

**HOUSE BILL No. 2572**

By Committee on Appropriations  
By request of the Joint Committee on Children's Issues

1-22

AN ACT concerning children in need of care; enacting the child abuse and neglect central registry act.

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

New Section 1. Notwithstanding any other provision of law to the contrary, all proceedings concerning determination that a person has committed substantiated abuse and neglect by the department of social and rehabilitation services under the Kansas code for care of children shall be confirmed by clear and convincing evidence.

New Sec. 2. Sections 2 through 9 and amendments thereto shall be known and may be cited as the child abuse and neglect central registry act. Proceedings pursuant to this act shall be civil in nature.

New Sec. 3. As used in this act:

(a) "Alleged perpetrator" means the person identified in the petition as the person suspected of perpetrating an act of abuse or neglect.

(b) "Substantiated abuse or neglect" means that a petition alleging abuse or neglect has been confirmed by a court order pursuant to this act by clear and convincing evidence.

(c) "Substantiated perpetrator" means a person who has been determined by a judgment of the court pursuant to this act by clear and convincing evidence to have committed a substantiated act of abuse or neglect.

(d) "Validated" means a judgment by a district court of this state that a substantiated perpetrator poses a danger to children and should not be permitted to operate, reside in, be employed by, or volunteer in a home or facility for the care of children licensed under provisions of article 5 of chapter 65 of the Kansas Statutes Annotated, notwithstanding any other provision of law to the contrary.

(e) "Investigation" means the gathering and assessing of information to determine if a child has been abused or neglected.

(f) "Act" means the child abuse and neglect central registry act.

(g) "Child abuse and neglect central registry" means a list maintained by the department of social and rehabilitation services of persons validated as substantiated perpetrators of child abuse, neglect or sexual abuse

1 by court order pursuant to this act.

2 (h) All other terms shall have the meanings as defined in K.S.A. 38-  
3 1502, and amendments thereto.

4 New Sec. 4. (a) The district or county attorney may file in the district  
5 court of the county of the residence or presence of the alleged perpetrator  
6 a verified petition for an order stating that such perpetrator meets the  
7 definition of a substantiated perpetrator and that such perpetrator's name  
8 be entered in the child abuse and neglect central registry.

9 (b) The petition alleging the alleged perpetrator meets the definition  
10 of a substantiated perpetrator shall state:

11 (1) The belief that the alleged perpetrator has committed a significant  
12 act or acts of abuse, sexual abuse or neglect; and stating sufficient facts  
13 to support such allegation;

14 (2) the name, age, residence and present address of the alleged  
15 perpetrator;

16 (3) the names and addresses of witnesses by whom the truth of the  
17 petition may be proved;

18 (4) to the extent known, whether or not the alleged perpetrator is  
19 able to pay for medical services, or if not known, any information the  
20 prosecutor might have about the alleged perpetrator's financial circum-  
21 stances or indigency;

22 (5) to the extent known, the name and address of any person who  
23 has custody of the alleged victim, and any known pending criminal charge  
24 or charges or of any arrest warrant or warrants outstanding or, if there  
25 are none, that fact or if not known, any information the prosecutor might  
26 have about any current criminal justice system involvement with the al-  
27 leged perpetrator; and

28 (6) a request that the court make a determination that the alleged  
29 perpetrator is a substantiated perpetrator and that such perpetrator's  
30 name be entered into the child abuse and neglect central registry.

31 New Sec. 5. Upon the filing of the petition provided for in section  
32 4, and amendments thereto, the district court shall issue the following:

33 (a) An order fixing the time and place of the hearing on the petition.  
34 The time designated in the order shall in no event be later than 60 days  
35 after the date of the filing of the petition.

36 (b) An order that the alleged perpetrator appear at the time and place  
37 of the hearing. If the alleged victim or any witness is a child less than 13  
38 years of age, the court may order that the testimony of the child or witness  
39 be taken pursuant to K.S.A. 38-1558, and amendments thereto.

40 (c) An order appointing an attorney to represent the alleged victim  
41 at all stages of the proceedings. The court shall give preference, in the  
42 appointment of the attorney, to any attorney who has represented the  
43 alleged victim in other matters if the court has knowledge of the prior

1 relationship. The alleged victim shall have the right to choose and to  
2 engage an attorney and, in such an event, the attorney appointed herein  
3 shall be relieved of all duties by the court.

4 (d) An order appointing an attorney to represent the alleged perpe-  
5 trator at all stages of the proceeding if the court finds the alleged per-  
6 petrator is indigent. Costs shall be paid by the county where the case is  
7 being heard.

8 (e) A notice in the manner provided for in section 7, and amendments  
9 thereto.

10 (f) An order for investigation. Such order shall be served on the al-  
11 leged perpetrator at the same time or after notice is given. It shall be  
12 served in the manner provided for in section 6, and amendments thereto.  
13 It shall order the alleged perpetrator to submit to a mental evaluation  
14 performed by a private psychiatrist, physician or other qualified mental  
15 health professional, as defined in K.S.A. 59-2946, and amendments  
16 thereto, designated by the court in the order. An institution within the  
17 department of social and rehabilitation services shall receive and evaluate  
18 any alleged perpetrator ordered evaluated therein. At the time designated  
19 by the court in the order, the examiner shall submit to the court a report,  
20 in writing, of the evaluation which report also shall be made available to  
21 counsel for the parties. Such report shall state that the examiner has made  
22 an independent evaluation and examination of the alleged perpetrator  
23 and shall state the results of the mental health examination. There shall  
24 be an investigation of pertinent facts and events related to the alleged  
25 abuse. Such investigative findings shall be submitted to the court in the  
26 form of a report. Copies of both reports shall be given to the alleged  
27 perpetrator at least 72 hours prior to the hearing.

28 New Sec. 6. (a) The notice provided by section 5, and amendments  
29 thereto, shall be given to the alleged perpetrator named in the petition,  
30 the attorney of the alleged perpetrator, if any, and to such other persons  
31 as the court shall direct. If the alleged perpetrator has a spouse, natural  
32 guardian, custodian, guardian or conservator notice shall also be given to  
33 them.

34 (1) The notice shall state:

35 (A) That a petition has been filed, alleging that the alleged perpe-  
36 trator is a substantiated perpetrator;

37 (B) the time and place of the hearing;

38 (C) the name of the attorney, if any, appointed to represent the al-  
39 leged perpetrator and the time and place where the alleged perpetrator  
40 shall consult with such attorney; and

41 (D) that the alleged perpetrator has a right to demand a hearing be-  
42 fore a jury.

43 (2) The court may order any of the following to serve the notice:

1 (A) The physician, psychiatrist or qualified mental health professional  
2 currently administering to the alleged perpetrator provided such profes-  
3 sional consents;

4 (B) any law enforcement officer; or

5 (C) the attorney of the alleged perpetrator.

6 (b) The notice shall be served personally on the alleged perpetrator  
7 and the attorney of the alleged perpetrator, if any, not less than 20 days  
8 prior to the date of the hearing and immediate return thereof shall be  
9 made. If the alleged perpetrator may not be personally served within the  
10 state, the court may direct notice be given to the alleged perpetrator in  
11 such manner and for such a period of time as the court shall deem rea-  
12 sonable. Notice required to be given to any other person shall be given  
13 in such manner and for such a period of time as the court shall deem  
14 reasonable. If the alleged perpetrator is a patient in any psychiatric hos-  
15 pital, notice by mail shall be given to the head of the hospital.

16 New Sec. 7. (a) Trial upon the petition shall be held at the time and  
17 place specified in the court's order issued pursuant to section 6, and  
18 amendments thereto. The hearing shall be held to the court only, unless  
19 the alleged perpetrator at least four days prior to the time set for the  
20 hearing, demands, in writing, a jury trial.

21 (b) The jury, if one is demanded, shall consist of six persons. The jury  
22 panel shall be selected as provided by law. Notwithstanding the provision  
23 within K.S.A. 43-166, and amendments thereto, otherwise, a panel of  
24 prospective jurors may be assembled by the clerk upon less than 30 days'  
25 notice in this circumstance. From such panel 12 qualified jurors, who  
26 have been passed for cause, shall be empaneled. Prior service as a juror  
27 in any court shall not exempt, for that reason alone, any person from jury  
28 service hereunder. From the panel so obtained, the alleged perpetrator  
29 or the alleged perpetrator's attorney shall strike one name; then the pros-  
30 ecutor shall strike one name; and so on alternatively until each has  
31 stricken three names so as to reach the jury of six persons. During this  
32 process, if either party neglects or refuses to aid in striking the names,  
33 the court shall strike a name on behalf of such party.

34 (c) The alleged perpetrator shall be present at the hearing unless the  
35 attorney for the alleged perpetrator requests that the alleged perpetrator's  
36 presence be waived. If the alleged victim or any witness is a child less  
37 than 13 years of age, the court may order that the testimony of the child  
38 or witness be taken pursuant to K.S.A. 38-1558, and amendments thereto.  
39 The alleged perpetrator shall be afforded an opportunity to appear at the  
40 hearing, to testify and to present and cross-examine witnesses. All persons  
41 not necessary for the conduct of the proceedings may be excluded. The  
42 hearings shall be conducted in as informal a manner as may be consistent  
43 with orderly procedure and in a physical setting not likely to have a harm-

1 ful effect on the welfare of the alleged victim. The court shall receive all  
2 relevant and material evidence which may be offered, including the tes-  
3 timony or written findings and recommendations of the examiner who  
4 evaluated the proposed patient pursuant to the court's order issued under  
5 section 6, and amendments thereto. Such evidence shall not be privileged  
6 for the purpose of this hearing.

7 (d) The rules governing evidentiary and procedural matters at hear-  
8 ings under this section shall be applied in a manner so as to facilitate  
9 informal, efficient presentation of all relevant, probative evidence and  
10 resolution of issues with due regard to the interests of all parties.

11 (e) The county or district attorney shall prepare all necessary papers,  
12 appear at the hearing and present such evidence as the county or district  
13 attorney determines to be of aid to the court in determining whether or  
14 not the proposed alleged perpetrator is a substantiated perpetrator sub-  
15 ject to having such perpetrator's name entered into the child abuse and  
16 neglect central registry.

17 New Sec. 8. (a) Upon completion of the trial, if the court or jury  
18 finds by clear and convincing evidence that the alleged perpetrator is  
19 validated as a substantiated perpetrator, the name of such validated per-  
20 petrator shall not be entered into the child abuse and neglect central  
21 registry until after the person has exhausted or failed to file an appeal to  
22 the state appellate courts in the manner provided in article 21 of chapter  
23 60 of the Kansas Statutes Annotated.

24 (b) If the court or jury finds from the evidence that the alleged per-  
25 petrator has not been shown to be a substantiated perpetrator under this  
26 act, the court shall terminate the proceedings. The department of social  
27 and rehabilitation services shall not further pursue the case.

28 (c) A copy of the judgment of each case filed under this act shall be  
29 provided to the secretary of social and rehabilitation services, or such  
30 secretary's designee.

31 New Sec. 9. (a) Any validated perpetrator of abuse or neglect on the  
32 registry pursuant to this act or a person on the registry prior to July 1,  
33 2004, may apply in writing to the district court of the county of residence  
34 of the substantiated perpetrator to have the perpetrator's name expunged  
35 from the central registry when three years have passed since the most  
36 recent judgment was entered against the validated perpetrator.

37 (b) A hearing shall be convened by the court, at which time the ap-  
38 plicant may present evidence supporting expungement of the applicant's  
39 name from the central registry. Evidence in support of or in opposition  
40 to the application may be presented by the prosecutor in the original  
41 action.

42 (c) The following factors shall be considered by the court in making  
43 the court's ruling:

1 (1) The nature and severity of the confirmed act of abuse or neglect;  
2 (2) the number of confirmations of abuse or neglect involving the  
3 applicant;

4 (3) if the applicant was a child at the time of the validation for which  
5 expungement is requested, the age of the applicant at the time of the  
6 confirmed abuse or neglect;

7 (4) circumstances that no longer exist which contributed to the find-  
8 ing of abuse or neglect by the applicant; and

9 (5) actions taken by the applicant to prevent the reoccurrence of acts  
10 of abuse or neglect.

11 (d) The hearing shall be set within 30 days from the date the appli-  
12 cation for expungement is received by the district court. A written notice  
13 shall be sent to the applicant, the prosecutor in the original action, the  
14 child the applicant abused or neglected, the person or agency who rep-  
15 resented the petitioner in the original action and the secretary of social  
16 and rehabilitation services, or such secretary's designee, at least 10 days  
17 prior to the hearing. The notice shall state the day, hour and place of the  
18 hearing. Continuances may be granted only for good cause. Any party  
19 given notice of the proceeding shall have the right to be heard and present  
20 evidence at the hearing.

21 (e) An order granting or denying the petition for expungement shall  
22 be sent to the applicant, the secretary of social and rehabilitation services,  
23 the prosecutor in the original action and the child the applicant abused  
24 or neglected, and shall be rendered by the court within 60 days from the  
25 date of the hearing. The order shall be in writing and shall set forth the  
26 reasons for the decision.

27 (f) Records may be expunged from the central registry by the district  
28 court when 18 years have passed since the most recent confirmed  
29 incident.

30 Sec. 10. This act shall take effect and be in force from and after its  
31 publication in the statute book.

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