and Restraint in Texas

Efforts have been underway in Texas and across the nation for more than a decade to reduce, eliminate or at least regulate the use of seclusion and restraint practices across a variety of settings. In 2005, Senate Bill 325 became a legislative milestone in this effort. The bill prohibited staff of the state juvenile justice and health and human services agencies from using certain types of restraint that could interfere with breathing and communication. The law also mandated that the Executive Commissioner of the Health and Human Services Commission adopt rules to "develop practices to decrease the frequency of the use of restraint and seclusion" more generally and established a work group to study related best practices and make further recommendations. The workgroup's recommendations are enclosed with this report.

Other legislative initiatives since 2005 have worked to reduce use of specific seclusion or restraint practices in specific situations or settings. For example, in 2009, the Legislature passed House Bill 3653, which limits the use of restraints on pregnant women and children in state run correctional facilities and municipal/county jails. Senate Bill 41, which passed in 2011, significantly restricts use of restraints in State Supported Living Centers, prohibits their use as punishment, and created reporting requirements regarding use of restraint. In 2013, the legislature passed Senate Bill 1842, which allows registered nurses to perform necessary evaluations of patients in private or state mental hospital within their first hour of restraint or seclusion; previously, only doctors, or delegated advanced nurse practitioners and physician assistants were permitted to complete this evaluation. The bill also added reporting requirements for hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion and required by the federal Centers for Medicare and Medicaid Services (CMS).

Two other bills passed in 2013 restrict the use of seclusion and restraint practices in the juvenile justice system. House Bill 2862 includes provisions requiring the Texas Juvenile Justice Department to annually collect and make available data regarding the use of disciplinary seclusion in juvenile probation facilities. Senate Bill 1356 requires juvenile probation officers, detention officers, and court-supervised community-based program staff to receive training in trauma-informed care that is in line with best practices about how to interact with juveniles who have experienced traumatic events.

Several bills that have addressed restraint or seclusion in different settings have been filed in recent legislative sessions, which, even without passage, demonstrate that some political will persists to strengthen protections against the misuse and abuse of these techniques. In the

most recent (85th) legislative session, a number of bills were introduced which may have furthered the goal of reducing use of seclusion and restraint practices. One of the few that passed requires the Texas Department of Criminal Justice to collect data on restraint of pregnant inmates and to report back to the legislature in 2018. In addition, House Bill 2025 closed a loophole that allowed assisted living facilities (nursing homes) to "correct" certain violations, after the fact to avoid penalties, including violations that involve restraint.

Other Relevant Initiatives in Texas

In 2007 Texas received federal funding, known as the State of Texas Alternatives to Restraint and Seclusion (STARS) grant, to further reductions in seclusion and restraint. As a result of work completed under the grant, Texas saw reduced use of seclusion and restraint practices at four state psychiatric hospitals, including reduced numbers of incidents of restraint or seclusion, reduced numbers of patients involved, and reduced length of time spent in restraint or seclusion per incident.

Also in 2007 the Hogg Foundation formed the Seclusion and Restraint Reduction Leadership Group to help steward and support efforts to reduce seclusion and restraint, in partnership with consumers of mental health services. Roughly since 2007, the Leadership Group has met quarterly to network and share ideas to advance its mission of reducing use of seclusion and restraint practices. It is comprised of representatives from organizations that provide services to youth and adults, as well as state agency personnel and other stakeholders invested in reducing use of seclusion and restraint practices in Texas. The Leadership Group has successfully implemented and supported a number of projects, including symposiums and training events, an analysis of state agency seclusion and restraint training requirements, a compendium of resources to support organizational culture change and more.

Purpose and Methodology

This comprehensive environmental scan is intended to further the dialogue around reducing the use of seclusion and restraint practices in Texas. This report provides information gathered through the scan about current and anticipated factors that can be used to inform strategic planning to reduce the use of seclusion and restraint in various systems and statewide. Texas Network of Youth Services (TNOYS) conducted the scan throughout 2017 with funding from the Hogg Foundation for Mental Health and in partnership with members of the statewide Seclusion and Restraint Reduction Leadership Group and other key stakeholders across Texas.

TNOYS engaged stakeholders through a variety of meetings and forums, including a focus group, a facilitated meeting, and approximately fifty interviews over the course of five months. TNOYS engaged leaders and stakeholders in the movement to reduce use of seclusion and restraint practices in areas including public education, child welfare, juvenile justice, criminal justice, mental health, services for people with disabilities, and services for the aging. TNOYS

shared preliminary findings at a Leadership Group meeting in July 2017 and obtained feedback at that time. TNOYS also consulted experts, advocates and consumers outside of the Leadership Group and conducted additional research activities, including the identification of news articles, legislative efforts, and various reports relevant to seclusion and restraint in Texas. We also obtained and analyzed data on seclusion and restraint through publically available data and through public information requests. The information and recommendations presented here are based on stakeholder interviews and on the research and data analysis conducted.

TNOYS' involvement with the Leadership Group began in January 2014, when the Hogg Foundation selected TNOYS as the facilitator for the group. This effort, titled *Growing a Culture of Care,* was built on a previous project, *Creating a Culture of Care*, which was a grant-funded initiative through which TNOYS worked with ten residential treatment centers across Texas to reduce the use of seclusion and restraint. Last year, TNOYS and the Hogg Foundation agreed that a forward-looking report, such as an environmental scan, would help identify and prioritize potential future efforts and opportunities to reduce use of seclusion and restraint.

Findings

Findings from the environmental scan are outlined below in the following categories: public education, child welfare, juvenile justice, law enforcement and criminal justice, mental health services, services for people with intellectual and developmental disabilities, and services for the aging.

Seclusion and Restraint Practices in Public Education

Stakeholders and our research suggest that seclusion[2] and restraint practices are regularly utilized against students in Texas schools, including by teachers, law enforcement officers, and administrators. Although there are some limits on use of seclusion and restraint, "time outs" and certain restraint practices are permitted within law and policy as disciplinary measures to manage student behavior as well as to maintain the safety of the involved student and others.[3] This distinguishes the public education system in the area of seclusion and restraint, from other systems such as the juvenile justice system, in which seclusion and restraint are typically only permitted to maintain safety and staff must employ other strategies to manage behavior.[4]

Although some data are available on use of restraint in public schools, it is not completely clear how often seclusion and restraint practices are being used in public education or with what results. Stakeholders who participated in this environmental scan consistently suggested that of all Texas systems that are addressed in this report, the area most in need of work to reduce use of seclusion and restraint practices is public education. This may not be surprising, given that

[2] We use the term "seclusion" to include "time-outs," as explained later in this section. "Time-outs" are exempted from rules that apply to seclusion in state law and administrative code and are not considered seclusion by TEA.

[3] Two of the primary sources for these rules are 19 Texas Administrative Code § 89.1053 and Texas Education Code - EDUC § 37.0021.

[4] See report section on Juvenile Justice for a detailed discussion of rules and procedures.

training for educators and other school personnel tends to focus on education rather than management of behavior, and that use of corporal punishment in schools is still legal in Texas, in school districts that choose to allow it.

Use of Restraint in Public Schools

Data we reviewed suggested that Texas school children may most often be restrained by being held or directed in a forceful way. Students are also restrained through the use of handcuffs, pepper spray, and Tasers©, and use of belt restraints and restraint chairs has been reported. Concerns over the use of restraint focus on the trauma and physical injuries that may result from restraint and the concern that restraint is still being used primarily for behavior management, or punishment, rather than in the narrowly defined emergency situations provided for by law.

Per Texas Education Code, restraint is "the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body." Per Texas Administrative Code, restraints are reserved for emergencies, defined as "a situation in which a student's behavior poses a threat of imminent, serious physical harm to the student or others or imminent, serious property destruction"[5] and are subject to other limitations, such as the requirement that they be discontinued as soon as the emergency no longer exists.[6]

State law that we found does not define which types of restraint practices are permitted to be used in schools and Texas Education Agency (TEA) staff told us that data on specific types of restraints used is not collected at the state level. The law does require schools to report to parents of children receiving special education services the nature of any restraints used, the times that use of the restraint began and ended, and other specific details when a restraint occurs, through a "good faith" effort at verbal notification on the day it occurs. A written notice must be issued to the student's parent within one school day of the restraint. It is unclear whether parents consistently receive these reports. Schools are not required to give these reports to parents of children who are not enrolled in special education.

Based on data TEA supplied us[7] upon our request, we can say the following in regard to restraint:

- In the past 3 years, the total number of students with disabilities who were reported to be restrained in public schools statewide has risen steadily, climbing from **9,264** students in school year 2013-2014 to **11,256** in school year 2015-16.
- In the same period, the number of general education students who were reported to be restrained has remained level; about **3,000** general education students were restrained each year.

[5] http://codes.findlaw.com/tx/education-code/educ-sect-37-0021.html
[6] http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089aa.html
[7] TNOYS representative analysis of data supplied by TEA as a result of a Public Information Request received October 5, 2017.

Use of Seclusion in Public Schools

For students with disabilities, the Texas Education Code cited above defines "seclusion" as "a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that is designed solely to seclude a person and contains less than 50 square feet of space." [8] Use of seclusion thusly defined is prohibited except for emergencies involving a student who has a weapon and is believed dangerous while awaiting law enforcement.

The prohibition on seclusion does not prohibit time-outs, however, which are recognized as allowing students to "regain self-control" and which involve separation but not locked doors or other physical barriers. Time-outs are not considered seclusion by TEA.

In this context, Texas Education Code administrative rules allow time-outs to be used as "behavior management techniques" if physical force or threat of physical force is not used to place a student in time-out and if time-outs are used in conjunction with an array of positive behavior intervention strategies and techniques.[9] If time-outs are utilized on a recurrent basis to increase or decrease a targeted behavior, the strategy must be documented in the student's learning or behavior plan. Policy stipulates that time-outs should not interfere with a student's ability to progress in the general curriculum or his or her specific learning program. Unlike for restraint practices, TEA does not require that parents receive notification when time-outs are used. Seclusion, as defined in the Code, is rarely if ever used and is not subject to formal reporting requirements.

Stakeholders say (and media has reported) that students may still be placed in seclusion that approximates prohibited seclusion without accountability. For instance, anecdotally some students may be placed in a room that is not locked. The door may be slightly ajar and an adult may be outside keeping the child in the room. While this may satisfy the letter of the law, it may also be interpreted as forcibly keeping a child segregated, which is not permitted. There have also been cases reported in the media, which indicate more obvious violations. For example, a child was apparently secluded in a Central Texas elementary school in 2015, which the school called a "focus room." The school district and TEA reportedly investigated the case.[10] Since time-outs are not reported in either case, data is not available on the frequency of this practice, if occurring.

Seclusion and Restraint in Special Education

The use or abuse of seclusion and restraint has historically affected students receiving special education services most, although the practices may also impact students who do not have disabilities. There are recent and specific laws in place intended to protect students receiving special education services from inappropriate use of seclusion and restraint, as discussed above. In fact, all specific protections against misusing seclusion and restraint in Texas law

[8] http://codes.findlaw.com/tx/education-code/educ-sect-37-0021.html
[9] http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089aa.html
[10] https://www.ksat.com/news/discipline-procedures-questioned-at-elementary-school

appear to apply to students with disabilities exclusively. Texas is not alone in protecting only a subset of its students according to Jessica Butler, author of "How Safe is the Schoolhouse," a report on seclusion and restraint laws and policies in schools nationwide.[11] Butler found that although some states provide some "meaningful protection" to all school children related to these practices, Texas is among 38 states that provide such protections only to those receiving special education services.

Despite the protections that are in place to protect students receiving special education services from inappropriate seclusion and restraint, students who have disabilities are still disproportionately impacted by seclusion and restraint while at school at high levels. The data shared above indicate that nearly four times more special education students than other students were reported to be restrained during the 2015-2016 school year in Texas. This is startling because students who receive special education services represent a small part of the overall student population. To provide context, TEA reports enrollment of about 5.3 million students in 2015-2016,[12] with just under half a million students (or roughly 9 percent) being identified as students receiving special education services.[13]

The data also indicate that the number of students who receive special education services who are being restrained is growing, or that reporting is increasing. The suggestion that reporting may be improving is promising, although some advocates believe that use of seclusion and restraint in schools is still significantly undercounted. Also according to the data, students receiving special education services who were restrained experienced restraint an average of 2-3 times per school year, usually by a teacher or administrator whereas for students in the general population a restraint, if experienced at all, was generally a one-time occurrence, and occurred when interacting with a police officer or resource officer.[14]

It is important to note that Texas came under media and federal scrutiny in 2016 for the under-identification of special education students in Texas.[15] This could mean that a number of students with disabilities who were not identified as needing special education services could have been or could still be subject to seclusion, restraint or other inappropriate treatment without the safeguards and reporting mandated for students enrolled in special education.

Law Enforcement in Schools

Some schools continue to rely on law enforcement (local police officers or school police officers) to manage difficult behavior, which has introduced the use of pepper spray and Tasers into schools. Use of these devices is considered restraint, but in the absence of detailed information from TEA on the types of restraints used in the incidents reported, it is not possible

[11] http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf
[12] TEA website showing total enrollment for 2015-2016 school year at https://rptsvr1.tea.texas.gov/adhocrpt/adste.html .
[13] TEA website showing special education enrollment for 2015-2016 school year at https://rptsvr1.tea.texas.gov/adhocrpt/adser.html.
[14] TNOYS representative analysis of data supplied by TEA as a result of a Public Information Request received October 5, 2017.
[15] http://www.houstonchronicle.com/denied/

to know the scale of their use in this context. We do know that both Tasers and pepper spray have harmed children and that Taser use has produced fatalities in general.[16]

In addition, stakeholders want and have proposed legislation calling for more data to be reported on the use of potentially injurious restraints by police in schools but, so far, such legislation has not been achieved. For example, Texas Appleseed called for tasking the Texas Judicial Council "with developing a data collection system that will require school district police departments, local police departments that assign or send their officers to schools, and courts to collect and report data related to school-based arrests, use of force incidents, and court contact" in January 2017. Texas Appleseed and other stakeholders are especially concerned about disproportionate use of chemical and other restraints on students of color and about the school-to-prison pipeline, which may be exacerbated by the presence of law enforcement officers in schools.

It is important to reiterate, however, that data received from TEA and analyzed does not point heavily to officers as practitioners of restraint, at least for students in special education. In more than 90 percent of reported cases of restraining a student receiving those services in the 2015-2016 school year, it was a teacher or other educational staff member, rather than a school police or resource officer, who restrained the student. In contrast, school police and resource officers, according to the same data, restrained all general education students who were restrained.[17]

However, this data raises additional questions. Does the data prove that students receiving general education services are never restrained except by police/resource officers or does it indicate that reporting may be incomplete? As discussed elsewhere in this section, a "deeper dive" into the data being collected by TEA is needed to truly understand what it means and what is happening within schools.

Restraints imposed by district police, school resource officers and other peace officers who may be on school property or at a school-sponsored or school-related event must be reported to TEA by law. Therefore, the roughly 3,000 restraints per year experienced by general education students represent restraints imposed by any police officer, but the data does not distinguish between types of police.

Training to Reduce Seclusion and Restraint in Public Education

TEA's Region 4 Education Service Center (Houston area) provides training for school personnel on the state's requirements related to the use of seclusion and restraint with students receiving special education services and on best practices. The program, which is called the Texas Behavioral Support Initiative (TBSI), was developed following legislation enacted in 2001 to limit

[16] https://www.reuters.com/article/us-axon-taser-toll/reuters-finds-1005-deaths-in-u-s-involving-tasers-largest-accounting-to-date-idUSKCN1B21AH

[17] TNOYS representative analysis of data supplied by TEA as a result of a Public Information Request received October 5, 2017.

use of seclusion in public schools.18 Staff reported that the basic training is mandated for each school's "core team," which refers to those who are responsible for special education, and is available to all, but that there is not any centralized monitoring to ensure that at least the required training has been obtained. Program staff report that since the 2014-2015 school year, almost 54,000 participants have taken the full available training, and more than 2,000 have taken the administrative overview that is offered. TBSI also offers training in Positive Behavioral Intervention and Supports (PBIS) and resources related to mental health support.

There is limited mandatory training for certain categories of school district police officers, which took effect in 2015. HB 2648 (Training Programs for School Based Police Officers) requires school police in districts of 30,000 or more students to receive training on how to approach youth in a positive, developmentally appropriate way and how to use de-escalation and other techniques to improve interactions. The law required training covering specific topics to be developed and distributed by the Texas Commission on Law Enforcement. However the law may be too narrowly focused. Based on one estimate, fewer than 50 school districts[19] are large enough to require the training, out of the more than 1,000 school districts[20] in the state. Some stakeholders reported they had concerns about the quality of the training that was originally developed although we did not obtain information about the training that was ultimately "rolled out." Expanding the training beyond large school districts may be advisable, especially if considered concurrently with some type of evaluation as to the completeness and effectiveness of the training (if not already being evaluated).

There are a variety of other efforts underway in Texas to foster positive and supportive approaches to managing all students, which could reduce the perceived need for seclusion, restraint or other disciplinary measures. For example, Social and Emotional Learning (SEL) programs have been adopted in some school districts. SEL programs focus on teaching children to recognize and manage emotions, work collaboratively with others, and deal with challenges effectively and in a healthy manner. Some school districts, including Austin ISD, have full departments dedicated to SEL programs, and Dallas ISD recently announced a 4-year grant to help implement SEL in its schools.

In 2015, TEA partnered with the University of Texas at Austin School of Social Work to implement a grant-funded restorative discipline practices initiative. The initiative provides training to education service center administrators and coordinators on a "relational approach to building school climate and addressing student behavior" that "fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment."[21]

These and other efforts may be too new or too small in scale to have had a significant impact on use of seclusion and restraint practices in Texas to date, and they do not specifically focus on integrating principles of trauma-informed care. A recent report by the Meadows Foundation on

[18] http://www.capitol.state.tx.us/Search/DocViewer.aspx?ID=77RSB011963A&QueryText=%22SB+1196%22&DocType=A
[19] https://www.texasappleseed.org/sites/default/files/HB%202684%20Explanation%20FINAL.pdf
[20] https://www.texastribune.org/2015/07/13/analysis-texas-schools-numbers/
[21] https://tea.texas.gov/Restorative_Discipline/

trauma-informed care[22] in Texas suggests that school personnel such as teachers and administrators, depending on the community and district, have much less exposure or access to trauma-informed care training than other child-serving professionals or programs in the state. One stakeholder, who offers training on trauma-informed care to educators and other stakeholders, suggested that teachers and other school personnel may shy away from opportunities for trauma-informed care training because they do not recognize their students as victims of trauma and/or they view trauma-informed care as a topic that is only relevant to a clinician. This stakeholder suggested that she has better luck engaging educators in training on trauma informed care when she presents it as a behavior management tool. At least one stakeholder disagreed with her approach, arguing that the focus should not be on behavior management, but rather on general mental health and wellness of students. Regardless, it is clear that those working in public schools need more training in trauma-informed care and reduction of seclusion and restraint practices but that obtaining their buy-in for the training is not always easy.

Opportunities on the Horizon

TEA is recently under the leadership of a new commissioner and the agency has been making a number of changes to improve the state's education system, including in the areas of special education, trauma-informed care, and reducing use of seclusion and restraint. For example, TEA staff report that they will be working with school districts to determine changes that can be made to help operationalize de-escalation and other practices at schools to reduce use of seclusion and restraint. TEA also reports hiring additional staff to support special education programs. Based on changes being made internally at the agency and the number of training initiatives happening in the field, the time may be ripe to establish specific goals to reduce the use of seclusion and restraint practices in public schools. Some stakeholders believe that legislation to move legal and regulatory language regarding its use in public schools to sections dealing with safety rather than sections dealing with behavior management would help facilitate a necessary shift.

Stakeholders report that although TEA may appear to be supportive of embracing seclusion and restraint reduction goals, the agency has historically taken a hands-off approach when it comes to pushing for change. Schools in Texas are very de-centralized in terms of policy and culture, which means that "hard" changes such as those involving compliance with state or federal law are challenging to implement and "soft" changes that require cultural shifts are even more difficult to achieve. Stakeholders outside of TEA observed that the agency will carry out legislative mandates, but that it won't try to otherwise dictate what schools should do.

The good news is that de-centralization allows for creativity and variation. There are opportunities to showcase and reward schools that have voluntarily and successfully reduced use of seclusion and restraint. Schools and districts could also be recognized for successfully implementing supportive approaches such as trauma-informed care and PBIS that may be able

[22] http://texaschildrenscommission.gov/media/83503/trauma-informed-care-final-report.pdf

to help reduce use of seclusion and restraint. Some stakeholders believe these incentives are critical for reducing its use, because they believe schools may currently have a disincentive to embark on this work. They argue that serving students who have disabilities requires extra time and resources and retaining those students may negatively affect or be perceived to negatively affect a school's performance ratings.

Recommendations

We recommend the following, in addition to considering the opportunities discussed above, based on our research and the insight provided to us by the stakeholders who participated in this environmental scan.

- Assess and analyze data available on use of seclusion and restraint in schools.

Conduct a "deep dive" into the data that are available regarding use of seclusion and restraint practices in public schools. Determine whether TEA should be collecting more detailed data from schools on use of restraint, including when a restraint is used and for what purpose. Explore the concerns expressed by advocates that suggest that like students who have disabilities, students of color may also be disproportionately impacted by restraint. Complete interviews with school personnel in order to determine whether schools are consistently and accurately reporting restraint data to TEA. Determine whether data are being collected on use of "time-out" and other behaviors that are essentially seclusion although they may not follow under the definition of seclusion that is currently in law.

- Better define language relevant to seclusion and restraint in laws and regulations and move language relevant to seclusion and restraint from sections regarding behavior management to sections regarding safety.

Policy regarding "time-outs" needs to be more clearly defined and more boundaries need to be drawn in order to ensure that children are not being secluded under existing law. Additionally, moving rules and regulations regarding use of seclusion and restraint from discipline or behavior management sections to safety and security sections would make it clear that these practices should not be used as punishment and should only be used as a last resort. Such a move would be consistent with rules and regulations relevant to seclusion and restraint in other settings.

- Explore extending existing protections for special education students to all students.

Explore extending the existing protections that are in statute for students who receive special education services to all students. This includes protections such as the requirement that schools must notify a parent when his or her child is restrained at school. Also look at extending relevant protections that apply to restraint to use of time-out; for example, explore requiring schools to notify a parent when they place his or her child in time-out.

- Build on existing training and organizational change programs to better equip schools to manage student behavior without seclusion or restraint and to promote general health and wellness.

In addition to expanding the training initiatives addressed above, school personnel may be able to benefit from training and resources available to professionals in other settings. For example, components of the Six Core Strategies may have value for preventing the escalation of behaviors that stem from trauma in school settings, and the "Road to Recovery" toolkit developed between the Hogg Foundation and the National Child Traumatic Stress Network may provide valuable support for schools in regard to promoting the mental health and wellness of students who have intellectual disabilities and have experienced trauma.

- Explore incentives to encourage schools to reduce use of seclusion and restraint.

Identify, acknowledge, and reward schools and school districts that are voluntarily working to reduce use of seclusion and restraint, including by implementing more positive approaches to managing student behavior and promoting strong mental health and wellness. Offer incentives to schools and school districts to implement positive approaches and/or to reduce use of seclusion and restraint.

- Study and work to implement best practices for the presence of law enforcement in schools.

Given the increasing rates of gun violence in this country, it is unlikely that the presence of law enforcement in schools will decline. Data available from TEA suggest that police presence in schools may not be a factor in most instances of restraining students receiving special education, but is heavily a factor in restraints used for other students. Many advocates expressed concerns about the increased presence of law enforcement in schools with regards to restraint as well as funneling young people into the school-to-prison pipeline. Given their concerns, and the low likelihood that presence of law enforcement in schools will decline, we recommend that someone study best practices regarding the presence of law enforcement in schools and then work to support implementation of those practices.

- Develop and foster relationships with new leadership at TEA and support the agency's efforts to better support schools and facilitate the reduction of use of seclusion and restraint.

Engage TEA's new leadership in conversation and collaboration around reducing use of seclusion and restraint in public schools. Support TEA's efforts, and any related requests for funding, for staffing and resources to do more field analysis and hands on training to help educators, administrations and others operationalize principles and techniques that will help them reduce need for and use of seclusion and restraint.

Seclusion and Restraint Practices in Child Welfare

The child welfare system in Texas has a strong cultural emphasis on trauma-informed care, which may help facilitate reduced use of seclusion and restraint practices. Stakeholders in the child welfare field in Texas report a consensus that seclusion and restraint practices may re-traumatize young people who have experienced abuse or neglect and that use of these practices should be reduced. This is critical because research suggests that 24,300 children in the Texas foster care system have experienced at least one Adverse Child Experience (ACE).[23]

There have been a number of innovative projects and initiatives to promote trauma-informed care in child welfare settings. At least in part because of these, and resulting organizational changes, the child welfare system appears to be ahead of other systems when it comes to investing in and using trauma-informed care practices, which helps reduce the use of seclusion and restraint. Advocates report that there is still substantial work to do, however, to ensure that children in the state's foster care system do not experience seclusion or restraint.

Use of Seclusion and Restraint in Child Welfare Settings

Like in other settings, those working in child welfare may use seclusion and restraint to manage or control behavior, as well as to protect safety. In the past, child welfare providers were sometimes encouraged by regulatory bodies to use restraint practices; for example, providers may have felt pressured by licensing regulations or other considerations to use restraint to prevent a child from running away from a facility or leaving the property. In recent years, regulatory authorities have moved away from rules and regulations that encourage or call for seclusion and restraint practices, in recognition that seclusion and restraint may re-traumatize children, traumatize staff, and even result in bodily injury.

The Texas Department of Family and Protective Services (DFPS) refers to practices of seclusion and restraint as Emergency Behavioral Interventions (EBIs). Licensed child welfare service providers are required to report EBIs quarterly to the agency's regulatory division on EBIs, as well as to debrief EBIs with staff and the young person involved and make "reasonable efforts" to debrief with other children who witness the incident. EBI data are not readily available publicly, however, and obtaining and analyzing the data were not within the scope of this report. At this point, the extent to which EBIs are used in child welfare settings is unclear and requires further analysis. Service providers expressed concern regarding using analysis of EBI data to assess the quality of a program, arguing that providers serving more challenging children may have higher rates of EBI use, even if they are trauma-informed.

Stakeholders suggested that there is some ambiguity regarding best practices for when and how restraints should be used in child welfare settings, including the proper use of chemical restraints. They also reported that confusion may exist around the appropriateness of restraining infants and toddlers, for whom certain types of restraint may be developmentally

[23] http://texaschildrenscommission.gov/media/83503/trauma-informed-care-final-report.pdf

appropriate and healthy, for instance, to protect a young child from danger as her or she learns to walk and explore new things.

Trauma-Informed Care in the Child Welfare System

As mentioned above, regulatory authorities, providers, and other child welfare stakeholders are increasingly recognizing that seclusion and restraint practices may re-traumatize young people in the child welfare system. This increased recognition is due largely to the spread of principles of trauma-informed care in the child welfare field. Similarly, trauma-informed care understanding has resulted in increased awareness of the impact that past trauma such as abuse or neglect may have on a child's behavior. To return to the example of the runaway child given above, a trauma-informed framework recognizes not only that restraining a child who is attempting to run may be re-traumatizing but also that a child's desire to run may in itself be a "fight or flight" response to past trauma rather than deviant behavior. This framework allows providers to create "cultures of care" that help identify and avoid triggers for challenging behaviors and then prevent them from escalating into crises.

Most professionals working in the child welfare system in Texas are required by legislation and/or regulatory standards to receive training in trauma-informed care and training is readily available. There is substantial concern, however, that training available to foster parents and certain professionals is insufficient, especially for those in rural and far-flung areas.

Texas has benefited from a number of programs and initiatives that have made trauma-informed care even more prevalent. For example, through funding from the Hogg Foundation, TNOYS worked with eleven residential treatment centers to reduce use of seclusion and restraint practices between 2011 and 2014 by integrating the Six Core Strategies for Reducing Seclusion and Restraint. An evaluation of this initiative that TNOYS completed in conjunction with the University of Texas at Austin found that most participating residential treatment centers were very successful at reducing use of seclusion and restraint.[24] These findings indicate that it is possible for service providers, even those serving young people with high levels of need, to reduce their reliance on seclusion and restraint practices with the right resources. A number of Texas' residential treatment centers are also working with the national Building Bridges program and stakeholders involved in that efforts report similarly successful results at reducing use of seclusion and restraint.

One of Texas' greatest advantages with regard to integration of trauma-informed care into child welfare settings may be the availability and implementation of Trust-Based Relational Intervention© (TBRI). TBRI is an attachment-based, trauma-informed intervention that is designed to meet the complex needs of vulnerable children, including those in child welfare settings.[25] TBRI was developed by Dr. Karen Purvis, out of Texas Christian University. Through a partnership with the Supreme Court of Texas Children's Commission, the Meadows Mental

[24] http://tnoys.org/wp-content/uploads/TNOYS-Creating-a-Culture-of-Care-Final-Evaluation-Report.pdf
[25] http://texaschildrenscommission.gov/media/83503/trauma-informed-care-final-report.pdf

Health Policy Institute for Texas recently completed a study and report on trauma-informed care in the child welfare system in Texas. The report suggests that as of 2017 more than 700 people had been trained in TBRI and an array of child welfare providers across the state have implemented the model.[26]

The Meadows Mental Health Policy Institute's report highlights many strengths in Texas' child welfare system in regard to trauma-informed care and many steps that have been taken by policymakers, service providers, and other stakeholders to ensure that child welfare programs are trauma-informed. The report points out that "traditional state funding structures allow for the provision of evidence-based trauma screening, assessment, treatment, and recovery supports." [27] The report also points out, however, that there are limitations to state funding structures in regard to trauma-informed care. Specifically, "they do not support the development of appropriate and safe facilities; the provision of peer support for professionals, staff, and caregivers; the development and implementation of organization-wide trauma training; the training and implementation of trauma-informed communication strategies and caregiver models; the development of cross-agency collaborations; and the evaluation of trauma-informed programs and services."[28] These limitations may be especially problematic in meeting goals to reduce the use of seclusion and restraint practices as that work requires significant culture change across organizations and systems.

Findings from the Meadows report are being used by the Children's Commission to support its Statewide Collaborative on Trauma-Informed Care in understanding and addressing the needs of children in foster care who have mental health conditions, particularly in relation to exposure to trauma and in understanding trauma-informed care.

Intersection with Other Systems

Child welfare stakeholders expressed more concerns about the other settings and systems that serve children in the child welfare system than with the child welfare settings themselves. For example, many children who are in foster care go to public schools. Many interact with the mental health and/or juvenile justice systems. These systems may or may not have adopted trauma-informed practices, as they are governed by different policies, laws, culture and history associated with seclusion and restraint. Child welfare stakeholders suggested a chief concern that their efforts to create cultures of care for the children they serve may be regularly undermined by the other systems with which children in the foster care system engage.

Moves toward Least Restrictive Environments and Kinship Care

Child welfare stakeholders also offered the changes being made to the child welfare system as an additional consideration for reduction of seclusion and restraint. The child welfare field has been moving in a direction for some time in which children are increasingly placed in the least

[26] Ibid.
[27] Ibid.
[28] Ibid.

restrictive environment. The implications of this trend on seclusion and restraint reduction are not completely clear. For example, less restrictive environments may be more family-like and therefore less likely to employ traumatizing practices that have been used for decades by institutions. On the other hand, placing children with very high levels of need, including challenging behavioral issues, in settings with less structure and with foster families rather than trained professionals may result in more crises that could lead to use of chemical or physical restraint. The child welfare system is also moving in the direction of placing more children in kinship care, and although there is general consensus in the community that children do better when placed with kin, it is not clear specifically what this shift will mean in regard to trauma-informed care or use of seclusion and restraint.

Opportunities for Investment in Child Welfare

Despite the state's apparent strength relative to integration of trauma-informed care in the child welfare system, stakeholders believe there is still work to be done in Texas to minimize the use of seclusion and restraint and to create more therapeutic environments in the institutional settings that have generally been the focus of these efforts. For example, providers emphasized that the low foster care reimbursement rates provided by the state contribute to challenges with recruitment and retention of qualified staff, which make it hard to consistently equip employees to manage behavior without resorting to using seclusion or restraint. High turnover makes it difficult to relieve staff of their residential child care duties so that they can attend training, as well as more difficult to justify spending money on training, which is essentially lost once a trained staff person leaves. Providers in rural areas report having fewer resources to support participation in training and technical assistance programs to integrate trauma-informed care and other approaches to reduce seclusion and restraint in their programs.

There may be a need for more data collection and analysis regarding the use of seclusion and restraint in child welfare settings, as well regarding the quality and breadth of implementation of trauma-informed care. It is not clear how consistently child welfare providers have been able to successfully implement trauma-informed concepts into their programs. Additional research and analysis could bring about a deeper understanding of what works and what does not work to reduce use of seclusion and restraint in these settings. The success of initiatives such as TNOYS' "Creating a Culture of Care" and the overwhelming support for approaches such as TBRI suggest that there is significant potential to create strong and sustainable trauma-informed cultures throughout child welfare settings across Texas, as long as there is additional effort and investment in this work.

One suggestion for investment that was offered by numerous stakeholders is to offer recognition, incentives, or awards for programs that demonstrate a commitment to reduction of seclusion and restraint. Foster care programs may have a financial disincentive to reduce use of seclusion and restraint under the current foster care system, which pays providers more to serve higher acuity kids. A child who is restrained or secluded may be assumed to be of higher acuity than a child who is not, and a provider may actually see a pay decrease if it appears that

the provider has successfully worked to reduce the acuity level of the child. A recognition, reward, or incentive program could help address this issue. Given the challenges and caveats associated with comparing programs based on their number of EBIs, it may make the most sense to structure recognition, incentives, or awards around commitment to a framework such as the Six Core Strategies, which have been demonstrated to reduce use of seclusion and restraint, rather than around seclusion and restraint numbers themselves.

Recommendations

In addition to exploring the opportunities discussed above, we recommend the following based on our research and the insight provided to us by the stakeholders who participated in this environmental scan:

- Analyze data being collected by the Texas Department of Family and Protective Services on use of Emergency Behavioral Interventions in child welfare programs.

EBI data analyzed by TNOYS years ago showed that seclusion and restraint in child welfare facilities was on the decline. Analysis of current data would indicate whether use of these practices is continuing to decline or has leveled off and would therefore offer insight into the level of investment that is still needed to reduce use of seclusion and restraint. An even more detailed analysis may also offer insight into the types of programs struggling most in the area of seclusion and restraint and identify areas in which more study of best practices is needed. For example, some providers suggested that there is ambiguity in regard to restraint of very young children, which may at times be developmentally appropriate, and this topic may need to be explored. Additionally, in-depth analysis of EBI data would inform discussions on how to better capture data on seclusion and restraint in a fair and accurate way that truly assesses program quality.

- Strengthen the quality, rigor, and application of trauma-informed care training that is readily available to child welfare professionals.

Nearly all child welfare professionals are required to obtain training in trauma-informed care and this training is readily available, but stakeholders consistently report that additional training is needed. For example, foster parents have reported that the training they receive is not hands-on and does not prepare them to deal with a challenging situation in which a child or youth's behavior escalates to the point at which a restraint may appear to be needed. We recommend strengthening the quality, rigor, and application of trauma-informed care training for all child welfare professionals. This may be able to be addressed at least partially by increasing access to evidence-based programs such as TBRI.

- Invest in organizational culture change, systems change, and cross-system collaboration.

Stakeholders reported that current support for organizational culture change is even less sufficient than training. The success of the "Creating a Culture of Care" project coordinated by

TNOYS over four years, which utilized the free and evidence-based Six Core Strategies for Reducing Use of Seclusion and Restraint, suggests that this investment would be worthwhile.

Additionally, stakeholders articulated a clear need to support systems reform and cross-system collaboration. Since children in foster care are no longer as isolated as they were in years past, and they now engage with many different programs and systems, including public schools, reducing re-traumatization of children in foster care requires reducing use of seclusion and restraint and other traumatizing practices in a variety of settings across systems.

- Monitor changes in the child welfare landscape and assess what they will mean for efforts to reduce use of seclusion and restraint.

Texas' child welfare system undergoing a variety of significant changes. Proponents of seclusion and restraint reduction should continue to monitor these changes and assess and respond to their implications in regard to use of seclusion and restraint.

- Support efforts to increase state funding for child welfare services.

Service providers reported that among the most critical challenges they face in regard to reducing use of seclusion and restraint are financial challenges that leave few resources for program development and support, and contribute to staff turnover. This may be especially true in rural areas. Although foster care reimbursement rates have increased significantly for some provider types, they still do not consistently cover the full cost of care. Stakeholders suggest that increasing these rates will support efforts to reduce the use of seclusion and restraint.

- Explore the development of a strategy to recognize, reward, or give incentives for efforts to integrate trauma-informed care into child welfare and other settings and reduce seclusion and restraint.

Along with providers in a number of other systems, child welfare providers expressed support for a strategy to recognize, reward, and/or give incentives to organizations that successfully integrate trauma-informed care into their programs and reduce use of seclusion and restraint, depending on how "success" might be determined or evaluated.

Seclusion and Restraint in Juvenile Justice

The stated mission of the Texas Juvenile Justice Department (TJJD) is "transforming young lives and creating safer communities." The department envisions itself as an organization that "advances public safety through rehabilitation."[29] While there is evidence that the TJJD is working to integrate a trauma-informed culture of care into its operations, a historical

[29] https://www.tjjd.texas.gov/aboutus/agency_mission.aspx

emphasis on preserving general safety and order may continue to limit the success of efforts to reduce use of seclusion and restraint.

Tens of thousands of juveniles (defined as youth who are age 10-16 when they offend) interact with the state's juvenile justice system each year.[30] In fiscal year 2016, more than 56,500 juveniles were formally referred to local probation departments.[31] A small percentage of these, typically the most serious or chronic offenders, will eventually be committed to the care and custody of TJJD. These individuals may reside at one of its five secure facilities (i.e., state schools) or may be assigned to one of numerous non-secure halfway houses in the state or to their home community under parole supervision. Four state schools are located in the north central part of the state (stretching roughly from Giddings near Austin to north of Dallas in Gainesville) and one of which is located in south Texas (Edinburg).[32] In 2016, the TJJD reported its average daily population of youth living in secure residential settings was 1,116.[33]

In general, juvenile justice facilities use seclusion and restraint practices to control behavior, impose discipline, and enhance safety. As outlined below, state law, administrative code and administrative policy govern the use of seclusion and restraint in the settings that make up the system. In some cases, different rules apply to state-run facilities versus county systems. Stakeholders suggested that county-run facilities face less regulation than secure state facilities and also that the practices used from county to county may vary wildly. Statutes and TAC rules place various data retention and collection requirements on both TJJD and local facilities. Some of the data collected is discussed throughout this section.

The American Correctional Association (ACA) is updating its expected practices for juvenile correctional facilities and juvenile detention facilities in relation to the use of separation (seclusion) with juveniles. Among the proposed changes, the group seeks to prohibit separation as discipline or punishment and permit it only as an immediate response to disruptive behavior that threatens the safety and security of the youth or others. Whether these changes would have an impact on the Texas system is unclear, as stakeholders have reported that the organization's presence in Texas is very limited.

Use of Seclusion in County Juvenile Justice Settings

There are more than 80 county-run secure facilities for juveniles in Texas, including both pre-adjudication detention facilities and post-adjudication correctional centers. Several types of seclusion or separation from the rest of the population may be practiced in these facilities, including disciplinary seclusion, safety-based seclusion (which became a newly defined category effective June 2016) and protective isolation.

[30] http://www.tjjd.texas.gov/about/overview.aspx. In some scenarios, this figure could also include a small number of 17-year-olds.
[31] http://www.tjjd.texas.gov/publications/reports/16_AnnualReport_for_Governor-LegBudgetBoard.pdf
[32] http://www.tjjd.texas.gov/programs/facilities_list.aspx
[33] http://www.tjjd.texas.gov/publications/reports/16_AnnualReport_for_Governor-LegBudgetBoard.pdf

Disciplinary seclusion[34] can be imposed as a consequence for a major rule violation in these settings. Juveniles must be provided a formal disciplinary review conducted by impartial parties before being placed in disciplinary seclusion. The TJJD implemented policy changes in 2016 that preclude juveniles with "known serious mental illness" or "severe or profound intellectual disability" from being placed in disciplinary seclusion and that limit the time juveniles can be placed in disciplinary seclusion per incident to 48 hours.

A new category of seclusion called "safety-based seclusion" has also been created to allow for greater differentiation regarding how and why seclusions are imposed. These seclusions are to be used to provide protection to others and property from juveniles who may be dangerous or destructive. Such seclusions are immediate and do not require a review process to be initiated prior to a juvenile's seclusion. However, there are concerns regarding how this new policy may be implemented.

First, there might not always be clear distinctions between the behaviors that may be used to justify disciplinary seclusions versus safety-based seclusions. For example, Texas Administrative Code (TAC) rules allow safety-based seclusion to be used to prevent escape and to control behavior that significantly disrupts programming, among other reasons.[35] These behaviors can be seen as having safety implications but can also be seen as behavior that might incur a disciplinary response.

Safety-based seclusions are also not constrained by the same limits that disciplinary seclusions are. They are not capped at a specific amount of time, although according to staff, they should be brief. As mentioned previously, there is no formal review that precedes a safety-based seclusion, although a facility administrator must review this type of seclusion within the first 4 hours. If it is extended beyond that timeframe, a type of review must occur every 24 hours.

Also, unlike in the case of disciplinary seclusion, juveniles with known serious mental illness or severe/profound intellectual disability may be placed in a safety-based seclusion. A mental health professional must be consulted with the first 24 hours if the resident has a known diagnosis of a serious mental illness, a known diagnosis of severe or profound intellectual disability, and/or a current designation as high or moderate risk for suicide.

Protective isolation, a different form of seclusion used for juvenile detainee safety relative to the rest of the population, is also open ended in terms of how long it may last.

As currently written, these policies may create confusion and the potential for misuse. In addition, stakeholders say there is significant discretion in how TAC rules are implemented. For example, although state law and administrative rules prohibit the use of seclusion in certain

[34] Title 37 Part 11 Chapter 343 (Sections 284-294) of the TAC contains rules pertaining to seclusion at secure juvenile pre-adjudication detention and post-adjudication correctional facilities.
http://www.tjjd.texas.gov/publications/Standards/Chapter_343_Final.pdf

[35] http://txrules.elaws.us/rule/title37_chapter343_sec.343.288

instances and allow it in others, facilities have options in how they define offenses as well as in assigning consequences. Some local facilities may be using seclusion frequently and others may have chosen not to use the seclusion option at all.

SNAPSHOT OF SECLUSIONS IN COUNTY FACILITIES				
	2014	2015	2016	% CHANGE
County Pre-Adjudication Seclusions	30,244	29,863	21,839	-27.79%
Exceeds 24 hours	5,415	6,071	3,601	-33.50%
Percentage Exceeds 24 hours	18%	20%	16%	
County Post-Adjudication Seclusions-ALL	10,726	13,223	13,087	22.01%
Exceeds 24 hours	669	1,108	1,072	60.24%
Percentage Exceeds 24 hours	6%	8%	8%	

Our analysis of data[36] provided by the TJJD as shown in the table above, indicates that seclusion is used more frequently at pre-adjudication detention facilities than at post adjudication correction centers and that seclusion at a pre-adjudication facility is more likely to exceed 24 hours. This may be due to the number of people each type of facility serves. The data also show that use of seclusions (and to a lesser degree, longer seclusions) is trending downward at pre-adjudication facilities but appears to be increasing at post-adjudication facilities, where juveniles typically spend longer periods of time.

In the middle of 2016, the TJJD began collecting data on the new safety-based seclusions within these facilities. Our analysis shows that roughly half of seclusions in both types of facilities fall into disciplinary versus safety-based seclusion for the available 6-month reporting period, with slightly more being reported as safety-based at both types of facilities. Also based on this time frame, between 2 and 6 percent of those secluded for either reason were deemed at a moderate to high risk for suicide, a category that also must now be reported. Data and analysis related to new classifications and rules will be more meaningful as full year data is collected and reported.

Limited seclusion data is also publically available by local pre and post adjudication facility. Currently posted information indicates a wide variety in the use of seclusion. A small number of facilities report using disciplinary seclusion 0 times in the reporting period while others report hundreds or even more than 1,000 incidents. Facilities also vary widely in capacity, from being able to accommodate 7 to 322 juveniles.[37]

[36] Unless otherwise noted, the tables and other statistics shown in the following section are based on a TNOYS representative analysis of data received October 30, 2017 from the TJJD as a result of a public information request.
[37] TNOYS representative analysis of TDJJ data available at http://www.tjjd.texas.gov/publications/other/searchfacilityregistry.aspx accessed in October 2017.

Use of Restraint in County Juvenile Justice Settings

TAC rules[38] also place restrictions on the use of restraints in these same local facilities. For example, the use of restraint (which can involve a physical hold or can involve devices such as handcuffs, ankle cuffs, waist belts, and restraining chairs or beds) is prohibited for "punishment, discipline, retaliation, harassment, compliance, intimidation or as a substitute for an appropriate disciplinary seclusion" as are "percussive or electrical shocking devices" or Tasers. Pepper spray, which is also governed by the above rules, may only be used in response to episodes of resident riot, as defined in TAC.

SNAPSHOT OF RESTRAINTS IN COUNTY FACILITIES				
	2014	2015	2016	% INCREASE
County Pre-Adjudication Restraints	6,155	6,842	6,798	10.45%
County Post-Adjudication Restraints	3,713	4,728	5,567	49.93%
	9,868	11,570	12,365	25.30%

The TJJD collects data on incidences of restraint. As the table above indicates, use of restraints is on the increase, especially at post-adjudication facilities. These figures represent only personal and mechanical restraints as reported by the TJJD. No incidence of chemical restraint was reported.

Diversion from State Secure Facilities to County Facilities

As a result of legislative changes made in recent years, juveniles who may have been sent to state secure facilities previously are being diverted to county facilities. In the wake of this trend, county level departments report seeing juveniles who have more serious offender histories and youth who pose greater behavioral challenges than before and therefore may be more difficult to manage. This may contribute to greater challenges for staff who must decide how to respond to difficult situations, in the context of seclusion and restraint usage, and is likely an area TJJD should explore proactively to determine whether local facilities have the tools, resources and training they may need to respond effectively.

This means juveniles in state secure facilities are a relatively small portion of the overall population involved in the juvenile justice system and state facilities are serving fewer youth than they did in years past. As a result, some state secure facilities have been closed. The few state secure facilities for juveniles that remain and are open today are large, some serving 200 or more juvenile offenders. Advocates believe the high numbers of youth in state secure facilities leads to poor conditions, lack of rehabilitation opportunities, and other problems, and

[38] Title 37 Part 11 Chapter 343 (Sections 800-818) of the TAC contains rules pertaining to restraint at secure juvenile pre-adjudication detention and post-adjudication correctional facilities.
http://www.tjjd.texas.gov/publications/Standards/Chapter_343_Final.pdf

many advocates are pushing for a regionalized model with more, smaller facilities. Although that position is not shared by all, there is at least some consensus that implementing trauma-informed practices that rely on personal connection and empathy is especially challenging in a large correctional environment.

The youth in state secure facilities have committed the most serious offenses and have some of the most challenging needs. A report issued by the TJJD in 2016 provides detail on some of the special challenges faced by juveniles who enter the justice system. Twenty eight percent of TJJD youth require special education services; this is close to triple that of public schools, which typically have 8-10% of youth requiring special education services. More than half of new commitments need mental health treatment, a four-point increase from 2015.[39] Compounding these issues is the challenge that many state secure facilities are located in more rural areas where there tends to be a scarcity of clinicians and other professionals who can provide quality mental healthcare treatment, substance abuse treatment, sex offender treatment, and other needed services. Stakeholders also reported that the general lack of support from the Legislature for TJJD has not helped the situation.

Use of Seclusion in State Secure Facilities

According to the TJJD's General Administrative Policy (GAP), juveniles at state secure facilities can be placed in the security program, where they are locked up in a separate security unit, as a result of certain minor and all major rule violations. GAP also states that this consequence may not be used as "punishment or a convenience for staff." The criteria are similar to that which can land a juvenile in probation in "disciplinary" seclusion. While the regulations state that this should last only an hour, and there are checks built in at 24-hour increments after the first day, there are provisions for extending it indefinitely. As discussed elsewhere in this report, the distinction between punishment and "discipline" may be unclear, although the fact that hearings must be held prior to placement of one of these youth in "disciplinary" seclusion offers some check and balance to the process.

Juveniles in these settings may also be placed in isolation, which is similar in some ways to the "safety based" seclusion permitted within local facilities discussed above. Juveniles deemed "out of control" and a serious and immediate danger to others" but not on suicide alert may be placed alone in a locked room. Regulations cap this placement at 3 hours, but the youth may subsequently be transitioned into the security program if deemed appropriate.

[39] https://www.tjjd.texas.gov/publications/ (Scroll to "State Institution Reports" and "Misc Reports" to find the 2016 Annual Treatment Effectiveness Review)

SNAPSHOT OF SECLUSION IN STATE SECURE FACILITIES				
	2014	2015	2016	% CHANGE
State Secure Seclusions	24,976	25,159	23,439	-6.15%
Exceeds 72 hours	1,011	928	1,136	12.36%
Percentage Exceeds 72 hours	4.05%	3.69%	4.85%	

Use of seclusion in state secure facilities appears to have decreased slightly, as the table above illustrates, although the number of longer seclusions (greater than 72 hours) has risen. In addition, based on our analysis of data the TJJD also provided, about 8.5 percent of seclusions involved a resident under "suicide alert" status in 2016, up from almost 5 percent in 2015.

Use of Restraint in State Secure Facilities

The use of restraints at state secure facilities (mostly discussed as "use of force" in department policy) follows similar principles as those in place at local facilities. The TJJD authorizes staff to "use reasonable force as a last resort to maintain safety and order."[40] Further, it "strictly prohibits" the use of force as punishment or for convenience of staff. [41]

Unlike in county facilities, pepper spray may be used in state secure facilities, although there are many specific rules surrounding its use. When used, it must be reported as a "critical incident." Some stakeholders see pepper spray as a necessary and better and safer alternative to physical restraints, while others see it as very harmful. With the current factors at play in these facilities in terms of size and intensity of issues, few if any stakeholders believe that restraint (or seclusion) can be entirely eliminated. However, there is disagreement on whether pepper spray should continue to be one of the options.

SNAPSHOT OF RESTRAINTS IN STATE SECURE FACILITIES				
	2014	2015	2016	% Increase
Personal, Mechanical and Chemical Restraints	11,281	12,432	12,157	7.77%
Chemical Restraints	733	902	1,107	51.02%
Percentage Chemical Restraints	6.50%	7.26%	9.11%	

We also analyzed data[42] provided by the TJJD on restraints at state secure facilities, as shown in the table above. Total restraints for these facilities almost equal the total reported for all local facilities, suggesting that restraints are more prevalent in state secure facilities, which interact with fewer youth per year. However, because we don't have data by individual juvenile, as discussed below, further analysis would be needed to understand whether this is true, and

[40] https://www.tjjd.texas.gov/policies/gap/380/97/gap3809723.pdf
[41] Ibid
[42] Unless otherwise noted, the tables and other statistics shown in the following section are based on a TNOYS representative analysis of data received October 30, 2017 from the TJJD as a result of a public information request.

what it means. The data also show that chemical restraint use is significant and on the rise. Both these observations may align with the notion that state secure facilities handle the most challenging juveniles, but are nevertheless concerning in conjunction with the goal of reducing both traumatizing events and the use of restraint for juveniles overall.

Current Efforts to Improve Conditions in State Secure Facilities

As discussed above, many advocates are pushing for a transition to a model with more facilities that are smaller and regionalized and serve fewer juvenile offenders. TJJD clearly espouses a philosophical desire to consider the role of trauma for the youth in its charge. A 2016 report to the legislature states "The agency strives to address the behavioral and emotional sequelae of the youths' trauma histories by developing increasingly safer, more nurturing, developmentally responsive living environments in its programs."

The agency has also made concerted efforts to improve conditions and create climates where challenging behaviors are less likely to escalate. For example, the agency is working Georgetown University to implement the Youth in Custody Practice model. The agency reported in 2016 that it had expanded its implementation of Positive Behavioral Interventions and Supports (PBIS) to all facilities as "the primary behavior management system."[43] Stakeholders report that the department has made improvements in connecting family to juveniles more closely, for instance by having a family liaison, promoting visitation, providing opportunities for virtual visits, and developing a family newsletter. [44]

TJJD has also implemented a number of youth development programs, such as the Pairing Achievement with Service (PAWS) program, to provide constructive outlets and opportunities for youth that leave less space for destructive behavior that may lead to seclusion or restraint. The PAWS program allows juveniles to bond with and train dogs for service over a 12 week period.[45] Critics point out that many of the positive programs being implemented by the agency is only available to youth who earn the privilege of participation, thereby leaving out some of the higher acuity youth who may need these supports the most.

Despite the improvements that have been made, some stakeholders expressed belief that the agency has consistently been led by directors who truly do not believe in the goal of reducing use of seclusion and restraint practices. These stakeholders argued that most front-line staff do not want to harm the juveniles in TJJD facilities but that because leadership has not bought in to seclusion and restraint reduction they do not know how else to respond in day-to-day tough situations. Their priority is to minimize conflict in facilities, stay on the good side of management, and go home safe. Many stakeholders suggested that a perception still remains that the young people in juvenile justice facilities are violent and more challenging than people in other systems that have successfully reduced use of seclusion and restraint, and that it is not possible to safely reduce use of seclusion and restraint in juvenile justice facilities.

[43] TDJJ Treatment Effectiveness Review 2016
[44] http://www.tjjd.texas.gov/programs/family_support_services.aspx
[45] http://www.tjjd.texas.gov/programs/paws.aspx

Recommendations

Based on our research and the insight provided to us by the stakeholders who participated in this environmental scan, we recommend the following to reduce use of seclusion and restraint practices in Texas' juvenile justice system.

- Investigate current trends that do not appear to support restraint and seclusion reduction goals.

Our analysis indicates that there is an increased use of restraints at local facilities, especially post-adjudication facilities, and an increased use of chemical restraints at state secure facilities. Our analysis also shows increased use of seclusion at post-adjudication facilities, and to a lesser degree, increased use of seclusion exceeding 72 hours at state secure facilities. These and other trends that do not align with the goal of reduction of restraint and seclusion should be further investigated and addressed.

- Implement a continuous quality improvement process for juvenile justice programs.

The TJJD collects a significant amount of data on use of seclusion and restraint within both county and state facilities, beyond what we have presented here, and has recently increased its efforts in this regard. According to at least some stakeholders, however, this data is not consistently analyzed or used to facilitate continuous quality improvement. TJJD and county programs should be required to analyze all relevant data that are collected and develop and implement an improvement plan to address findings and further reduce use of seclusion and restraint. The improvement plan may include the provision of training or technical assistance from qualified parties. In addition, the agency and other stakeholders should consistently review data that are collected in regard to seclusion and restraint reduction in order to determine whether current policies, procedures, and practices are achieving intended results and what adjustments or additional initiatives may be needed.

- Strengthen quality and breadth of data on use of seclusion and restraint that is being collected.

To the extent that isolation, security placements, and seclusion (of any definition) as well as restraint incidents are tabulated only by incident and not by individual, important information is missing. The data collected by TJJD does not allow us to assess whether the same juveniles are being serially or repeatedly restrained or separated. TJJD should look at collecting and analyzing seclusion and restraint data that is specific to the individual; for example, the average number of seclusion or restraint incidences for a juvenile experiencing seclusion or restraint. TJJD should also track use of seclusion and restraint practices among juveniles who have intellectual or developmental disabilities or mental health conditions.

- Explore strategies to ensure that seclusion and restraint practices are being used only as intended in juvenile justice programs.

Despite attempts to further define rules and expectations around the proper use of seclusion and restraint practices, they may still be used as punishment under the guise of safety or discipline. Moreover, and in light of the ACA's proposed rules, TJJD may want to re-evaluate the use of seclusion for discipline as well. To address these issues, the TJJD should examine and better define the use of seclusion for punishment versus discipline, and review ways in which current policies could allow for unintended consequences. Stakeholders should also assess whether current protocols and controls in place governing the use of all types of seclusion and restraint, including reporting requirements, are working as intended, and whether program oversight and accountability is sufficient. Finally, as the TJJD continues to monitor the implementation of its updated rules and standards related to seclusion and associated reporting requirements, it should ensure that reported data is carefully analyzed, and that feedback is given to field staff as appropriate.

- Provide training and support services for juvenile justice programs in the areas of alternatives to seclusion and restraint.

TJJD has expressed a desire to provide training and support services for its staff on trauma-informed care, organizational culture change, and reduction of seclusion and restraint practices but the agency does not have the funding to cover the cost of these services. Stakeholders express concern that without available alternatives, county probation departments may seek to use more seclusion or restraint rather than less. Training and support services should be made available to TJJD and county juvenile justice departments. These services should engage and/or be provided by professionals who have experience working in correctional settings in order to ensure that juvenile justice personnel find them to be credible and realistic.

- Continue to promote strategies and best practices that are already being implemented within TJJD and that have shown positive outcomes in the reduction of restraint and seclusion, while looking for opportunities to enhance these and embrace new initiatives.

One place to look for additional approaches and ways to enhance implementation of current initiatives is the Juvenile Justice Information Exchange, which contains a wealth of information about best practices in this field. (http://jjie.org/hub/evidence-based-practices/).

- Create awareness at the legislative level of the effectiveness of best practices and the success of innovative programs being implemented within the TJJD and elsewhere.

Numerous stakeholders highlighted the consistent negative discussion surrounding TJJD and the consistent lack of meaningful support from state leadership. One stakeholder reported that the agency is making "unbelievable efforts against incredible odds" given the extent to which it has bene defunded by the Legislature. TJJD will not be successful at improving its facilities without investment. Advocates and other stakeholders can help encourage this investment by highlighting what the agency is doing well and by sharing information on best and promising

practices, such as perhaps smaller facilities, that may be able to be implemented in order to reduce use of seclusion and restraint practices and generally improve conditions.

Seclusion and Restraint in Law Enforcement and Criminal Justice

The subject of seclusion and restraint may be unique when we talk about law enforcement and criminal justice compared to other systems. Members of the public are apprehended on the street, transported against their will to police stations, jails and hospitals, and in some cases incarcerated for long periods of time. Restraint may and often does occur at any of these junctures, and may include handcuffs, choke holds, shackles and pepper spray being used during arrests, transport and imprisonment. Seclusion is common, whether termed seclusion, isolation, solitary confinement or administrative segregation.

In any setting, seclusion and restraint may be used to control behavior, either as punishment or for the safety of self or others. Unlike other settings, which may have a therapeutic or educational purpose at least in theory, the entire purpose of the criminal justice system is centered on ideas about punishment and protecting safety of society. It seems intuitive that this would make it more difficult to reduce use of seclusion and restraint in the criminal justice system than in other sectors. Interestingly, stakeholders report that this is not necessarily the case. Although there are many major problems in Texas' criminal justice system in regard to seclusion and restraint, there has also been substantial progress made in some areas.

Use of Restraint by Law Enforcement

Law enforcement is given wide latitude with regard to restraint, which can also be seen as part of the spectrum of the use of force. One of an officer's primary roles is to subdue those who are or who may be criminals or who present danger to themselves or others. Often times, law enforcement may end up engaging with individuals who are experiencing mental health crises or other unstable situations that may heighten tension or contribute to aggressive or confusing behavior.

The American legal system has granted law enforcement the power to restrain, harm or even kill individuals when circumstances and protocols call for it, which differentiates this sector from others we have analyzed in this report. Increased scrutiny by media and others, such as the Black Lives Matter movement, is bringing greater attention to the issue of seclusion and restraint related to local police action, especially, restraint that leads to death. This may present opportunities to assess whether current protocols used by law enforcement are appropriate. Stakeholders suggest that policy changes may be needed in the areas of use of force by law enforcement, and that the scope of that work should be much broader than just looking at deaths resulting from shooting by police. Stakeholders also report a major need for training for law enforcement personnel in the area of de-escalation.

Increased attention on the issue of use of force by law enforcement has highlighted the difficulty that is sometimes encountered in obtaining details about what happens to people in

police custody. For example, an *Austin American-Statesman* series researched individual cases and found that more than 250 people died while under restraints by Texas police over 11 years. In some cases, a person's own family members were unable to get information from police about how the death occurred. Another research project, which resulted in an online resource called the Texas Justice Initiative, provided details on the circumstances surrounding the deaths of almost 7,000 people from 2005 to 2015 while in legal custody in Texas. (Some of the deaths were of natural causes.) However, beyond such one-time journalistic efforts, is not clear that the state collects, aggregates or analyzes data regarding how arrestees are treated when it comes to seclusion and restraint, even when the outcome is fatal.

Data is almost certainly collected by individual departments though it may not be routinely made public without open records requests. Policies and procedures governing the use of restraint are also likely to differ from one department to another, and based on the outcomes of many recent legal actions, tend to give officers the benefit of the doubt when it comes to use of force.

Use of Seclusion and Restraint in County Jails

County jails house arrestees awaiting trial who cannot make bail, those with certain low level offenses and short-term sentences, and those who may be awaiting transit to a state prison. County jails have been termed by many as de-facto holding areas for the mentally ill who, for a variety of reasons, may not be receiving treatment for their conditions.

The Texas Commission on Jail Standards (TCJS) oversees the roughly 235 county jails and a handful of privately operated correctional facilities in Texas. Numbers may fluctuate as counties close or build new facilities or change contract arrangements. At the end of 2016, these facilities housed more than 65,000 inmates according to the Commission.[46] The Commission establishes the minimum standards, inspection procedures, and enforcement policies for the custody, care and treatment of inmates as well as their rehabilitation, educational and recreational programs.

As with other systems we have discussed in this report, stakeholders say that attitudes towards seclusion and restraint can vary dramatically among counties. The National Association of Counties (NAC) was cited as an organization with progressive policies and ideas but it is not clear whether or how these recommended practices have actually filtered down into jails. In fact, we heard in our scan that the Texas Association of Counties (TAC) does not work closely with its national counterpart NAC, and instead tends to align itself with the Sheriffs Association of Texas. Stakeholders suggest that many jails are not using best practices and may at times be grossly violating the rights of individuals in their custody. One advocate reported that we can be assured that at any given time, at least one Texas jail has staff that is doing something "very

[46] http://www.tcjs.state.tx.us/docs/2016AnnualJailReport.pdf

wrong, even criminal" such as falsifying logs, allowing physical and mental abuse of inmates, or not reporting a death to the Attorney General's office.

The Texas Commission for Jail Standards is responsible for inspecting jails and reports instances of non-compliance with standards, but stakeholders have criticized these efforts as inadequate. Currently, non-compliance reports are posted for 16 county jails.[47] Once issues are addressed, the reports are removed, making it difficult for advocates or other interested parties to track the history of problems at a particular jail.

Anecdotal evidence supports claims by advocates that there are problems in jails related to seclusion and restraint. For example, two employees of the Coryell County Jail were fired recently after it was proven they were involved in spraying an inmate's food with pepper spray.[48] A man was found dead in a Montgomery County Jail in September after being drugged and left in a restraint chair in seclusion in the hours leading up to his death.[49]

What was most striking in our discussion with stakeholders in regard to use of seclusion and restraint in county jails is that many of the individuals being secluded or restrained have not yet been convicted of a crime.[50] These individuals, who often have few economic resources, may remain in jail for extended periods while they wait for a hearing date if they cannot make bail.

Mental Health and Seclusion in County Jails

An estimated 30 percent of Texas jail inmates have one or more serious mental health conditions.[51] Far and away the biggest concern relative to seclusion and restraint in jails is centered on the failure of jailers to recognize and properly address the needs of persons with mental illness, including suicidal ideation, who arrive in county jails. According to the Texas Jail Project, during the period 2009 through 2012, 88 people died to suicide in Texas county jails. Of those, 47 were housed in single cells. Best practices recommend keeping people experiencing mental health crises out of isolation, but stakeholders report that jailers often mistake mental illness for difficult behavior and isolate these individuals as a form of punishment or for convenience.

Additionally, county jails are not well equipped to help people having a mental health crisis or struggling with a serious mental health condition. Individuals often don't have access to medications they may need or evaluation or treatment by mental health professionals while they are in jail. This issue has been acknowledged across the board by law enforcement, mental health professionals and those advocating for detainees' rights. The Sheriffs' Association of

[47] http://www.tcjs.state.tx.us/index.php?linkID=340

[48] http://www.chron.com/news/houston-texas/texas/article/Texas-jail-worker-charged-inmate-pepper-spray-food-12276538.php

[49] http://police-misconduct-lawyer-texas.com/blog/detainee-dies-in-montgomery-county-texas-jail-after-being-restrained-in-a-chair-and-given-medications/

[50] http://www.jailhousestories.org/ "Voices of Pretrial Detention in Texas"

[51] https://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf

Texas is credited with saying in 2015: "Texas Sheriffs believe that the county jail is not the appropriate place to hold a patient in mental crisis" and with supporting "increased state funding for local mental health authorities that provide community mental health services, as well as pre- and post-arrest diversion for people with mental illness" during the last legislative session.[52] Chronic understaffing along with overcrowded jails has been cited as one underlying factor that may lead to unnecessary, harmful, or improperly monitored restraint or seclusion.

Despite these problems, suicide rates in county jails may be dropping. *The Texas Tribune* reported in 2016 that in the year prior, just 14 county jail inmates had died by suicide, representing a significant decrease from the 34 suicides reported during the same period the year before. On average, 23 county jail inmates died to suicide annually in the five years before that, the organization reported. [53]

The Sandra Bland Act, which went into effect this summer, could bring further relief. The law requires county jails to divert people with mental health and substance abuse issues toward treatment, makes it easier for defendants to receive a personal bond if they have a mental illness or intellectual disability, and requires that independent law enforcement agencies investigate jail deaths.[54]

Use of Seclusion in State Jails and Prisons

In its 2016 statistical report, the Texas Department of Criminal Justice (TDCJ) reported 134,547 persons in state prisons and 8,705 in state jails. The average sentence length reported for state prisoners was 19.3 years; the average reported for those in state jails was 1.1 years. Among those in state prisons, 4,372 were in "administrative segregation" and 1,573 in "safekeeping" in August 2016, the report said. In state jails, 83 were reported in segregation and 3 in safekeeping.

Administrative segregation is defined as "a non-punitive, maximum custody status involving separation of an offender from the general population within the prison institution for the purpose of maintaining safety, security, and order… " It is distinguished from solitary confinement, which is another form of seclusion used by TDCJ and other prison systems, however stakeholders argue that the difference is merely semantic as they are both forms of seclusion or isolation. The department's Disciplinary Rules and Procedures for Offenders discuss cell restriction and solitary confinement as two forms of isolation that can be used as punishment for disciplinary violations. These are not reported separately in the statistical report. Cell restriction is capped at 90 days and allows inmates to leave their cells for various reasons, such as medical needs, treatment programs, showers, meals, school or training, or to attend religious activities. Solitary confinement, described as a "segregated housing status" allows egress only for showering and is capped at 15 days, although consecutive terms can be served with a 72-hour "separation" in between.

[52] https://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf
[53] https://www.texastribune.org/2016/12/04/suicides-county-jails/
[54] https://www.texastribune.org/2017/06/15/texas-gov-greg-abbott-signs-sandra-bland-act-law/

Media reports have drawn attention to the amount of seclusion Texas prisoners have historically been assigned.[55] Texas' practices have been criticized compared to other states and described as amounting to torture in the case of death-row inmates who are automatically kept in solitary confinement for the duration of what can be decades behind bars. [56] This is troubling because the excessive use of segregation negatively impacts mental health according to experts, who have reported that 30 percent or more of prisoner suicides occur while in administrative segregation, even though segregated prisoners represent a tiny fraction of the whole population of this system.[57] The mental deterioration that results from solitary confinement was documented by the ACLU of Texas in its report "A Solitary Failure: The Waste, Cost, and Harm of Solitary Confinement in Texas" in 2015. By many accounts, administrative segregation, even though not intended as punishment, effectively mirrors solitary confinement in that prisoners are isolated 22-23 hours per day. Inmates also report difficulty adjusting to human interaction when released.

Stakeholders report that TDCJ has taken initiative to address this issue and that things are getting significantly better. This fall, Texas correctional officials announced the end of the use of solitary confinement as punishment. Some stakeholders report that this change has already curtailed the use of solitary confinement in Texas prisons; others argue that only fewer than 80 inmates were punitively confined, and it will not address inmates who are in solitary confinement for other reasons. [58]

TDCJ's recent efforts to reduce use of solitary confinement come after the agency began making voluntary reforms over the last couple of years to reduce the use of administrative segregations, which have proven to be extremely successful. [59] The agency developed a mental health diversion program that serves as an alternative to administrative segregation for inmates who are experiencing a mental illness. The diversion program supports participants with transitioning into the general population. Stakeholders report that a large number of inmates who are still in administrative segregation are there because of their gang ties. The agency is looking at alternatives for this population, such as gang renunciation programs, but those programs are complicated and expensive so there is still work to be done in this area.

Use of Restraint in State Jails and Prisons

Online (but difficult to confirm) articles[60] catalog abuses such as arbitrary use of pepper spray against inmates in Texas prisons. Some accounts portray sadistic prison employees who

[55] http://tpr.org/post/solitary-confinement-still-used-texas-jails-and-prisons-what-cost

[56] https://www.nytimes.com/2017/04/26/us/texas-death-row-torture-report.html?_r=0

[57] https://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf. Note: this report cites 38 percent (page 50), A NYT article from 2012 cited 50 percent. http://www.nytimes.com/2012/06/20/us/senators-start-a-review-of-solitary-confinement.html

[58] (http://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-prisons-eliminate-use-of-solitary-12219437.php)

[59] http://tpr.org/post/solitary-confinement-still-used-texas-jails-and-prisons-what-cost

[60] http://rashidmod.com/?p=2346

circumvent rules with impunity, for example, by inventing a rule violation or accusing a prisoner of being about to self-harm, as an excuse for punishment or restraint. If true, this may represent a small only minority of employees; however, it is chilling to imagine even a few cases such as these, given that prison employees wield so much power over the lives of those who are incarcerated.

Significant progress has been made in regard to treatment of pregnant inmates. Law now limits restraint of pregnant inmates during childbirth and a bill passed in the recent session requires new information to be collected on the treatment of inmates who are pregnant. Less progressive legislative developments in the same session include the passage of Senate Bill 1576, which authorized the use of mechanical or chemical restraints on individuals committed to the Texas Civil Commitment Office, formerly known as the Office of Violent Sex Offender Management, under certain circumstances and required the office to develop procedures governing the use of mechanical or chemical restraints on committed persons.

Seclusion of Juveniles in Adult Jails and Prisons

Currently in Texas 17 year olds engage in the adult criminal justice system rather than the juvenile justice system. Additionally, juveniles younger than the age of 17 may be sent to the adult system if they are certified as adults due to the seriousness of their crime. This is relevant to the issue of seclusion and restraint reduction because juveniles who are detained or incarcerated in adult facilities must typically be segregated from adults for their own safety. In some facilities, such as jails in small counties, this may mean that a juvenile is confined to his or her own cell and isolated due to the fact that there are simply not resources to support a larger facility with appropriate services for a person under the age of 18. Many advocates are currently pushing to “raise the age” for jurisdiction of the juvenile justice system to include 17 year olds. Raising the age would reduce the number of young people who end up isolated in the adult criminal justice system.

Recommendations

Based on our research and the insight provided to us by the stakeholders who participated in this environmental scan, we recommend the following steps and strategies to reduce use of seclusion and restraint practices by law enforcement and in the criminal justice system.

- Expand opportunities to train law enforcement on de-escalation.
- Assess policies and protocols in regard to use of force by law enforcement.
- Increase oversight of county jails, including by establishing an ombudsman external to the jail system, to whom people who are jailed and/or their family members or representatives can report allegations of abuse or other issues of concern.
- Identify funding opportunities to increase staff in understaffed in jails.
- Explore strategies to offer opportunities for county jails to network, learn, problem solve, and share best practices in regard to recognizing and appropriately addressing mental illness and reducing use of seclusion and restraint.

- Explore strategies to offer rewards or incentives for counties whose jails demonstrate a concerted effort to reduce use of seclusion and restraint practices.
- Raise the age for juvenile justice system involvement to include 17-year-olds, so that they are not sent to adult prison facilities where they may need to be isolated for their own protection.
- Identify best and innovative practices used by correctional systems in other states and other countries to address gang involvement without relying so heavily on administrative segregation.

Seclusion and Restraint in Mental Health

Mental health services are provided through a variety of systems, including the systems discussed in other sections of this report. Mental health services may also be provided in both residential and community-based settings. This section of our scan report focuses on the provision of mental health care services in residential settings such as psychiatric hospitals and residential treatment centers.

Current Policies and Practices regarding Restraint in Psychiatric Hospitals

Texas law[61] allows seclusion and restraint within defined limits in psychiatric hospitals, as defined in Texas Health and Safety Code, Title 4, Subtitle G, Chapter 322. Seclusion and restraint must also adhere to federal law governing hospitals eligible for Medicare or Medicaid payments if such payments will be sought. Guidance provided by the Centers for Medicare and Medicaid Services states, in part, "Regardless of whether a state meets the payment requirements for prisoners housed in these hospitals, the hospital must apply the Conditions of Participation, including the restraint and seclusion rules, to all patients including the prisoners. If a hospital wants to apply different health and safety rules to prisoners, it may want to consider establishing a distinct part."[62]

Some stakeholders reported that seclusion is not used in specific psychiatric hospitals as a matter of policy. In contrast, it was reported that physical restraint is used in psychiatric hospitals as long as relevant laws and administrative rules are followed. Stakeholders report that restraint is used frequently, at least in some hospitals. Vertical and horizontal holds are common. Restraint chairs are used at times, typically in extreme circumstances. Incidences of restraint are consistently linked to safety concerns according to stakeholders (i.e. they are not used as punishment).

Stakeholders suggested that many restraints could be avoided if hospital staff had more flexibility and patients had more autonomy in their day-to-day life. The rigidity and structure in many hospitals may lead to escalated behaviors and/or undermine attempts at self-regulation. For instance, stakeholders suggest that if patients were permitted to eat a snack when hungry,

[61] http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.322.htm
[62] https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/PsychHospitals.html

the frustration and agitation that can lead to restraint might be avoided. Additionally, stakeholders report that some hospitals lock patients who do not attend classes in certain parts of the hospital and others prohibit patients from walking outside of a very limited radius/proximity on hospital grounds. These limitations make it difficult for patients to take walks or utilize other self-regulation techniques to cool down.

There was agreement that staff members generally do not like using restraints on patients, and that the process is traumatic for all involved, as well as burdensome in terms of additional paperwork. Because use of medication is not required to be reported as a restraint, it may be seen by hospital staff as an easier solution to "problem" behavior than other, more appropriate responses. Stakeholders reported that use of drugs to medicate patients who are agitated (which has the effect of chemically restraining someone, even if that is not the stated purpose) is common and may be a serious hidden problem in psychiatric hospitals.

Some stakeholders reported an alarming lack of accountability in regard to use of chemical restraint by psychiatric hospitals. One stakeholder reported that judges visit state hospitals regularly in order to authorize medication of patients who do not want it. Stakeholders reported that physicians wield great power in these settings and that their perspective may be colored by the variety of drugs that are available to them to control behavior of patients. Stakeholders cited the frequent referrals of individuals who are involved in the criminal justice system to state hospitals as a complicating factor, as those referrals may heighten concerns about liability for state hospital administrators and lead to an environment that prioritizes risk management.

There was some agreement among stakeholders that it may be more challenging to hold private psychiatric hospitals accountable than state psychiatric hospitals, in regard to seclusion and restraint as well as other issues.

Creating Cultures of Care in State Psychiatric Hospitals

The state's ten mental health hospitals offer nearly 2,500[63] beds to adults and children who require inpatient mental health services. The numbers and types of patients served as well as preferred treatment practices have changed over time. Recent years have seen a significant increase in patients admitted to state hospitals as "forensic commitments." The majority of these are people entering the hospital via the criminal justice system who are there until they can be considered competent to stand trial. Some stakeholders say this change has also affected the environment within hospitals, and created a focus on "risk management" and concern over liability perhaps at the expense of recovery.

Stakeholders report that state hospitals have made extensive investments in reducing the use of seclusion and restraint practices, particularly in the past ten years. The STARS initiative, which aimed to reduce seclusion and restraint in state psychiatric hospitals, claimed significant

[63] Source: LBB's Legislative Primer listed 2,463 beds in FY 2015.

results. The initiative provided targeted training and support to create "cultures of care" in "all human service settings" where seclusion and restraint occur. The Department of State Health Services reports that as a result of the work completed under its STARS grant (awarded in 2007), significant improvements were realized with regard to creating cultures of care at state psychiatric hospitals and that this was evidenced by reductions in the numbers of incidents of restraint or seclusion, the number of patients involved, and the length of time spent in restraint or seclusion per incident.[64]

Some stakeholders report though that these efforts have dwindled or faded over time. They report that commitment to reduction of seclusion and restraint varies across facilities and that turnover among leadership has been a major challenge. Ten years after the STARS initiative was implemented, it is not clear whether the improvements that were made have endured in the four psychiatric hospitals in which the project was completed, or in the other settings meant to benefit from the toolkit, which was the project's legacy.

Stakeholders reported having very different perspectives on the training that is offered to new state hospital employees. Some reported that hospitals provide new employee training that covers trauma informed care and reduction of seclusion and restraint. They reported that employees of some hospitals also receive training in person-centered planning, a method that complements trauma informed care and seclusion and restraint reduction by helping employees learn to build on the strengths and individual goals of each patient. Some credited the training that is offered with helping staff de-escalate crises and avoid the need for seclusion and restraint.

Others reported that the training for new state hospital employees is "bare bones" and focuses on how to restrain someone safely rather than on alternatives to restraint or how to create an environment that reduces the need for restraint. Like in other settings discussed in this report, training issues may be exacerbated by workforce turnover and shortages of well-qualified staff. A Legislative Budget Board (LBB) report prepared for the last legislative session highlighted workforce shortages among "critical staff" across the state hospital system.

Data collected on Seclusion and Restraint in Psychiatric Hospitals

State hospitals collect more data than many other facilities relevant to seclusion and restraint. Texas Administrative Code (TAC) requires the documentation in an individual's medical record of detailed information associated with restraint or seclusion incidents. In addition, facilities must review and analyze at least quarterly a subset of this data, including demographic information, deaths or injuries of patients or staff, length of time of each restraint or seclusion, and information about emergency medications administered during restraints or seclusions. Moreover, facilities are required "to identify and correct trends and patterns that may contribute to the use of restraint or seclusion" as part of a requirement to engage in continuous improvement.

[64] https://www.dshs.texas.gov/cultureofcare/

In addition, the federal Centers for Medicare and Medicaid Services recently began requiring submission of relevant data from psychiatric hospitals treating patients receiving Medicare or Medicaid, including the rate of seclusions (per 1,000 bed days), the rate of personal and mechanical restraints, and the rate of emergency medication orders used in a behavioral emergency. The state hospitals in Texas reported restraint rates that averaged .52 hours per 1,000 bed days (or 3,221 hours) for mid-2014 to mid-2015. Almost no seclusion was reported. As one indicator of the variation in restraint use across facilities, individual hospitals reported a high rate 1.23 hours and a low rate of 0. However, it is not clear what type of analysis is or should be done to meet the improvement efforts outlined in TAC (either individually or on a system wide basis), nor, what benchmarks are or should be used to gauge progress or effectiveness.

It is not clear how transparency and accountability for private hospitals differs from the state-run hospitals, but this may be an area for further study and was expressed as a concern. Private hospitals do report data to the state and in some cases to federal oversight agencies, but stakeholders reported that it is more challenging to regulate private hospitals than it is to regulate state hospitals.

Employee Morale in Psychiatric Hospitals

Some stakeholders expressed the concern that negative public perceptions of psychiatric hospitals works against direct care staff in regard to morale and reduces their motivation to do what is best for those in their care. Stakeholders cited 'One Flew Over the Cuckoo's Nest as an example of what many people may believe psychiatric settings are like and reported stereotypes suggesting that abuse and other violations of human rights are rampant in psychiatric hospital settings. Other stakeholders reported though that there is abuse occurring in many of these settings, as well as violations of human rights in regard to inappropriate use of seclusion and restraint.

All stakeholders acknowledged that patients do often benefit tremendously from the care they receive in these settings, and that there is a lot of "gray area" regarding what is appropriate and beneficial. Use of psychiatric medication often makes patients substantially better and may be needed at times to keep patients or staff safe. Given the stressful nature of working in a psychiatric hospital and the complexity of these issues, some stakeholders suggested a need for more resources and protocols to support hospital staff in dealing with the trauma of using restraints on patients and of their job in general.

Seclusion and Restraint in Residential Treatment Centers

Although some psychiatric hospitals do have special units for children and adolescents, young people who need residential mental health services often end up in residential treatment centers (RTCs). The Waco Center for Youth is a state-run RTC but other RTCs are private. Residential treatments centers may receive referrals through the foster care or juvenile justice

systems and/or may take private placements. Because all residential treatment centers serving minors must be licensed by the state child welfare agency, the discussion regarding data collection on emergency behavioral interventions that is included in the child welfare chapter of this report is also relevant here. Residential treatment centers are required to report data on emergency behavioral interventions, which include use of seclusion and restraint, to the state licensing agency. Comprehensive analysis of this data is needed.

As discussed in the child welfare chapter, eleven Texas RTCs participated in a project with TNOYS to reduce use of seclusion and restraint practices using SAMHSA's Six Core Strategies for Reducing Seclusion and Restraint. A number of residential treatment centers are also working with the national Building Bridges Initiative to promote cultures that lead to reduced use of seclusion and restraint. There is more work to do to expand these projects and their benefits to the residential treatment centers that have not yet been able to participate.

Recommendations

Based on our research and the insight provided to us by stakeholders who participated in the environmental scan, we recommend the following to reduce use of seclusion and restraint practices in psychiatric hospitals.

- Identify strategies to better monitor and increase accountability for psychiatric hospitals in regard to use of restraint, especially chemical restraint.
- Acknowledge the increasing caseloads of forensic commitments that psychiatric hospitals are experiencing and identify opportunities to provide support for administrators with managing these patients and the associated liability.
- Identify strategies to increase oversight of private psychiatric hospitals in regard to seclusion and restraint and work to make some of the resources, such as training, that have been available to state psychiatric hospitals to private hospitals.
- Continue to provide support for psychiatric hospitals to facilitate organizational culture change to create environments that prevent behaviors from escalating to the point at which restraint is needed. Working to create cultures of care in psychiatric hospitals may also help address some of the challenges that were identified regarding employee morale.

Seclusion and Restraint in Services for People with Intellectual and Developmental Disabilities

People with Intellectual and Developmental Disabilities may receive services in many different settings. State Supported Living Centers (SSLCs) provide residential services for people with intellectual and developmental disabilities. Community-based settings that serve people with disabilities include public schools (which are discussed in another section), as well as other settings supported by government, private and/or non-profit organizations. This variation

makes it challenging to ensure that people with disabilities consistently receive trauma-informed care and that they are not subject to inappropriate use of seclusion or restraint.

Advocates for people with intellectual and developmental disabilities are not comfortable with the status that has been achieved in the areas of seclusion and restraint reduction. Although advocates acknowledge that there are legal protections in place that apply to people with disabilities when it comes to seclusion and restraint, there is concern that the rights of people with disabilities are not well understood and that the legal protections that have been established are not always met.

There are more protections for people with disabilities in regard to use of seclusion and restraint in certain community-based settings than in SSLCs, but SSLCs may be monitored better than many community settings, which means protective policies in SSLCs may be more likely to be more enforced. These issues factor into a larger debate regarding whether the State of Texas should invest more in residential or community-based services for people with intellectual and developmental disabilities. Stakeholders interviewed for this report suggested that more people with disabilities could leave in the community safely with additional support and resources for them and their family members, but that it would not be safe to move people out of SSLCs into community-based settings without the right supports.

As in many other systems, advocates report that while most front line staff who serve and care for people with disabilities want to embrace the concept of reducing or eliminating the use of seclusion and restraint, they also fear the results of not using seclusion and restraint practices when needed to prevent injuries, because they lack alternative tools and techniques to respond to situations in a more trauma-informed and constructive way. Stakeholders have called for more training and better pay for staff in settings serving people with disabilities, as well as clearer expectations and policies in regard to seclusion and restraint, and more information sharing across sectors (i.e. across silos). Advocates also report a need for better data collection, additional research to develop evidence-based practices, and research that looks at what other states and the federal government are doing with respect to use of seclusion and restraint among people with disabilities.

Focus on Trauma-Informed Care

Stakeholders report that there has been significant progress made to promote trauma-informed care for people with disabilities at the state level, but that trauma-informed care concepts may not be trickling down into local settings and services. One stakeholder expressed concern that there has been a shift away from the specific goal of reducing use of seclusion and restraint practices to a more holistic focus on trauma-informed care. Although many stakeholders assume that training on trauma-informed care and the promotion of environments with cultures of care lead to natural declines in use of seclusion and restraint practices, some stakeholders expressed concern that there may not be as much training on reducing seclusion and restraint available as there was in the past as a result of this shift.

State Supported Living Centers

Restraint is prohibited in many community settings serving people who have disabilities but not in SSLCs. In SSLCs, restraint is not permitted to manage behavior but is permitted to ensure safety. This means front line staff must make decisions in moments of frustration or crisis regarding whether a person is at the point of "imminent danger to him/herself or others" in order to justify a restraint. These decisions are subjective and may be very difficult on staff, who may be traumatized after administering a restraint and may wonder if they made the right decision. This subjectivity also presents a legal gray area in which the requirement that staff make judgment calls leaves them vulnerable to lawsuits.

The Department of Justice monitors Texas' 13 State Supported Living Centers (SSLCs) and is dedicated to the goal of reducing seclusion and restraint. A Department of Justice Settlement Agreement has driven some improvement within these facilities in Texas. For example, Texas is collecting substantial data on these programs and is conducting pilot projects to help staff working in SSLCs understand trauma and how it relates to escalation of challenging behaviors and de-escalation of crises.

Trauma, Coping Skills, and Communication Skills

Stakeholders emphasized that people who have intellectual or developmental disabilities are more likely to have been physically, sexually, and/or emotionally abused than people who do not have disabilities and that acting out may be how people who have disabilities cope with that trauma. More needs to be done to prevent abuse of this population as well as to raise awareness of its implications.

Stakeholders also reported that frustrating behavior may be a strategy used by some people with disabilities who have not been taught a more positive way of expressing their feelings or disagreement with something. People who have disabilities have the needs and desires just like people without disabilities but may have a more difficult time expressing them. Stakeholders suggested that more work is needed to raise awareness of these issues among people who work or otherwise engage with people who have intellectual and developmental disabilities, so that they can recognize the reasons behind behaviors and respond appropriately. Stakeholders also suggested that people who have disabilities need more training and support in regard to coping skills, communication skills, and other life skills, so that they are less likely to engage in behaviors that may lead to an inappropriate restraint.

Recommendations

Based on our research and the insight provided to us by stakeholders who participated in the environmental scan, we recommend the following to reduce use of seclusion and restraint practices in psychiatric hospitals.

- Increase pay for direct-care staff who work with people who have disabilities.

- Strengthen training for direct-care staff in SSLCs as well as other programs that is specific to the issue of reduction of seclusion and restraint and promote networking opportunities for providers to share ideas. This training should be inter-disciplinary given that people with disabilities may receive services in many different settings.
- Promote utilization of de-briefing after restraint events and where use of physical intervention was avoided. Debriefing can help all parties involved process the incident as well as serve as a powerful training opportunity for the staff person who used the restraint and bystanders or others involved.
- Strengthen programs that teach coping skills and communication skills to people with disabilities so that they have the tools needed to convey their needs and desires. This may prevent frustrating behaviors, which may reduce risk of restraint.
- Support efforts to humanize people with intellectual and developmental disabilities in the public eye in order to create more empathy for them and help people understand their needs. Engage family members of people who have disabilities as part of this effort. Raise awareness of the needs, strengths, and limitations of people with disabilities among professionals, including the medical community, so that they can recognize the root causes behind frustrating behaviors and respond appropriately.
- Strengthen research and data collection on use of seclusion and restraint practices among people who have disabilities. This includes calling for sharing of data reported to state and federal agencies. It also includes growing research support development of evidence-based practices and looking at how other states are addressing seclusion and restraint reduction in settings that serve people with disabilities.

Seclusion and Restraint in Services for the Aging

Seclusion and restraint is and has been a persistent problem at nursing home facilities in Texas and nationally. Among stakeholders we consulted, the biggest continued concern in regard to the use of seclusion and restraint practices in services for older adults is the use of certain anti-psychotic medications to chemically restrain residents with dementia, which is therefore our primary focus here. The problem persists despite U.S. Food and Drug Administration (FDA) so-called “black box” warnings about the harmful effects of this practice and federal and state pressure to eliminate it.

Drugs that fall into this category include those marketed as Abilify, Clozapine, Latuda, Zyprexa, Symbyax, Invega, Seroquel and Risperdal. These and other similarly classed drugs are known to adversely affect mental functioning and hasten death for elderly people with dementia. These drugs are approved to treat specific and fairly rare diseases such as schizophrenia and Tourette’s syndrome, but are harmful when prescribed inappropriately. Nevertheless, they have been widely given in settings such as nursing home facilities to mask and manage dementia-related symptoms or “manage behavior” rather than to treat specific illness.

Scope of the problem

Elderly persons with dementia make up a significant proportion of those receiving services in nursing homes. A 2015 report issued by the U.S. Government Accountability Office estimated that nearly 40 percent of nursing home residents had dementia in the period it reviewed;[65] other sources have estimated the number is higher. In 2011, when federal agencies sounded the alarm nationally about the harmful provision of certain drugs to older adults with dementia, nearly 29 percent of Texas nursing home residents were receiving anti-psychotic drugs for "off-label" uses, (i.e. uses not approved by the FDA). This number had decreased to 17.1 percent by the first quarter of 2017, but remains high compared to the national average of 15.7 percent, based on data collected and published by the Centers for Medicaid and Medicare Services (CMS). [66] "Off label" use (again, this means unapproved uses, or uses that are not associated with specific diagnoses that would justify their use) should happen rarely if ever in this context, given the known harms the practice creates.

At the state level, additional data on nursing home quality and operations is also collected and has further highlighted the problem. For example, the state's most recent Nursing Facility Quality Review (NFQR) includes an assessment of the use of anti-psychotic drugs. According to report, conducted in 2015 and issued in 2017, the review found that while use had decreased, it was still of significant concern.[67] Specifically, 21 percent of Texas residents in the review sample were receiving at least one antipsychotic medication. The report also stated that staff members were aware of the statewide efforts to reduce the use of these medications, and many were implementing gradual dose reductions for identified residents.

In our own look at the most recent data available compiled by CMS, 30 facilities in Texas had reported that 40 percent or more of their long-term residents were receiving anti-psychotics. One facility reported nearly 90 percent.[68] CMS excludes residents with schizophrenia, Tourette's syndrome and Huntington's disease when reporting this measure, which means most if not all the reported cases are of "off label uses." The information is also self-reported by facilities.

This particular form of chemical restraint may be culturally and institutionally embedded at individual facilities that serve the aging population. This practice is originally believed to have taken hold in part due to marketing campaigns by drug companies that promoted the off-label uses of their products. Inadequate staffing and lack of necessary training at nursing facilities have also been cited as causes for the continuation of practices because medicating residents is "convenient." Advocates report that these drugs in fact cause elderly individuals to "shut down," and almost "disappear." In contrast, the more appropriate, non-pharmaceutical

[65] https://www.gao.gov/assets/670/668221.pdf
[66] https://www.nhqualitycampaign.org/files/AP_package_20170717.pdf
[67] https://hhs.texas.gov/sites/default/files//documents/laws-regulations/reports-presentations/2017/nf-quality-review-2015-june-1-2017.pdf
[68] https://www.medicare.gov/NursingHomeCompare/search.html. This is based on the average of the last 2 quarters of 2016 and the first 2 quarters of 2017 as reported to CMS, sorted for State of Texas, and code 419, the anti-psychotic drug measure.

interventions that can help residents with dementia feel better yet stay engaged require time and specific skills to deliver.

Some stakeholders also expressed additional concerns that assisted living and home care settings don't receive the same regulatory scrutiny as nursing facilities and may have similar or even worse chemical restraint problems that may be going undetected. In any setting and regardless of the regulatory environment, as one stakeholder pointed out, it is doctors who prescribe anti-psychotic drugs inappropriately that create danger for older adults, especially those with dementia. However, nursing staff, family members and friends who request or fail to question such practices when necessary also play a role in the problem.

Other Restraints

The overall issue of restraints in nursing homes in Texas has improved significantly in recent years, according to the same report (2015 NFQR), mentioned above.[69] Down from a high of 41% of residents being restrained in any manner in 2010 in nursing homes statewide, just 7% were reported restrained in 2015. According to the report, most of these restraints are physical, although the breakdown of physical versus chemical restraint is not shown. Of physical restraints, the report shows that most are in the form of full or partial bedrails. Residents can suffer serious injuries when they attempt to circumvent bedrails, yet the review also found that family members often request the use of restraints.

Rights and Recourse Regarding Chemical Restraint

One opportunity to address the problem of chemical restraint in nursing homes lies with increasing public awareness about the risks of using these drugs on nursing home residents and about steps families and residents can take to avoid choosing a facility that is less likely to provide appropriate care. There is good data available about nursing home quality and readily available comparative data that gives Texas policy makers, families, and advocates information about the performance of specific nursing facilities related to chemical restraint and other areas of interest. Review of such information is essential in evaluating options for care. In addition, it may be equally important that family members and future residents evaluate (in person) a facility's attitude and stated processes around medicating residents.

Another opportunity lies in working to expand the rights of residents and families around treatment decisions in Texas. Under current state law, protections exist for residents or their legal representatives in the area of informed consent. Texas law addresses the rights of nursing home residents to be informed about psycho-active drugs[70] they are prescribed and to receive disclosure regarding the reasons for the medication, the recommended course of treatment

[69] https://hhs.texas.gov/sites/default/files//documents/laws-regulations/reports-presentations/2017/nf-quality-review-2015-june-1-2017.pdf

[70] Psycho-active drugs include the drugs we have discussed here and a larger set of drugs that affect perception, mood, consciousness or behavior.

and associated risks. Without full disclosure, residents or family members may not understand the risks to the health of their loved one if placed on an anti-psychotic drug.

However, even if they know about them, individuals may have little recourse when these requirements are not followed, either legally or practically. Legal remedies that allow individuals (i.e. residents or family members) to sue nursing homes for violations related to informed consent or the use of chemical restraint are not written into the law in Texas, as they are in other states, such as California. Rather, in Texas, enforcement of resident rights is left in the hands of the state agency responsible for licensing nursing homes and in the hands of the Attorney General.

Relying on the state to oversee this aspect of care is problematic. Some stakeholders are skeptical that state surveyors adequately assess compliance with laws relevant to chemical restraint. Others say that even when the agency identifies poor practices and badly run facilities, action is not taken by the state to shut the facility down or take other action strong enough to change behavior. Finally, stakeholders report that residents or family members often fear retaliation (a resident's removal from the facility) if treatment is refused or challenged and they may not have other options for care.

It is also unfortunately true that some nursing home residents (along with other older adults) do not have family or friends to advocate for them. In fact, the state validated more than 32,000 cases of abuse or neglect of persons over 65 in Texas in FY 2016. When an elderly resident is neglected by relatives and friends, or has no one to look out for his or her best interests, it falls to nursing home staff and regulators alone to ensure that residents have access to the level of care that they need and deserve.

A new law passed during the 85th Texas Legislative Session could make it a little harder for nursing homes to use inappropriate restraints. House Bill 2025 took away the "right to correct" (and therefore potentially avoid fines) as an option for certain violations, including violations of current law related to restraint, but only in cases where these violations are "widespread in scope."[71] This means that penalties, which could be assessed and collected by the state, can result from such violations but only if they meet the scope requirement and other criteria outlined in the law. Facilities still have the "right to correct" option for many violations. Further complicating the potential benefit of this legislative change, stakeholders also reported that the state may not be able to collect penalties for a state licensing violation that is also a federal violation (which restraint violations would likely be).

One stakeholder has also suggested that nursing facility rules for providers do not provide clear guidance on the use of restraint in managing behavior that may be associated with dementia as compared to some other settings, and that rule changes could address this deficiency.

[71] http://www.legis.state.tx.us/tlodocs/85R/billtext/html/HB02025F.htm

State Agency Initiatives to Curb Chemical Restraint

The Health and Human Services Commission (HHSC) and the (formerly separate) Department of Aging and Disability (DADS) have undertaken several initiatives aimed at addressing the problem of inappropriately prescribed anti-psychotics. Among these is the Quality Incentive Payment Program (QIPP), which could help offset costs associated with making necessary changes. The program rewards eligible private and non-state government owned nursing facilities (i.e. as a nursing home owned by a hospital authority, hospital district, healthcare district, city, or county) that do well on four measures, one of which is the percent of residents who received an antipsychotic medication (long-stay). HHSC staff report that the program went into effect in September of 2017 and has 514 voluntarily participating nursing facilities. Staff members also report that data will be available beginning in January 2018 and will be used to begin analyzing the program's effectiveness at that time. QIPP also evaluates participants on the percent of their residents who were physically restrained (also long-stay).

HHSC/DADS has also invested in the Music and Memory program, which aims to help residents reconnect with the world through "specific, music-triggered memories." HHSC/DADS reports that its pilot program, which began with 32 nursing home participants in 2015, has expanded to include more than 400 nursing facilities, and is expected to benefit thousands of nursing home residents.[72] An evaluation of the program's effectiveness is also planned for 2018. The program uses Civil Money Penalty (CMP) funds, which must be approved by the CMS,[73] to pay for implementing the program, based on its alignment with the goal of reducing the use of antipsychotic medications while improving the quality of care provided to residents with Alzheimer's and other related dementias, according to HHSC.[74] The Music and Memory program is one example of an alternative, non-pharmaceutical approach that can be made available to who are working with residents with dementia and seeking ways to improve their quality of life.

HHSC also does quality monitoring and technical assistance to nursing facilities throughout the state. Teams that include nurses, pharmacists and dieticians conduct on-site visits to evaluate and assist facilities in many areas, including the appropriateness of anti-psychotic drug use and the care of residents with dementia. [75]

While not directly aimed at reducing inappropriate restraint, the department has other initiatives that may encourage a culture of care. For instance, HHSC has developed its "Snapshot on Aging and Dementia Curriculum," designed for high school student who are studying health occupations or who may volunteer with older adults. The curriculum teaches students about interacting with and caring for older adults, including those with specific

[72] https://hhs.texas.gov/about-hhs/communications-events/news/2017/03/music-memory-roll-out-more-nursing-homes
[73] https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/LTC-CMP-Reinvestment.html
[74] https://www.dads.state.tx.us/providers/Forum/issue14/musicandmemory.html
[75] https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/nursing-facilities-nf/quality-monitoring-program-qmp

conditions like Alzheimer's disease. Its goals include dispelling myths about aging, and highlighting positive relationships with older adults.[76]

Financial Considerations

Stakeholders continue to cite the need for additional staffing and training of nursing homes to support reduction of chemical restraint. However, some are also skeptical that nursing homes operating under a for-profit cost model will be willing to hire and properly train staff without associated financial incentives or the threat of disincentives in the form of penalties or legal settlements. Medicaid funds an estimated 85 percent[77] of the state's nursing home facilities, and the state sets Medicaid reimbursement rates. It has been reported that there is a significant gap between the amount Medicaid reimburses and actual facility costs, causing nursing homes to lose money on many of their patients, and potentially encouraging them to "cut corners" on quality of care. Legislative or state agency action would be needed to increase these rates. Efforts by legislators in the 85th session to garner additional federal funds to help close this gap did not succeed.

Recommendations

Based on our research and the insight provided to us by the stakeholders who participated in this environmental scan, we recommend the following steps and strategies to reduce the inappropriate chemical restraint of older adults, especially those being cared for in nursing homes.

- Continue to evaluate and explore strategies to identify, acknowledge and provide rewards or incentives to nursing homes and other eldercare settings that have eliminated off-label use of anti-psychotic drugs for residents, especially those with dementia. Assessment of QIPP results will provide essential data on whether financial incentives make a difference.
- Advocate for specific penalties for facilities reporting high levels of inappropriate anti-psychotic drug use, and high levels of chemical or physical restraint in general.
- Support legislation that gives family members and residents the right to sue when informed consent and related laws are violated.
- Continue public awareness campaigns on the dangers of using the black-box anti-psychotic drugs inappropriately and on the data that is available on nursing homes measuring their use of anti-psychotic drugs.
- Provide additional, continued training and other support for the more time and labor-intensive alternative interventions that help residents with dementia cope and thrive, the Music and Memory program being one example.

[76] https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/nursing-facilities-nf/quality-monitoring-program-qmp/resources/bridging-intergenerational-gaps

[77] https://communityimpact.com/houston/cy-fair/healthcare/2017/03/30/bill-aims-to-earn-texas-nursing-homes-more-federal-medicaid-funding/

- Explore rule revisions in nursing facilities around managing behavioral health needs of people exhibiting behavioral and psychological symptoms of dementia and the application of restraint or seclusion, as well as use of anti-psychotic medications. Comparisons with other programs such as the Home and Community-based Services waiver program for people with intellectual and developmental disabilities may offer some examples of clearer guidance and better policy.

Overarching Findings

There are a number of issues that arose as recurring themes across systems through the completion of the environmental scan:

- There have been at least some successes achieved in every system to reduce use of seclusion and restraint practices. The degree of these successes and the level of remaining work to do varies somewhat, but generally, there has been some progress made on at least some level in every system but there is still significantly more work to do.
- Some of the successes Texas has seen to date have been legislative. Although legislative changes are important, legislative changes alone will not make a difference. It is critical that advocates and stakeholders develop and support plans for effective policy implementation following legislative successes.
- The goal of this work is not to completely eliminate the use of seclusion and restraint practices. All stakeholders who were interviewed suggested that there may be times at which seclusion or restraint may be appropriate, but that those occasions are few and these practices are vastly over-used currently.
- Reduction of seclusion and restraint practices is a human rights issue and achieving it will require a commitment to treating people with dignity and respect. Stakeholders overwhelmingly indicated that seclusion and restraint cannot effectively be reduced without more public awareness, training, and education in regard to helping direct care and front line staff, as well as the general public, to understand trauma, mental illness, and disabilities, and the impact that they have on the individuals who experience them.
- The quality of direct care or front line staff is a major issue in every system. These professionals are nearly universally underpaid, which makes it difficult for agencies and programs to recruit and retain talent. Additionally, direct care and front line staff need more training, especially on topics including preventing behaviors from escalating to the point at which a seclusion or restraint may be perceived to be needed. It is difficult for agencies and programs to provide consistent and quality training due to a continually severe budget climate. The turnover associated with many direct care and front line positions across systems makes the provision of consistent and quality training even more difficult.
- Training and other resources to support reduction of seclusion and restraint tend to be more available in urban areas than in rural areas. Additionally, programs in urban areas

may be better-resourced in general. This suggests that in many systems, seclusion and restraint practices may be utilized more often in rural areas and there may be more work left to do to reduce use of these practices in rural areas.

- There are major challenges in regard to data and transparency. Some systems are collecting more and better data than others, in regard to use of seclusion and restraint, and these systems may be able to be models for systems across the board. Even where substantial data is collected, however, state agencies generally do not appear to be analyzing the data, making it available to the public, and most importantly, using the data to facilitate continuous quality improvement in the area of reducing use of seclusion and restraint.
- Additionally, using data to assess program quality and compare across programs is a complicated topic. First, it is difficult to ensure that providers are reporting data accurately and fairly. Second, issues such as determining whether a seclusion or restraint is used for punitive or safety purposes may be subjective and complex. Third, given that stakeholders acknowledge there may be occasions in which use of seclusion and restraint are warranted, some providers feel strongly that comparisons drawn across programs should take the characteristics of specific clients served into account, as some programs serve more challenging clients than others.

There were also overarching findings in regard to the Seclusion and Restraint Reduction Leadership Group and the future of this work:

- The Hogg Foundation has played an instrumental role in initiating, facilitating, and supporting many of the successes that have been achieved to date to reduce use of seclusion and restraint.
- Although there are many organizations that are engaged in efforts to reduce use of seclusion or restraint in a specific system, there are very few, if any, interdisciplinary efforts focused on reducing use of seclusion and restraint across systems, outside of the Leadership Group.
- An interdisciplinary approach is critical to this work, as it requires effective legislative advocacy, policy advocacy, and policy implementation. Critical to policy implementation is the provision of training, technical assistance, and/or consultation. Additionally, data collection and analysis is required in order to understand what is happening on the ground, assess progress, and facilitate continuous quality improvement.
- A cross-systems approach to this work is also critical. Stakeholders repeatedly pointed out that individuals do not live their lives within just one system. For example, a young person who is in foster care may also attend a public school, have a disability, and be involved with the juvenile justice system. He or she may have a parent who is incarcerated and who has a mental illness. Systems must be able to work together in order to understand the overall impact of seclusion and restraint on the clients they serve. Additionally, there is potential for systems to learn from one other and to collaborate, such as by sending their direct care or front line staff to shared training events.

- There are many players doing valuable work in the area of seclusion and restraint reduction in Texas but they are generally working somewhat independently and are not necessarily part of a larger effort. For example, a number of advocacy organizations employ policy staff who have been working to reduces seclusion or restraint in a specific system, among other projects in that system. Many of these individuals were not previously aware of the Leadership Group but may be interested in participating moving forward.

Recommendations

The following recommendations were developed to further reduction of seclusion and restraint practices in Texas, based on the findings from this environmental scan.

- Increase commitment to protecting human rights and treating people with dignity and respect. There must be a high level of commitment to these values at all levels of government. Increased public awareness of trauma, mental illness, and disabilities and the impact they have on the individuals who experience them may help generate more commitment in this area.
- Increase investment in the state human services, criminal justice, and education systems. Adequate funding is required in order to hire and retain qualified staff, train staff appropriately, and effectively monitor program safety and quality.
- Provide training to equip professionals across systems with a higher understanding of trauma and human behavior. Also provide training to equip these professionals with an improved understanding of needs, desires, and experience of people who have disabilities.
- In order to be most effective, tailor training to each individual system, ensure that it is accessible in rural areas, and evaluate it regularly.
- Align training standards within and across systems.
- Strengthen data collection, analysis, and transparency regarding use of seclusion and restraint practices in all systems.
- Explore opportunities to build on the state's Quality Incentive Payment Program, which provides incentives for nursing homes that reduce their use of chemical restraint and may serve as a good example for an incentive program for other systems. Providers suggest that they will respond well to incentives and opportunities for recognition for reducing use of seclusion and restraint. This is important because stakeholders report that it is often more difficult to secure buy-in and participation from private programs than from public programs.
- Engage in legislative advocacy to strengthen state laws and standards that limit use of seclusion and restraint practices. This work may be especially needed in the area of public education.
- Develop and support effective plans for policy implementation to follow up on legislative advocacy successes. As discussed above, thorough plans for policy implementation are critical to the success of any legislative efforts. For example,

training and technical assistance are critical because without viable alternatives to seclusion and restraint or support with organizational culture change, organizations will find ways to work around the law. Monitoring and accountability measures are also critical for effective policy implementation.

- Utilize a strengths-based and constructive approach when working with programs and systems to reduce use of seclusion and restraint. This includes equipping programs with tools that are more acceptable and recognizing those that have created trauma informed cultures in which seclusion and restraint are rare. It also includes using strategies, such as debriefing, to identify what staff are doing right rather just than what they are doing wrong.
- Continue to facilitate and grow the Leadership Group, but using a new format that better supports and strengthens the many disjointed efforts stakeholders are engaged in across Texas to reduce use of seclusion and restraint practices. TNOYS suggests accomplishing this through a format that involves quarterly events, rather than meetings, that are focused on the sharing of information and opportunities, rather than on advancing internal Leadership Group projects, for which there has not historically been necessary capacity to complete.