

**Substitute for HOUSE BILL No. 2170**

By Committee on Children and Seniors

2-19

1 AN ACT concerning schools and school districts; relating to seclusion and  
2 restraint of pupils.

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

5 Section 1. Sections 1 through 5, 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 this statute, the following terms shall have the  
9 meanings specified herein:

10 (a) "Altercation" means a fight involving a student. Any student  
11 possessing a weapon in such a manner as to pose an immediate danger also  
12 qualifies as an altercation.

13 (b) "Chemical restraint" means the use of medication to control a  
14 student's violent physical behavior or restrict a student's freedom of  
15 movement.

16 (c) "District" means a school district organized under the laws of this  
17 state that is maintaining a public school for a school term pursuant to  
18 K.S.A. 72-1106, and amendments thereto. This term shall include the  
19 governing body of any accredited nonpublic school.

20 (d) "Department" means the state department of education.

21 (e) "Emergency safety intervention" means the use of seclusion or  
22 physical restraint when a student presents an immediate danger to himself  
23 or others. Violent action that is destructive of property may necessitate the  
24 use of an emergency safety intervention if the property destruction poses  
25 an immediate danger. Use of an emergency safety intervention for  
26 purposes of discipline, punishment or for the convenience of a school  
27 employee shall not meet the standard of immediate danger.

28 (f) "Immediate danger" means an immediate and impending threat of  
29 a student causing serious physical harm to himself or others.

30 (g) "Mechanical restraint" means any device or object used to limit a  
31 student's movement.

32 (h) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a  
33 person acting as a parent as defined in K.S.A. 72-1046(d)(2); (4) a legal  
34 guardian; (5) an education advocate for a student with an exceptionality;  
35 (6) a foster parent, unless the student is a child with an exceptionality; or  
36 (7) a student who has reached the age of majority or is an emancipated

1 minor.

2 (i) "Physical escort" means the temporary touching or holding of the  
3 hand, wrist, arm, shoulder, or back of a student who is acting out for the  
4 purpose of inducing the student to walk to a safe location.

5 (j) "Physical restraint" means bodily force used to substantially limit  
6 a student's movement, except that consensual, solicited or unintentional  
7 contact and contact to provide comfort, assistance or instruction shall not  
8 be deemed to be physical restraint.

9 (k) "School" means any learning environment, including any  
10 nonprofit institutional day or residential school and any accredited  
11 nonpublic school, that receives public funding or over which the Kansas  
12 state department of education has regulatory authority.

13 (l) "Seclusion," when used with a student, means that all the  
14 following conditions are met:

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

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

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

19 (m) "Time-out" means a behavioral intervention in which a student is  
20 temporarily removed from a learning activity without being confined.

21 Sec. 3. (a) The use of prone, or face down, physical restraint on a  
22 student, supine, or face up, physical restraint on a student; physical  
23 restraint that obstructs the airway of a student; or any physical restraint  
24 that impacts a student's primary mode of communication is prohibited.

25 (b) The use of chemical restraint on a student is prohibited, except as  
26 prescribed treatments for a student's medical or psychiatric condition by a  
27 person appropriately licensed to issue such treatments.

28 (c) The use of mechanical restraints on a student is prohibited, except  
29 those protective or stabilizing devices either ordered by a person  
30 appropriately licensed to issue the order for the device or required by law,  
31 any device used by a law enforcement officer in carrying out law  
32 enforcement duties, and seatbelts and any other safety equipment when  
33 used to secure the student during transportation.

34 (d) Emergency safety intervention shall be used only if a student's  
35 behavior creates an immediate and impending threat of causing serious  
36 physical harm to himself or others. Violent action that is destructive of  
37 property may necessitate the use of an emergency safety intervention if the  
38 property destruction poses an immediate danger. Use of an emergency  
39 safety intervention for purposes of discipline, punishment or for the  
40 convenience of a school employee shall not meet the standard of  
41 immediate danger. However, if the student is involved in an altercation,  
42 then physical restraint may still be used even if the immediate danger  
43 standard is not met.

1 (e) A student shall not be subjected to an emergency safety  
2 intervention except by a school employee who has been trained in the  
3 appropriate use of emergency safety interventions, consistent with  
4 nationally recognized training programs. This training requirement shall  
5 not apply if the student is involved in an altercation.

6 (f) A student shall not be subjected to seclusion if the student is  
7 known to have a medical condition that could put the student in mental or  
8 physical danger as a result of seclusion. The existence of such  
9 medical condition must be indicated in a written statement from the  
10 student's licensed health care provider, a copy of which has been provided  
11 to the school and placed in the student's file.

12 ~~(g) A student shall not be subjected to seclusion if the student is~~  
13 ~~known to have a medical condition that a licensed health care provider has~~  
14 ~~indicated, in a written statement that is provided to the school and that is~~  
15 ~~on file with the school, which precludes this action.~~

16 ~~(h) {(g)}~~ While in a seclusion, school personnel must be able to see  
17 and hear the student at all times.

18 ~~(i) {(h)}~~ All seclusion rooms equipped with a locking door shall  
19 ensure that the lock automatically disengages when the teacher or  
20 attendant viewing the student walks away from the seclusion room, or in  
21 cases of emergency, such as fire or severe weather.

22 ~~(j) {(i)}~~ If a school uses a seclusion room, such room will be a safe  
23 place with proportional and similar characteristics as other rooms where  
24 students frequent. It shall be free of any condition that could be a danger to  
25 the student, be well-ventilated and sufficiently lighted.

26 Sec. 4. (a) When any student is subjected to an emergency safety  
27 intervention, the school employee who conducted the emergency safety  
28 intervention, or an employee who witnessed its use, shall document the use  
29 of the seclusion or the physical restraint. The school shall attempt to notify  
30 the parent the same day the emergency safety intervention was used. This  
31 documentation shall be completed and provided to the parent no later than  
32 the school day following the day on which the seclusion or physical  
33 restraint is used. The parent shall be given a copy of the standards of when  
34 restraint and seclusion can be used, a flyer on their rights, including  
35 complaint rights through the local dispute resolution process and the  
36 complaint process of the state board of education, and information that  
37 will help them navigate the complaint process, including contact  
38 information for the parent training and information center and protection  
39 and advocacy system. Parents will also have 30 days from being informed  
40 of the use of emergency safety intervention to file a complaint through the  
41 local dispute resolution process. Parents will have at least 30 days from the  
42 final decision from the local dispute resolution process to file a complaint  
43 under the state board of education complaint process pursuant to section 5,

1 and amendments thereto.

2 (b) Each public school district shall submit information and data on  
3 the use of seclusion and restraint as required by the department. At a  
4 minimum, the department shall collect sufficient information and data to  
5 ensure the patrons, policymakers and the public can gain a clear picture of  
6 the depth and breadth of the use of seclusion and restraint in Kansas  
7 schools. The purpose of the information and data collected is to provide  
8 detailed information so that policymakers can identify trends and  
9 opportunities in order to help reduce the use of seclusion and restraint in  
10 public schools.

11 (c) The department shall compile the reports from the schools and  
12 provide the results to the public, the governor and the committees on  
13 education in the senate and the house of representatives by January 20,  
14 2016, and annually thereafter, and publish any school policy adopted by  
15 the state board of education pursuant to section 5, and amendments  
16 thereto, to ensure uniformity and compliance with this act. In issuing these  
17 reports, the department will ensure that as much information and data as  
18 possible are provided on the use of seclusion and restraint in order to allow  
19 patrons, policymakers and the public to be able to compare the data  
20 regarding the use and incidences between school districts and individual  
21 schools. In compiling the aggregate data, individual student confidentiality  
22 shall be protected in accordance with the family educational rights and  
23 privacy act (FERPA) to ensure that personally identifiable information is  
24 not included.

25 (d) A copy of this policy shall be distributed to each public school  
26 employee at the start of the school year or upon employment.

27 Sec. 5. The state board of education shall adopt rules and regulations  
28 as necessary to implement ~~the provisions of this act including {sections 1~~  
29 **through 4, and amendments thereto. The state board shall also adopt}**  
30 ~~rules and regulations—regarding: {creating an independent complaint~~  
31 **process as set out in subsections (a) through (e) which shall be in effect**  
32 **no later than January 1, 2016.}**(a) A process for a parent to submit a  
33 complaint to the Kansas state department of education alleging that a  
34 public school is violating or has violated a provision of sections 1 through  
35 5, and amendments thereto, or K.A.R. 91-42-1 through 91-42-2, and any  
36 other rules and regulations promulgated regarding emergency safety  
37 interventions. This complaint process to the Kansas state department of  
38 education shall be an option for parents after they have completed the local  
39 dispute resolution process.

40 (b) A process for investigating a complaint submitted under  
41 subsection (a).

42 (c) A process for ensuring that parents and schools are treated equally  
43 in the complaint process.

1       (d) A process for completion of a written report of findings of facts  
2 and conclusions.

3       (e) A process for determining sanctions if a district fails to comply  
4 with identified corrective actions.

5       Sec. 6. This act shall take effect and be in force from and after its  
6 publication in the statute book.