

**Senate Substitute for Substitute for
HOUSE BILL No. 2170**

By Committee on Education

3-19

1 AN ACT concerning schools; creating the freedom from unsafe restraint
2 and seclusion act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 8, and amendments thereto, shall be
6 known and may be cited as the freedom from unsafe restraint and
7 seclusion act.

8 Sec. 2. As used in sections 1 through 7, and amendments thereto:

9 (a) "Department" means the state department of education.

10 (b) "Emergency safety intervention" means the use of seclusion or
11 physical restraint.

12 (c) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a
13 person acting as a parent as defined in K.S.A. 72-1046(d)(2), and
14 amendments thereto; (4) a legal guardian; (5) an education advocate for a
15 student with an exceptionality; (6) a foster parent, unless the student is a
16 child with an exceptionality; or (7) a student who has reached the age of
17 majority or is an emancipated minor.

18 (d) "Physical restraint" means bodily force used to substantially limit
19 a student's movement, except that consensual, solicited or unintentional
20 contact and contact to provide comfort, assistance or instruction shall not
21 be deemed to be physical restraint.

22 (e) "School" means any learning environment, including any
23 nonprofit institutional day or residential school or accredited nonpublic
24 school, that receives public funding or which is subject to the regulatory
25 authority of the state board of education.

26 (f) "Seclusion" means placement of a student in a location where all
27 the following conditions are met:

28 (1) The student is placed in an enclosed area by school personnel;

29 (2) the student is purposefully isolated from adults and peers; and

30 (3) the student is prevented from leaving, or the student reasonably
31 believes that such student will be prevented from leaving, the enclosed
32 area.

33 Sec. 3. (a) Emergency safety interventions shall be used only when a
34 student presents a reasonable and immediate danger of physical harm to
35 such student or others with the present ability to effect such physical harm.

1 Less restrictive alternatives to emergency safety interventions, such as
2 positive behavior interventions support, shall be deemed inappropriate or
3 ineffective under the circumstances by the school employee witnessing the
4 student's behavior prior to the use of any emergency safety interventions.
5 The use of emergency safety interventions shall cease as soon as the
6 immediate danger of physical harm ceases to exist. Action that is
7 destructive of property may necessitate the use of an emergency safety
8 intervention. Use of an emergency safety intervention for purposes of
9 discipline, punishment or for the convenience of a school employee shall
10 not meet the standard of immediate danger of physical harm.

11 (b) The individualized education program team for a student shall
12 consider any information from a licensed health care provider with regard
13 to the use of seclusion on such student if the student is known to have a
14 medical condition that could put the student in mental or physical danger
15 as a result of seclusion. The existence of such medical condition must be
16 indicated in a written statement from the student's licensed health care
17 provider, a copy of which has been provided to the school and placed in
18 the student's file.

19 (c) When a student is placed in seclusion, a school employee shall be
20 able to see and hear the student at all times.

21 (d) All seclusion rooms equipped with a locking door shall be
22 designed to ensure that the lock automatically disengages when the school
23 employee viewing the student walks away from the seclusion room, or in
24 cases of emergency, such as fire or severe weather.

25 (e) A seclusion room shall be a safe place with proportional and
26 similar characteristics as other rooms where students frequent. Such room
27 shall be free of any condition that could be a danger to the student, and
28 shall be well-ventilated and sufficiently lighted.

29 Sec. 4. (a) When a student is subjected to an emergency safety
30 intervention, the school shall notify the parent, or if a parent cannot be
31 notified, then shall notify an emergency contact person for such student,
32 the same day the emergency safety intervention was used. Documentation
33 of the emergency safety interventions used shall be completed and
34 provided to the parent no later than the school day following the day on
35 which the emergency safety intervention was used. The parent shall be
36 provided the following information after the first incident in which an
37 emergency safety intervention is used during the school year, and may be
38 provided such information after each subsequent incident that occurs
39 during the school year: (1) A copy of the standards of when emergency
40 safety interventions can be used; (2) a flyer on the parent's rights; (3)
41 information on the parent's right to file a complaint through the local
42 dispute resolution process and the complaint process of the state board of
43 education; and (4) information that will assist the parent in navigating the

1 complaint process, including contact information for the parent training
2 and information center and protection and advocacy system. The parent
3 may be provided the foregoing information in printed form or may be
4 provided with a website address containing such information.

5 (b) If a parent believes emergency safety interventions have been
6 used in violation of this act, then within 30 days from being informed of
7 the use of emergency safety intervention, such parent may file a complaint
8 through the local dispute resolution process. A parent may file a complaint
9 under the state board of education complaint process within 30 days from
10 the date a final decision is issued pursuant to the local dispute resolution
11 process.

12 (c) The department shall compile reports from schools on the use of
13 emergency safety interventions and provide the results based on aggregate
14 data on the department website, and to the governor and the committees on
15 education in the senate and the house of representatives by January 20,
16 2016, and annually thereafter. The department's reported results shall
17 include, but shall not be limited to, the following information:

18 (1) The number of incidents in which emergency safety interventions
19 were used on students who have an individualized education program;

20 (2) the number of incidents in which emergency safety interventions
21 were used on students who do not have an individualized education
22 program;

23 (3) the total number of incidents in which emergency safety
24 interventions were used on students;

25 (4) the maximum and median number of minutes a student was
26 placed in seclusion;

27 (5) the maximum number of incidents in which emergency safety
28 interventions were used on a student; and

29 (6) such other information as the department deems necessary to
30 report.

31 Sec. 5. (a) If there is a third incident involving the use of emergency
32 safety interventions within a school year on a student who has an
33 individualized education program or a section 504 plan, then such student's
34 individualized education program team or section 504 plan team shall
35 meet within 10 days after such third incident to discuss the incident and
36 consider the need to conduct a functional behavioral analysis, develop a
37 behavior intervention plan or amend either if already in existence, unless
38 the individualized education program team or the section 504 plan team
39 has agreed on a different process.

40 (b) If there is a third incident involving the use of emergency safety
41 interventions within a school year on a student who is not described in
42 subsection (a), then a meeting between such student's parent and school
43 employees shall be conducted within 10 days after such third incident to

1 discuss the incident and consider the appropriateness of a referral for an
2 evaluation under the special education for exceptional children act, K.S.A.
3 72-961 et seq., and amendments thereto, the need for a functional
4 behavioral analysis or the need for a behavior intervention plan. Any
5 meeting called pursuant to this subsection shall include the student's
6 parent, a school administrator for the school where the student attends, one
7 of the student's teachers, a school employee involved in the incident and
8 such other school employees designated by the school administrator as
9 appropriate for such meeting.

10 (c) The student shall be invited to any meeting called pursuant to this
11 section.

12 (d) The time for calling a meeting pursuant to this section shall be
13 extended beyond the 10-day limit if the parent of the student is unable to
14 attend within that time period.

15 (e) Nothing in this section shall be construed to prohibit the
16 development and implementation of a functional behavioral analysis or a
17 behavior intervention plan for any student if such student may benefit from
18 such measures but has had less than three incidents involving emergency
19 safety interventions within a school year.

20 Sec. 6. The state board of education shall adopt rules and regulations
21 as necessary to implement the provisions of this act on or before January
22 1, 2016.

23 Sec. 7. (a) There is hereby established the emergency safety
24 intervention task force. The task force shall consist of the 15 members
25 appointed as follows:

26 (1) Two members shall be appointed by the state board of education,
27 one of which shall be a member of the state board of education and one of
28 which shall be an attorney for the department;

29 (2) two members shall be appointed by the disability rights center of
30 Kansas;

31 (3) two members shall be appointed by families together inc., one of
32 which shall be a parent of a child with a disability;

33 (4) two members shall be appointed by keys for networking, inc., one
34 of which shall be a parent of a child with a disability;

35 (5) two members shall be appointed by the special education advisory
36 council;

37 (6) two members shall be appointed by the Kansas association of
38 special education administrators;

39 (7) two members shall be appointed by the Kansas association of
40 school boards, one of which shall be an attorney for the association; and

41 (8) one member shall be appointed by the Kansas medical society,
42 who shall be a person licensed to practice medicine and surgery in Kansas.

43 (b) The emergency safety intervention task force shall study and

1 review the use of emergency safety interventions and prepare a report on
2 its findings and recommendations concerning the use of such
3 interventions. The task force's report shall be submitted to the governor
4 and the legislature on or before January 20, 2016.

5 (c) The member of the task force who is also a member of the state
6 board of education shall call an organizational meeting of the task force on
7 or before August 1, 2015. At such organizational meeting the members
8 shall elect a chairperson and vice-chairperson from the membership of the
9 task force. The task force also shall consider dates for future meetings, the
10 agenda for such meetings and the need for electing a facilitator to assist in
11 discussions among the members of the task force.

12 (d) The task force may meet at any time and at any place within the
13 state on the call of the chairperson. A quorum of the task force shall be
14 eight members. All actions of the task force shall be by motion adopted by
15 a majority of those members present when there is a quorum.

16 (e) If approved by the legislative coordinating council, members of
17 the task force attending meetings authorized by the task force shall be paid
18 amounts for expenses, mileage and subsistence as provided in K.S.A. 75-
19 3223(e), and amendments thereto.

20 Sec. 8. The provisions of sections 1 through 8, and amendments
21 thereto, shall expire on June 30, 2017.

22 Sec. 9. This act shall take effect and be in force from and after its
23 publication in the statute book.