

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 193**

As Agreed to April 30, 2016

**Brief\***

House Sub. for SB 193 would amend the Freedom from Unsafe Restraint and Seclusion Act (Act) to add and clarify definitions; revise the standards for the use of emergency safety intervention (ESI); require each local board to develop and implement policies governing the use of ESI; exempt campus police and school resource officers from the Act's requirements; clarify parent notification requirements after the use of ESI; expand the data to be compiled by the Kansas Department of Education (KSDE); clarify the process for a parent to request a meeting with the school to discuss each incident involving the use of ESI; and change the sunset for provisions of the Act from June 30, 2018 to June 30, 2020.

***Definitions***

The bill would add and revise definitions of key terms. 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. Further, the bill would, by definition, distinguish among the following types of officers: campus police officer, law enforcement officer and police officer, school resource officer, and school security officer.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

### ***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. Current law prohibits seclusion where a student is known to have such a medical condition, so the change from “seclusion” to “ESIs” further prohibits the use of physical restraint under these circumstances. The bill would add an exception to the use of seclusion and physical restraint if 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 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 bill would prohibit the following types of restraints:

- Physical restraints that are prone (face-down), are 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; and
- Seat belts or any other safety equipment 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;
- 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 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.

### ***Officers Exempt from Requirements of the 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.

If a school is aware 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 KSDE. As it pertains to use by a law enforcement officer, mechanical restraint would include, but not be limited to, the use of handcuffs.

### ***KSDE Aggregate Data Reports on Use of ESI***

The bill would require all statewide aggregate data required to be included in the KSDE's annual report to the Governor and House and Senate Education Committees on the use of ESI to be aggregated by gender and eligibility for free and reduced lunch. Current law already requires statewide aggregate data to be reported by age and ethnicity. Further, the bill would require the KSDE Data Governance Board to use the actual data value when providing statewide aggregate data.

### ***Meetings 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, as current law provides. 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.

For any student with a Section 504 Plan, the bill would require the student's Section 504 team 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.

For any student with an individual education plan (IEP) placed in a private school by a parent, the bill would require a meeting after the use of ESI 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 bill would require the private school to help facilitate the meeting.

For a student who does not have an IEP or a Section 504 Plan, the bill would require the parent and school 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.

### **Conference Committee Action**

The Conference Committee agreed to replace the contents of House Sub. for SB 193, concerning degree prospectus requirements, with the contents of HB 2534, amending the Freedom from Unsafe Restraint and Seclusion Act, with the following changes: extend the sunset date from June 30, 2018, to June 30, 2020; remove administrative review and regulation promulgation language; and add a requirement related to the KSDE's Data Governance Board. (The former contents of House Sub. for SB 193 were added to the Conference Committee Report for HB 2622, which was adopted April 28, 2016.)

## **Background**

[*Note:* The Conference Committee replaced the former contents with the contents of HB 2534, as noted above.]

### ***HB 2534 Background***

At the House Committee on Children and Seniors hearing, testimony in favor of HB 2534 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, did 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 State Board reflecting the remaining recommendations made by the ESI Task Force created under 2015 Senate Sub. for Sub. for HB 2170. The House Committee amended the bill to add and amend definitions; require local boards to develop and implement written policies on the use of ESI and specify what the written policies would include; provide for a local dispute resolution process; clarify which officers would be exempt from the requirements of the Act; clarify written documentation would not be required regarding law enforcement use of ESI; and add an administrative review process by the State Board. Additionally, the House Committee amended the sunset date.

[These changes were maintained in this Conference Committee report, with the following changes: extend the sunset for the Act from June 30, 2018, to June 30, 2020; remove administrative review and regulation promulgation language; and add a requirement related to the KSDE's Data Governance Board.]

According to the fiscal note prepared by the Division of the Budget on HB 2534, as introduced, the Department of Education states enactment of the bill would have no fiscal effect, as the bill codifies many rules and regulations already adopted by the Board of Education.

Freedom from Unsafe Restraint and Seclusion Act

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