

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR SUBSTITUTE FOR HOUSE
BILL NO. 2170**

As Agreed to May 7, 2015

Brief*

Senate Sub. for Sub. for HB 2170 would create the Freedom from Unsafe Restraint and Seclusion Act (Act), regarding the use of seclusion and restraint of students in the school setting. The bill would define key terms; address the use of emergency safety intervention (ESI); require notification and documentation of the use of ESI; provide a process for a parent to file complaints through the local dispute resolution process and the State Board of Education (Board) complaint process; require the Kansas Department of Education (Department) to collect data on the use of ESI; require the Board to adopt rules and regulations necessary to implement the Act; and establish the ESI Task Force.

Definitions

The bill would define key terms, including:

- “Emergency safety intervention” would mean the use of seclusion or physical restraint;
- “Physical restraint” would mean bodily force used to substantially limit a student’s movement, but would not include consensual, solicited, or

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unintentional contact or contact to provide comfort, assistance, or instruction;

- “School” would mean any learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school that receives public funding or is under the regulatory authority of the Department; and
- “Seclusion” would mean the student was:
 - Placed in an enclosed area by school personnel;
 - Purposefully isolated from adults and peers; and
 - Prevented from leaving, or the student reasonably believes he or she will be prevented from leaving, the enclosed area.

Use of ESI

The bill would allow for the use of ESI only if a student presents a reasonable and immediate danger of physical harm to self or others with the present ability to effect such physical harm. ESI used for discipline, punishment, or the convenience of a school employee would not meet the standard of immediate danger of physical harm, however. Further, the bill would specify the school employee witnessing the student’s behavior must determine whether less restrictive alternatives to ESI, such as positive behavior interventions support, are inappropriate or ineffective prior to the use of ESI. The use of ESI would be required to cease as soon as the immediate danger of physical harm ceases to exist. Violent action that is destructive of property may necessitate the use of ESI.

Use of Seclusion

The bill would prohibit the use of seclusion if the student is known to have a medical condition that could put the student in mental or physical danger as a result of seclusion. Such medical condition would be required to be indicated by the student's licensed health care provider in a written statement, with a copy provided to the school and placed in the student's file.

The bill would require school personnel be able to see and hear the student in seclusion at all times. Seclusion rooms equipped with a locking door would require a lock that automatically disengages when the school employee viewing the student walks away from the seclusion room, or in cases of emergency, such as fire or severe weather. A seclusion room would be required to be a safe place with proportional and similar characteristics as other rooms frequented by students, free of any condition that would endanger the student, and well-ventilated and sufficiently lit.

Documented Use of ESI

When a student is subjected to ESI, the bill would require the school to notify the parent, or if a parent cannot be notified, an emergency contact person for such student the same day ESI was used. Further, the bill would require documentation of ESI used to be completed and provided to the parent no later than the school day following the day on which ESI was used. After the first incident in which ESI is used during the school year, the parent also would be given:

- A copy of the standards for the use of restraint and seclusion;
- A flier regarding parent's rights;

- Information on the parent's right to file a complaint through the local dispute resolution process and the complaint process of the Board; and
- Information to help navigate the complaint process, including contact information for the parent training and information center and protection and advocacy system.

On the first occurrence of an incident involving the use of ESI, the bill would require the information be provided in printed form. After each subsequent incident that occurs during the school year, the full website address containing the information would be provided.

Parental Appeal Rights

If a parent believes ESI was used in violation of the Act, rules and regulations adopted pursuant to the Act, or policies of the school district, a parent could file a complaint through the local dispute resolution process within 30 days of being informed of the use of ESI. Within 30 days of the final decision from the local dispute resolution process, parents could file a complaint under the Board complaint process.

Data Reporting on Use of ESI

The bill would require the Department to compile reports from schools on the use of ESI and provide the results based on aggregate data on the Department website and to the Governor and the Committees on Education in each chamber by January 20, 2016, and annually thereafter. The reported results would be required to include, at a minimum:

- The number of incidents in which ESI was used on students who have an individual education plan (IEP);

- The number of incidents in which ESI was used on students who have a section 504 plan;
- The number of incidents in which ESI was used on students who do not have an IEP or a section 504 plan;
- The total number of incidents in which ESI was used on students;
- The total number of students with behavior intervention plans subjected to ESI;
- The number of students physically restrained;
- The number of students placed in seclusion;
- The maximum and median number of minutes a student was placed in seclusion;
- The maximum number of incidents in which ESI was used on a student;
- All of the information reported above aggregated by age and ethnicity of the students on a statewide basis;
- To the extent possible, the information reported by the school on the number of incidents in which ESI was used on students with an IEP, a section 504 plan, or neither; and
- Such other information as the Department deems necessary to report.

Third Use of ESI

If there is a third incident involving the use of ESI within a school year on a student who has an IEP or a section 504 plan, the bill would require such student's IEP team or section

504 plan team to meet within ten days of the incident to discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan, or amend either if already in existence, unless the team has agreed on a different process.

If there is a third incident using ESI on a student without an IEP or section 504 plan, the bill would require a meeting to be conducted within ten days of the incident to discuss the incident and consider the appropriateness of a referral for an evaluation under the Special Education for Exceptional Children Act; the need for a functional behavioral analysis; or the need for a behavior intervention plan. The meeting would involve the parent, an administrator for the school the student attends, one of the student's teachers, a school employee involved in the incident, and such other employees designated by the administrator as appropriate for the meeting. The student also would be invited to the meeting. If the parent of the student is unable to attend within the ten-day limit, the time for calling the meeting would be extended.

The bill specifies this section should not be construed to limit similar actions prior to the occurrence of a third incident.

Rules and Regulations Authority

The bill would require the Board to adopt rules and regulations necessary to implement the provisions of the Act on or before March 1, 2016. The rules and regulations would be required to include, but not be limited to, the standards for the use and reporting of ESI.

Creation of the ESI Task Force

The bill would establish the ESI Task Force (Task Force), which would be charged with studying and reviewing the use of ESI and preparing a report on its findings and recommendations concerning the use of ESI. The report

would be submitted to the Governor and the Legislature on or before January 20, 2016. The 17-member task force would be appointed as follows:

- Two members appointed by the Board, one of which must be a Board member and the other, a Department attorney;
- Two members appointed by the Disability Rights Center of Kansas;
- Two members appointed by Families Together, Inc., one of which must be a parent of a child with a disability;
- Two members appointed by Keys for Networking, Inc., one of which must be a parent of a child with a disability;
- Two members appointed by the Special Education Advisory Council;
- Two members appointed by the Kansas Association of Special Education Administrators (KASEA);
- Two members appointed by the executive director of the Kansas Council on Developmental Disabilities, one of which must be a parent of a child with a disability;
- Two members appointed by the Kansas Association of School Boards (KASB), one of which must be a KASB attorney; and
- One member appointed by the Center for Child Health and Development of the University of Kansas Medical Center, who must be a person licensed to practice medicine and surgery in Kansas and is a practicing physician with experience treating children with disabilities, but

who is not a staff member of the Center for Child Health and Development of the University of Kansas Medical Center.

The appointed Board member would call an organizational meeting on or before August 1, 2015. At such meeting, the members would elect a chairperson and vice-chairperson from the membership of the Task Force and consider dates for future meetings, the agenda for such meetings, and the need for electing a facilitator to assist in discussions among the members of the Task Force. The Task Force could meet at any time and place within Kansas on the call of the Chairperson. All Task Force action would be by motion adopted by a majority of those members present when there is a quorum, which would be eight members. If approved by the Legislative Coordinating Council, members would be paid for expenses, mileage, and subsistence.

Sunset

The provisions of the bill would expire on June 30, 2018.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill, and further agreed to:

- Clarify language regarding the possible use of ESI in the case of violent action that is destructive of property;

- Prohibit seclusion of a student known to have a medical condition that could put the student in mental or physical danger as a result of seclusion, as indicated in a written statement from the student's licensed health care provider, with a copy provided to the school and placed in the student's file;
- Require the information provided to a parent on the first occurrence of an incident involving the use of ESI be in printed form, and a full website address containing the information be provided on the second and subsequent incidents;
- Clarify the parent's right to file a complaint through the local dispute process when the parent believes ESI was used in violation of the Act, rules and regulations adopted pursuant to the Act, or policies of the school district;
- Add to the required reporting data the number of ESI incidents with students who have a section 504 plan; the number of ESI incidents with students who do not have an ESI or a section 504 plan; the total number of students with behavior intervention plans subjected to ESI; the number of students physically restrained; the number of students placed in seclusion; information reported by the school for the number of incidents of ESI use on students with an IEP, a section 504 plan, and neither, to the extent possible; and aggregated statewide information for all specifically required reporting data by age and ethnicity of the students;
- Require rules and regulations necessary to implement the provisions of the Act to be adopted by March 1, 2016, instead of January 1, 2016, and require the rules and regulations to include, but not be limited to, the standards for the use and reporting of ESI;

- Expand the ESI Task Force to 17 members to include 2 members appointed by the executive director of the Kansas Council on Developmental Disability, one of whom would be a parent of a child with a disability;
- Require the Task Force member appointed by the Center for Child Health and Development of the University of Kansas Medical Center to be a person licensed to practice medicine and surgery in the state and be a practicing physician with experience treating children with disabilities, but not be a staff member of the Center for Child Health and Development of the University of Kansas Medical Center;
- Change the expiration date of the provisions of the bill to June 30, 2018; and
- Change the effective date to publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Children and Seniors at the request of Representative Kiegerl. At the House Committee hearing on the original bill, testimony in support of the bill was provided by Representative Rubin; representatives of the Big Tent Coalition, the Coalition to Protect Children Against Unnecessary Seclusion and Restraint, and the Down Syndrome Guild of Greater Kansas City; and several private individuals. The proponents generally testified the bill was necessary to protect the physical and mental well-being and safety of disabled children. The proponents noted the bill would add necessary protections for students and establish accountability for all school districts throughout the state and stated current regulations and practices were not sufficient. Several parent proponents provided personal accounts of

their children being improperly secluded or restrained in school.

Written testimony in favor of the bill was provided by representatives of the Association of Community Mental Health Centers of Kansas, Autism Society - The Heartland, the Disability Rights Center of Kansas, Easter Seals Capper Foundation, InterHab, the Kansas Association of Centers for Independent Living, the Kansas Council on Developmental Disabilities, the Kansas Mental Health Coalition, the National Alliance on Mental Illness Kansas, Skills to Succeed, and The Arc of Douglas County, and by several private individuals.

A representative of KASB provided neutral testimony, noting sections of the bill KASB supported and opposed and providing a detailed analysis of the bill.

Representatives of the KASEA and Topeka USD 501 Public Schools testified in opposition of the bill, as introduced. Written testimony in opposition of the bill was provided by a representative of Atchison Public Schools and a private individual. Opponents recognized the recent efforts and progress in the area of regulating seclusion and restraint by the Board and the Department and noted there were regulations and enforceable standards in place or in development.

The bill hearing was continued, at which time a substitute bill was presented. Representatives of the Department and the Board testified at the hearing in opposition to the original and substitute bills, detailing their recent efforts to address concerns related to seclusion and restraint. The representative of the Department provided copies of regulations effective April 19, 2013, and proposed Department regulations regarding ESI recently submitted to the Department of Administration and the Office of the Attorney General for review. The representative of the Department discussed the difficulties and delays with the approval of the proposed regulations that would be created with passage of the bill. A parent also testified at the request

of the Committee and stated she felt current efforts by the Department and the Board were not sufficient. No other testimony was provided on the substitute bill.

The House Committee recommended a substitute bill to address concerns identified during discussion on the bill. One change included in the substitute bill would be its application to all students; the original bill would have applied only to children with disabilities.

The House Committee of the Whole amended the bill to remove an instance of a standard repeated in the bill and to establish a date certain for the adoption of rules and regulations creating an independent complaint process.

In the Senate Education Committee, a representative of the Coalition to Protect Children Against Unnecessary Seclusion and Restraint and several private individuals appeared in support of the bill. Written testimony in support of the bill was provided by numerous private individuals and representatives of the Alliance for Childhood Education; The Arc of Douglas County; Autism Society – The Heartland; Autism Speaks; Association of Community Mental Health Centers; Big Tent Coalition of Kansas; Center for Child Health & Development, KU Medical Center; Disability Rights Center of Kansas; Down Syndrome Guild of Greater Kansas City; Easter Seals Capper Foundation; Inclusion Connections, Inc.; InterHab; Johnson County Developmental Supports; Kansas Appleseed; Kansas Association of Centers for Independent Living; Kansas Council on Developmental Disabilities; Kansas Developmental Disabilities Coalition; Kansas Mental Health Coalition; Kansas Governor's Commission on Autism; Keys for Networking; the National Alliance on Mental Illness; Protection and Advocacy for Individuals with Mental Illness Advisory Council; Puzzle Piece Ranch; Self Advocate Coalition of Kansas; Shawnee Mission Special Education PTA; Skills to Succeed; Topeka Independent Living Resource Center; and the University of Kansas Center on Developmental Disabilities.

Opponent testimony was provided by representatives of the Board, the Department's Special Education Advocacy Council; the High Plains Educational Coop; the KASEA; the Northwest Kansas Educational Service Center; and the Blue Valley, Gardner, Kaw Valley, and Wichita school districts.

Neutral testimony was provided by representatives of KASB and Kansas City, Kansas, Public Schools.

The Senate Committee adopted a substitute bill with many of the same provisions as Sub. for HB 2170. Substantive changes in the Senate's substitute include classifying all seclusion and restraints as ESI; amending when use of ESI is appropriate; removing provisions specific to use of physical restraint, including use of physical restraint when a student is involved in an altercation; modifying notification and data reporting requirements; adding provisions applicable after the third use of ESI on a student; modifying the Board's obligation to adopt rules and regulations; establishing the ESI Task Force; and adding a June 30, 2017, sunset.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Department indicates the agency currently is in the process of implementing the physical restraint and seclusion room policies outlined in the original bill and would require no additional expenditures to implement it. A fiscal note on the substitute bill was not available.

Freedom from Unsafe Restraint and Seclusion Act; students; schools; emergency safety intervention; Emergency Safety Intervention Task Force; dispute resolution; complaint process

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