

UPDATED
SESSION OF 2016

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 323**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 323 would enact the Jason Flatt Act and would amend the Freedom from Unsafe Restraint and Seclusion Act.

Jason Flatt Act

The Jason Flatt Act would require the board of education of each school district to provide suicide awareness and prevention programming to all school staff. The bill would require such programming to include at least two hours of training each calendar year based on programs approved by the Kansas State Board of Education (KSBE), which could be satisfied through independent self-review of suicide prevention training materials and a building crisis plan developed for each school building, including steps for recognizing suicide ideation, appropriate methods of interventions, and a crisis recovery plan. The bill also would require each school district to notify parents or legal guardians of students enrolled in such district that the training materials provided under such programming are available.

The bill would provide that no cause of action could be brought for any loss or damage caused by any act or omission resulting from the implementation of the provisions of the bill, or resulting from any training, or lack of training, required by the bill. Further, the bill would state nothing in this

*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>

section shall be construed to impose any specific duty of care.

The KSBE would be required to adopt rules and regulations necessary to implement the Jason Flatt Act by January 1, 2017.

Freedom from Unsafe Restraint and Seclusion Act

Introduced as HB 2534 in the House Committee on Children and Seniors, this portion of the bill would amend the Freedom from Unsafe Restraint and Seclusion Act (Act) to add and clarify definitions; replace some references to “seclusion” with “emergency safety intervention” (ESI); and amend the standards for the use of ESI with regard to the requirements of a health care provider’s written statement indicating a student cannot be subjected to ESI for medical reasons, the prohibited types of restraints, and the requirement each local board develop and implement written policies governing the use of ESI. The written policies would address school personnel training, an alternative dispute resolution process, a system for collection and maintenance of documentation for each ESI use, a procedure for periodic review of ESI use, and a schedule for providing notice of a local board’s written policies on ESI use. The bill would exempt certain school law enforcement personnel from the requirements of the Act; clarify parent notification requirements after the use of ESI; expand the aggregate data to be compiled by the Kansas Department of Education (KDOE); clarify the process for a parent to request a meeting with the school to discuss each incident involving the use of ESI; establish a process for administrative review of local board decisions by the KSBE; and make technical amendments. The bill also would extend the deadline for the KSBE to adopt rules and regulations to March 1, 2017, and require the rules and regulations include the exact statutory language for the standards for the use, reporting, and other requirements of ESI. Further, the bill would sunset certain provisions of the Act.

Sunset Provision

On June 30, 2018, the ESI Task Force would sunset, and the statute related to a parent's right to a meeting request after the use of ESI and Section 7 of the bill, regarding the process for administrative review of a local board's final decision by the KSBE, would expire.

Definitions

The following definitions would be added:

- "Appointing authority" would mean a group of persons empowered by statute to make human resource decisions that affect the employment of officers;
- "Chemical restraint" would mean the use of medication to control a student's violent behavior or restrict a student's freedom of movement;
- "Commissioner" would mean the Commissioner of Education;
- "Complaint" would mean a written document that a parent files with a local board as provided for in this Act;
- "Hearing officer" would be defined as the KDOE employee designated to conduct an administrative review;
- "Incident" would mean each occurrence of the use of an ESI;
- "Legitimate law-enforcement purpose" would be defined as a goal within the lawful authority of an officer that is to be achieved through methods or conduct condoned by the officer's appointing authority;

- “Local board” would refer to the board of education of a district or the governing body of any accredited nonpublic school;
- “Mechanical restraint” would mean any device or object used to limit a student’s movement;
- “Physical escort” would refer to the temporary touching or holding the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location; such action would not be considered an ESI; and
- “Time out” would refer to a behavioral intervention in which a student is temporarily removed from a learning activity without being secluded.

The definition of ESI, currently “the use of seclusion or physical restraint,” would be amended to clarify it would not include the use of time-out.

The bill also would, by definition, distinguish among the following types of officers: campus policy officer, law enforcement officer and policy officer, school resource officer, and school security officer.

Restrictions on the Use of ESI

A student would not be subjected to an ESI if he or she is known to have a medical condition that could place the student in mental or physical danger if an ESI is used, unless not subjecting the student to an ESI would result in significant physical harm to the student or others. The bill would require the written statement from the student’s licensed health care provider confirming the existence of a medical condition that could place the student in mental or physical danger if ESI is used to include:

- An explanation of the student's diagnosis;
- A list of any reasons why an ESI would put the student in mental or physical danger; and
- Any suggested alternatives to the use of ESIs.

Prohibited Types of Restraints

The following types of restraints would be prohibited by the bill:

- Physical restraints that are prone (face-down), supine (face-up), obstruct the student's airway, or impact a student's primary mode of communication;
- Chemical restraints, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue such treatments; and
- Mechanical restraints, except:
 - Protective or stabilizing devices ordered by a person appropriately licensed to issue an order for the device or required by law;
 - Any device used by a certified law enforcement officer in carrying out law enforcement duties;
 - Seat belts; and
 - Any other safety equipment when used to secure students during transportation.

Local Board Written Policies on Use of ESI

Each local board would be required to develop and implement written policies to govern the use of ESI in schools. At a minimum, the written policies would be required

to conform to the standards, definitions, and requirements of the Act. Written policies would be required for:

- School personnel training:
 - Designed to meet the needs of personnel as appropriate to their duties and potential need for the use of ESI;
 - Addressing prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;
 - Consistent with nationally recognized training programs; and
 - Requiring maintenance by schools of written or electronic documentation on training provided and lists of participants in each training for inspection by the KSBE.

- A local dispute resolution process;

- A system for the collection and maintenance of documentation for each use of ESI;

- A procedure for the periodic review of the use of ESI at each school, which would be compiled and submitted at least biannually to the superintendent or the superintendent's designee; and

- A schedule for when and how parents are provided with notice of the local board's policies on the use of ESI.

Written policies developed pursuant to the Act would be required to be accessible on each school's website and included in each school's code of conduct, safety plan or student handbook.

Local Dispute Resolution Process

The bill would require a local dispute resolution process be developed to include procedures for:

- The filing of a parent complaint with the local board. If a parent believes an ESI was used on the parent's child in violation of the Act, rules and regulations, or the local board's ESI policy, the parent could file a complaint within 30 days of the date on which the parent was informed of the use of ESI;
- A complaint investigation;
- The implementation of a dispute-resolution final decision. The local board's decision would:
 - Be in writing;
 - Include findings of fact and any corrective actions required by the school if deemed necessary by the local board; and
 - Be mailed to the parent and the KDOE within 30 days of the local board's receipt of the complaint; and
- A parent's right to request an administrative review by the KSBE including information as to the parent's deadline to submit the request.

Officers Exempt from Requirements of Act

Campus police officers and school resource officers would be exempt from the requirements of the Act when engaged in an activity with a legitimate law enforcement purpose. However, school security officers would not be exempt from the requirements of the Act.

Parent Notification of Use of ESI

The bill would amend requirements regarding the school's notification of a parent when ESI is used. If the school is unable to contact the parent, the school would be required to attempt to contact the parent using at least two methods of contact. If the school attempts at least two methods of contact, the same-day notification requirement would be satisfied. A parent could designate a preferred method of contact to receive the required same-day notification. A parent could agree, in writing, to receive only one same-day notification from the school for multiple incidents occurring on the same day.

The bill would amend the required documentation of the use of an ESI to require the documentation be in writing and include the following:

- Events leading up to the incident;
- Student behaviors necessitating the ESI;
- Steps taken to transition the student back into the educational setting;
- The date and time the incident occurred, the type of ESI used, the duration of the ESI, and the school personnel who used or supervised the ESI;
- Space or an additional form for parents to provide feedback or comments to the school regarding the incident;
- A statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of ESIs; and
- Email and phone information for the parent to contact the school to schedule the ESI meeting.

If the triggering issue necessitating the ESIs is the same, the school would be allowed to group incidents together when documenting the events leading up to the incident, student behaviors that necessitated the ESI, and steps taken to transition the student back into the educational setting.

A parent could request the information required to be provided after the first incident of use of ESI during the school year be provided to the parent by e-mail, instead of in printed form. The bill would require the full and direct website address containing such information be provided to a parent on the occurrence of a second or subsequent incident.

Notification of ESI Use by Law Enforcement Officer or School Resource Officer

If a school is aware that a law enforcement officer or school resource officer has used seclusion, physical restraint, or mechanical restraint on a student, the school would be required to notify the parent the same day using the parent's preferred method of contact. However, the school would not be required to complete and provide written documentation of ESI use by law enforcement to a parent or to report the same to the KDOE. As it pertains to use by a law enforcement officer, mechanical restraint would include, but not be limited to, the use of handcuffs.

Kansas Department of Education Aggregate Data Reports on Use of ESI

With the exception of aggregated data on the number of incidents in which ESI was used on students who have individualized education programs (IEPs), Section 504 Plans, or who do not have either, the bill would require all other aggregate data reports on the use of ESI compiled by the KDOE also to be aggregated by gender and eligibility for free and reduced lunch of the students on a statewide basis.

Parent Meeting Request After Use of ESI

The bill would amend when and how a parent could request a meeting following the use of ESI to allow for a discussion and debriefing after each incident, instead of after the third incident within a school year. The parent could request such a meeting verbally, in writing, or by electronic means. The bill also would require the school to hold such a meeting within ten school days of the parent's request. The focus of the meeting would be to discuss proactive ways to prevent the need for ESI and to reduce future incidents.

The parent would determine whether the student would be invited to the meeting. If a parent is unable to attend the meeting within the ten-school-day limit, the time for calling the meeting would be extended.

Meeting for Students with a Section 504 Plan

For students with a Section 504 Plan, the student's Section 504 team would be required to discuss and consider the need for an evaluation under the Special Education for Exceptional Children Act at the meeting following the use of ESI.

Meeting for Students with an IEP and Placed in a Private School

For any student with an IEP who is placed in a private school by a parent, a meeting after the use of ESI would be required to include the parent and the private school, who would consider whether the parent should request an IEP team meeting. If a parent requests an IEP team meeting, the private school would be required to help facilitate the meeting.

Meeting for Students without an IEP or Section 504 Plan

For a student who does not have an IEP or a Section 504 Plan, the parent and school would be required 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 behavior analysis, or the need for a behavior intervention plan.

Such meetings would be required to include the following:

- The student's parent;
- A school administrator for the school where the student attends;
- One of the student's teachers;
- A school employee involved in the incident; and
- Other school employees designated by the school administrator as appropriate for such meeting.

Kansas State Board of Education's Rules and Regulations Authority

The bill would extend the deadline for the KSBE to adopt rules and regulations necessary to implement the Act from March 1, 2016, until March 1, 2017. The rules and regulations would be required to include the exact statutory language for the standards for the use, reporting, and other requirements of ESIs.

Administrative Review by Kansas State Board of Education

A parent who has filed a written complaint with the local board regarding the use of ESI could request an

administrative review by the KSBE of the local board's final decision.

Each parent seeking administrative review would be required to provide the following information in the request:

- The name of the student and the student's contact information;
- The name and contact information, to the extent known, for all involved parties, including teachers, aides, administrators, and district staff;
- A detailed statement of the basis for seeking administrative review, with all supporting facts and documentation. The documentation would be required to include a copy of the complaint filed with the local board and the local board's final decision, if issued. The request would have to be legibly written or typed and signed by the parent. The parent would be required to attach as exhibits all relevant written instruments or documents in the parent's possession or, if unavailable, reference the instruments or documents in the request for administrative review; and
- Written consent to disclose any personally identifiable information from the student's education records necessary to conduct an investigation pursuant to the Act.

Administrative Review Process

Each request for administrative review would be filed with the Commissioner within 30 days from the date the final decision is issued under the local dispute-resolution process, or within 60 days from the date the complaint was filed with the local board if a final decision was not issued. A copy of the request for administrative review would be forwarded by

the hearing officer to the clerk of the local board from whom the administrative review is sought.

On receipt of each request for administrative review, the hearing officer would be required to consider the local board's final decision and could initiate its own investigation of the complaint. The bill outlines what a hearing officer's investigation could include.

The hearing officer could remand the issue back to the local board if the hearing officer receives information he or she determines was not previously made available to both parties during the local board's dispute-resolution process. If remand occurs, the hearing officer's case would be closed. The rights and responsibilities of administrative review would begin again after the local board issues its amended final decision or 30 days from the date of remand, whichever occurs first.

The Commissioner would be required to provide the results of the administrative review in writing to the parent, the school's head administrator, the district superintendent, the local board clerk, and the KSBE within 60 days from the Commissioner's receipt of the request for administrative review, unless the time frame is extended for good cause upon approval by the Commissioner.

Results of Administrative Review

The results of the administrative review would contain findings of fact, conclusions of law, and, if needed, suggested corrective action. The hearing officer would be required to determine whether the district is in violation of the Act based solely on the information obtained during the course of the investigation and the administrative review process. The determination would include one of the following: the local board appropriately resolved the complaint through its dispute-resolution process; the local board should reevaluate the complaint according to its dispute-resolution process with

suggested findings of fact; or the hearing officer's suggested corrective action is necessary to ensure that local board policies meet the requirements of law.

Nothing in the administrative review process would require exhaustion of other remedies before using the procedures or seeking remedies otherwise available.

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

Background

SB 323 Background

At the Senate Committee on Education hearing on SB 323, Senator Smith; representatives of the Association of Community Mental Health Centers of Kansas, Inc., Greater Kansas City Mental Health Coalition, Headquarters, Inc., Jason Foundation, Kansas Chapter for the American Foundation for Suicide Prevention, Kansas National Education Association, and National Alliance on Mental Illness; several family members of students who committed suicide; and other private citizens offered testimony in support of the bill. Representatives of the KDOE, Office of the Attorney General, and United School Administrators of Kansas offered neutral testimony. There were no opponents.

The Senate Committee replaced language requiring all teachers and principals licensed or certified by the KSBE to receive at least two hours of suicide prevention training annually that uses best practice-based programs recommended by the KSBE with language requiring school districts to provide a minimum of one hour of programming to all school staff. The Senate Committee also adopted amendments requiring school districts to notify parents that materials are available and concerning liability. The Senate

Committee recommended its amendments be incorporated into a substitute bill.

The House Committee on Education amended the bill by increasing the training requirement from one hour to two hours per calendar year. The Committee also removed language relating to willful and wanton misconduct from the section related to causes of action brought for any loss or damage brought because of requirements of the bill.

According to the fiscal note prepared by the Division of the Budget, the introduced bill would have no fiscal effect for the state. Any costs would be borne by local school districts.

There was no fiscal note provided related to bill amendments.

The House Committee of the Whole amended Sub. for SB 323 by adding HB 2534 into the bill.

HB 2534 Background

At the House Committee on Children and Seniors hearing, testimony in favor of the bill was presented by Representative Rubin; the chairperson and a member of the ESI Task Force; the vice-chairperson of the ESI Task Force (who also presented testimony on behalf of the Coalition to Protect Children from Unnecessary Seclusion and Restraint); and four private individuals. The proponents generally stated the bill represents the historic and unprecedented unanimous agreement of stakeholders who served on the ESI Task Force in recommending amendments to the Act to provide additional protection for children and to remove requirements for schools that did not affect the safety of students. The proponents stressed the importance of keeping the provisions in statute, rather than in agency rules and regulations. Some concern was expressed by proponents that not all of the ESI Task Force recommendations were included in the bill. Written testimony in favor of the bill was provided by four

private individuals (two of whom also were members of the ESI Task Force) and a representative of the National Down Syndrome Society.

Opponent testimony was presented by representatives of the Kansas Association of Special Education Administrators and Seaman Unified School District No. 345. The opponents generally stated the bill, as introduced, omitted some of the recommendations of the ESI Task Force and changed the original intent for the statutes to sunset.

Neutral testimony was presented by a representative of the Kansas Association of School Boards, who stated the bill, as introduced, does not fully incorporate the recommendations of the ESI Task Force. The representative stated the final recommendation of the ESI Task Force (the Legislature should amend the ESI statutes to incorporate provisions currently found only in the ESI regulations or draft rules and regulations and amend regulations to mirror the language of the ESI statute) was not accomplished in the introduced bill.

The House Committee amended the bill to add language mirroring rules and regulations recently adopted by the KSBE reflecting the remaining recommendations made by the ESI Task Force created under 2015 Senate Sub. for Sub. for HB 2170. The following amendments were made by the House Committee: added and amended definitions; required local boards to develop and implement written policies on the use of ESI and specified what the written policies would include; provided for a local dispute resolution process; clarified which officers would be exempt from the requirements of the Act; clarified written documentation would not be required regarding law enforcement use of ESI; and added an administrative review process by the KSBE. Additionally, the House Committee amended the sunset date.

According to the fiscal note prepared by the Division of the Budget on the original bill, the KDOE states enactment of

the bill would have no fiscal effect, as the bill codifies many rules and regulations already adopted by the KSBE.