

SESSION OF 2002

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2945

As Amended by House Committee on
Federal and State Affairs

Brief*

HB 2945, as amended by House Committee, amends various of the statutes in the Kansas Code for Care of Children and creates a new act that would be known as the Child Abuse and Neglect Central Registry Act.

Child Abuse and Neglect Central Registry Act

The first eight sections of HB 2945 create the Child Abuse and Neglect Central Registry Act, including new definitions of substantiated abuse or neglect; alleged perpetrator; substantiated perpetrator; validated, as applied to a person who poses a danger to children who would be prohibited from operating, being employed by, or volunteering in a child care facility; and investigation.

The new act authorizes a county or district attorney to file a petition in district court for an order stating an alleged perpetrator, a person identified in the petition as the person suspected of perpetrating abuse or neglect, meets the definition for a substantiated perpetrator and that such name be entered in the Child Abuse and Neglect Central Registry.

The new statute sets out the information to be included in a petition for a finding of substantiated abuse or neglect. On the filing of a petition, the district court is to issue an order fixing the time and place of a hearing which is to be no later than 60 days from the filing of the petition; an order for the alleged perpetrator to appear at the hearing; an order appointing an attorney to represent the alleged victim; an order

*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/cgi-bin/fulltext/bills.cgi>

appointing an attorney to represent the alleged perpetrator if such person is found to be indigent; and an order for an investigation to be served on the alleged perpetrator. If the alleged victim or any witness is less than 13 years of age the court may order testimony of such person to be taken in a room other than the courtroom and televised by closed circuit to be viewed by the court, finder of fact, and the parties to the proceeding or outside the courtroom and recorded for viewing by such persons. In appointing an attorney to represent the victim, the court is to give preference to any attorney who has represented the victim in other matters if such prior relationship is known to the court. The alleged victim has the right to choose and employ an attorney, in which case any court appointed attorney is to be relieved of duties by the court. The costs of representation for an alleged perpetrator found to be indigent are to be paid by the county in which the case is heard. An order for investigation issued to an alleged perpetrator is to order such person to submit to a mental evaluation which may be performed by any person set out in the statute and designated by the court.

A hearing held pursuant to a petition for a finding of substantiated abuse is to be held to the court only. The alleged perpetrator is required to be present unless the attorney for such person requests the requirement be waived; the rules governing evidentiary and procedural matters are to be applied in a manner to facilitate informal, efficient presentation of evidence and resolution of issues; and the county or district attorney is to appear at the hearing and present evidence. If the court finds, by clear and convincing evidence, the alleged perpetrator is validated as a substantiated perpetrator, the person's name is not to be entered in the Central Registry until an appeal has been exhausted or an appeal has not been filed as authorized by law. If the court finds the alleged perpetrator is not shown to be a substantiated perpetrator, proceedings are to be terminated and the Department of Social and Rehabilitation Services is not to pursue the case.

A procedure for expungement from the Central Registry is set out in HB 2945. Any validated perpetrator of abuse or neglect on the Registry either pursuant to the new laws or prior to July 1, 2002, may apply to the district court of the county of residence of the applicant to have his or her name expunged from the Central Registry after three years have elapsed since the most recent judgement was entered. A hearing is to be held by the court within 30 days of the receipt of the application at which the applicant may present evidence supporting expungement and evidence in opposition or support of expungement

may be presented by the prosecutor in the original action. The proposed law sets out factors to be considered by the court in making a ruling and those persons who are to receive notice of the hearing, any of whom have the right to be present and heard at the hearing. An order granting or denying the petition for expungement is to be issued within 60 days of the date of the hearing and be sent to persons set out in the proposed law. The district court may expunge records from the Registry after 18 years from the most recent confirmed incident.

Reports

HB 2945 creates a new statute that requires the Secretary of Social and Rehabilitation Services to submit a report to the Legislature relating to family preservation services. The report is to include statistics on the number of referrals; the outcome of such referrals; the number and age of children and the number of families and family members referred; the number of successful family preservations, as that term is defined in the bill; and the number of failures, including descriptions of why the child was removed from the home. The Department is to establish the types of services available for family preservation by rules and regulations, including those enumerated in the bill.

Code For Care of Children

Sections 10 through 25 and Sections 28 through 31 amend statutes that are a part of the Code for Care of Children

HB 2945 amends existing definitions and adds new definitions applicable to the child in need of care laws. One change is to the definition of "child in need of care" in which several of the criteria are amended to delete references to physical, mental, or emotional abuse or neglect and replace them with "has been abused." These changes reflect a new definition of "abuse or abused" which includes:

- Mental or emotional injury or permitting the child to be in a situation that results in an observable and material impairment in the child's growth, development, or psychological functioning as diagnosed by an independent, court-appointed physician; causing

or permitting the child to be in a situation in which the child sustains a mental or emotional injury;

- Physical injury that results in substantial harm to the child or the genuine threat of substantial harm from physical injury, including an injury that is at variance with the history or explanation given and, excluding an accident;
- Failure to make a reasonable effort to prevent an action by another person that results in physical injury resulting in substantial harm to the child; and
- Sexual abuse.

Substantial harm is defined to mean real and significant physical injury or damage to the child including, torturing, cruelly beating, shaking which results in great bodily harm, or inflicting cruel and inhuman corporal punishment, but not to include a parent's use of reasonable force to discipline children, including spanking. The new definition of "substantial risk" is real and significant probability. Many of the amendments to sections of the Code that appear in HB 2945 reflect the deletion of the term, physical, mental, or emotional abuse and neglect, which is replaced with the term, abuse.

The definition of "neglect" is amended to include a standard of substantial risk of substantial harm. There are also new definitions of "accident" and "genuine threat" created by the bill.

The bill would require the Department of Social and Rehabilitation Services to pay the costs of a court ordered physical, emotional, or mental evaluation of the parent or custodian of a child who is the subject of proceedings under the Code if the court finds the parent or other relative being considered for custody is indigent.

HB 2945 bars a court from ordering the removal of a child from the custody of a parent until the court finds from evidence presented by the petitioner that reasonable efforts have been made to maintain the family unit and prevent unnecessary removal by utilizing family preservation services. If the parent or parents refuse such services in writing, removal may be ordered. Family preservation services need not be utilized if there is evidence of physical abandonment, physical abuse,

sexual abuse, or when a parent has been convicted of specified crimes.

A new procedure to be followed in the removal of a child from family foster care for the purpose of an emergency change of placement is created by HB 2945. Pursuant to amendments, the Secretary of Social and Rehabilitation Services would be required to give the foster parents a written explanation which is to include specific information set out in the bill. If there is a verified application from the foster parent of a child removed for an emergency placement containing specified information, the court must set a date for a hearing on the issue of whether an emergency existed requiring action to assure the safety and protection of the child. The standard of clear and convincing evidence is to be followed by the court in determining whether an emergency existed. If no such finding is made, the court shall place the child back into the custody of the foster parent or parents from whom the child was removed unless the court finds such placement is not in the best interest of the child. If an application for review of the action of Social and Rehabilitation Services in an emergency removal of a child has been filed, no child who has been removed may remain in the emergency placement for more than 72 hours after the petition was filed, excluding Saturdays, Sundays, and legal holidays, unless within the 72-hour period, a determination is made that an emergency requiring immediate action existed.

Two statutes that concern the privacy of records and reports involving a child in need of care are amended by HB 2945 to require the Secretary of Social and Rehabilitation Services to allow an individual member of the Legislature to review the file and records of a child if the child's parent or guardian gives written authority for such access. Any review would have to take place within 10 business days of the request and at a location requested by the legislator. Prior to reviewing records, the legislator would be required to sign a form that sets out the laws governing confidentiality of the records and file and penalties for further release of the information.

Statutes that relate to a law enforcement officer taking a child into custody are amended to require the standard of substantial risk of substantial harm to the child be applied in the decision to take custody of the child.

A statute that concerns the Child Death Review Board is also amended by HB 2945.

A statute created by HB 2945 requires the Secretary of Social and Rehabilitation Services to review all rules and regulations and adopt new regulations or amend existing ones to conform with the provisions of HB 2945.

The bill would become effective on publication in the *Kansas Register*.

Background

At the time of the Committee hearing on the original bill, four members of the Legislature appeared in support of HB 2945 as did four foster parents, and two minors in foster care. Testimony was received from members of Citizens for Change and foster parents from Johnson and Rice Counties. Written testimony supporting the bill was received from five members of the Legislature and several other persons. Opponents included two district court judges, a representative of Prevent Child Abuse America, the Kansas Children's Service League, Sunflower House, Kaw Valley Center, Social and Rehabilitation Services, the District Attorneys Association, and a district attorney, a CASA administrator, and the Judicial Administrator. Written testimony in opposition was received from Kansas Action for Children, and two juvenile court attorneys.