

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2170**

As Amended by House Committee of the Whole

Brief*

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 provide definitions; address the use of restraint, emergency safety intervention, and seclusion; require documentation of the use of emergency safety intervention; 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 seclusion and restraint; and require the Board to adopt rules and regulations necessary to implement Sections 1 through 4 of the bill and also to adopt rules and regulations creating an independent complaint process to be in effect no later than January 1, 2016.

Definitions

Several terms would be defined in the bill, including “department,” “district,” “immediate danger,” “parent,” “physical escort,” and “time-out.” The additional terms that would be defined include these:

- “Altercation” would mean a fight involving a student. Any student possessing a weapon in such a manner as to pose an immediate danger also would be considered an altercation;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Chemical restraint” would refer to the use of medication to control a student’s violent physical behavior or restrict his or her freedom of movement, while “mechanical restraint” would mean any device or object used to limit a student’s movement. “Physical restraint” would mean bodily force used to substantially limit a student’s movement, but would not include consensual, solicited, or unintentional contact or contact to provide comfort, assistance, or instruction;
- “Emergency safety intervention” would mean the use of seclusion or physical restraint when a student presents an immediate danger to self or others;
- “School” would refer to 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 all of the following conditions were imposed on a student:
 - Placement in an enclosed area by school personnel;
 - Purposefully isolated from adults and peers; and
 - Prevented from leaving, or reasonably believes there is prevention from leaving, the enclosed area.

Use of Restraint

The bill would prohibit use of the following physical restraints on students: prone, or face down; supine, or face up; restraint that obstructs the airway; or any physical restraint that impacts a student’s primary mode of

communication. The use of chemical restraint on a student would be prohibited, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue such treatments. The use of mechanical restraints on a student would be prohibited, except for protective or stabilizing devices ordered by a person appropriately licensed to issue the order for the device or when required by law, any device used by a law enforcement officer in carrying out enforcement duties, and seat belts or other safety equipment when used to secure the student during transportation.

Use of Emergency Safety Intervention

The bill would allow for the use of emergency safety intervention only if a student's behavior created an immediate and impending threat of causing serious physical harm to self or others. The bill would allow the use of emergency safety intervention as necessary for violent action that is destructive of property if the property destruction poses an immediate danger. Emergency safety intervention used for discipline, punishment, or the convenience of a school employee would not meet the standard of immediate danger. If a student was involved in an altercation, physical restraint would be allowed even if the immediate danger standard was not met.

Only a school employee trained in the appropriate use of emergency safety intervention, consistent with nationally recognized training programs, would be allowed to use the intervention on a student. The training requirement would not apply if the student was involved in an altercation.

Use of Seclusion

The bill would prohibit the use of seclusion on a student 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 and 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 teacher or attendant viewing the student walks away from the seclusion room, or in cases of emergency, such as fire or severe weather.

If a school used a seclusion room, such room would be required to be a safe place with proportional and similar characteristics as other rooms frequented by students, be free of any condition that would endanger the student, and be well-ventilated and sufficiently lighted.

Documented Use of Emergency Safety Intervention

When a student is subjected to emergency safety intervention, the school employee who conducted the intervention, or an employee who witnessed its use, would be required to document the use of seclusion or physical restraint. The school would be required to attempt notification of the parent the same day the emergency safety intervention was used. The bill would require the documentation be completed and provided to the parent no later than the school day following the day the seclusion or physical restraint was used. The parent also would be given:

- A copy of the standards for the use of restraint and seclusion;
- A flyer regarding parent rights, including complaint rights through the local dispute resolution process and the complaint process of the Board; and
- Information to help with navigating the complaint process, including contact information for the parent training and information center and protection and advocacy system.

Parental Appeal Rights

Parents would have 30 days from being informed of the use of emergency safety intervention to file a complaint through the local dispute resolution process. Parents would have a minimum of 30 days from the final decision from the local dispute resolution process to file a complaint under the Board complaint process.

Data Reporting on Use of Seclusion and Restraint

As required by the Department, each public school district would be required to submit information and data on the use of seclusion and restraint. The Department would be required to, at a minimum, collect sufficient information and data to ensure patrons, policymakers, and the public would be able to gain a clear picture of the extent of the use of seclusion and restraint in Kansas schools. Information and data would be collected to provide policymakers with detailed information with which to identify trends and opportunities to help reduce the use of seclusion and restraint in public schools.

The Department would be required to compile the reports from the schools and provide the results to the public, the Governor, and the Committees on Education in each chamber by January 20, 2016, and annually thereafter. The Department would publish any school policy adopted by the Board, pursuant to rules and regulations and the complaint process, to ensure uniformity and compliance with the Act. In issuing these results, the Department would ensure as much information and data as possible would be provided on the use of seclusion and restraint so as to allow patrons, policymakers, and the public the ability to compare the data regarding use and incidences between school districts and individual schools. In compiling aggregate data, individual student confidentiality would be protected in accordance with the federal Family Educational Rights and Privacy Act to ensure personally identifiable information was not included. At the beginning of the school year or upon enrollment, a copy

of this policy would be distributed to each public school employee.

Rules and Regulations Authority

The Board would be required to adopt rules and regulations necessary to implement Sections 1 through 4 of the bill. The Board also would be required to adopt rules and regulations creating an independent complaint process to be in effect no later than January 1, 2016. The independent complaint process would be required to include processes for:

- A parent to submit a complaint to the Department alleging a public school was violating or had violated a provision of the Act, or Kansas Administrative Regulations (KAR) 91-42-1 through 91-42-2, and any other rules and regulations promulgated regarding emergency safety intervention. The complaint process to the Department would be available to parents after completing the local dispute resolution process;
- Investigating a complaint submitted under the complaint process to the Department;
- Ensuring parents and schools receive equal treatment in the complaint process;
- Completion of a written report of findings of facts and conclusions; and
- Determining sanctions if a district fails to comply with identified corrective actions.

Background

The bill was introduced by the House Committee on Children and Seniors at the request of Representative Kiegerl. At the House Committee on Children and Seniors 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 Douglas County, and by several private individuals.

A representative of the Kansas Association of School Boards provided neutral testimony, noting sections of the bill the Association supported and opposed and providing a detailed analysis of the bill.

Representatives of the Kansas Association of Special Education Administrators 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 Kansas State Department of Education and the Kansas State Board of Education testified at the hearing in opposition to the original and substitute bills, detailing recent efforts of the Department and the Board 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 emergency safety interventions 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.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Kansas Department of Education 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.