

# STATE OF KANSAS

Proposed

DEPARTMENT FOR CHILDREN AND FAMILIES  
OFFICE OF THE SECRETARY  
555 S. KANSAS AVE., 6TH FLOOR  
TOPEKA, KS 66612



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## State of Kansas Department for Children and Families

### Notice of Public Hearing on Proposed Administrative Regulations

November 7, 2018

A public hearing will be conducted on Tuesday, January 22, 2019 at 10:00 a.m. in Room 1034 of the DCF Administration Building, 555 S. Kansas Ave., Topeka, Kansas to consider the adoption of proposed rules and regulations of Protection and Prevention Services, Department for Children and Families, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Beth Lange at [Beth.Lange@ks.gov](mailto:Beth.Lange@ks.gov). All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Stacy Thowe at (785) 296-6620.

Copies of the proposed regulations can be viewed at the following website: [www.dcf.ks.gov](http://www.dcf.ks.gov).

Summaries of the proposed regulations follow. There is no economic impact.

**K.A.R. 30-46-10 – Definitions.** This regulation adds the definitions of "affirmed perpetrator" and "unsubstantiated alleged perpetrator" to the list of definitions and amends the definitions of "abuse" and "neglect". The additions and amendments implement current practice and there is no economic impact.

**K.A.R. 30-46-13 – Right to interview.** This regulation adds language that an alleged perpetrator has the right to be interviewed before an affirmed finding is issued. This amendment implements current practice and there is no economic impact.

**K.A.R. 30-46-15 – Notice of Decision.** This regulation adds language that an affirmed perpetrator or an unsubstantiated alleged perpetrator will be notified in writing of the secretary's decision concerning the investigation. This amendment implements current practice and has no economic impact.

**K.A.R. 30-46-17 – Expungement of record of perpetrator from child abuse and neglect central registry.** This regulation has been amended to improve clarity and organization and adds language concerning

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the right to appeal the secretary's decision. This amendment implements current practice and has no economic impact.

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**30-46-10. Definitions.** For the purpose of the child abuse and neglect central registry, the following definitions shall apply:

(a) "Abandon" and "abandonment" have the meaning specified in K.S.A. 38-2202, and amendments thereto.

(b) "Abuse" means "physical, mental or emotional abuse" or "sexual abuse," as these two terms are defined in K.S.A. 38-2202 and amendments thereto and as "sexual abuse" is further defined in this regulation, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. The term "abuse" shall include any act that occurred in Kansas, regardless of where the child is found or resides, ~~and shall include any act, behavior, or omission that impairs or endangers a child's social or intellectual functioning.~~

The term "abuse" may include the following:

(1) Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child's presence that demonstrates a flagrant disregard for the child;

(2) emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child; and

(3) corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behavior.

(c) "Affirmed perpetrator" means a person who has been determined by the secretary or the secretary's designee, by a preponderance of evidence, to have committed an act of abuse or neglect, regardless of where the person resides, but has not been substantiated so the affirmed perpetrator's name is not placed on the child abuse and neglect central registry.

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(d) "Alleged perpetrator" means the person identified in the initial report or during the investigation as the person suspected of perpetrating an act of abuse or neglect.

(d)(e) "Child" means anyone under the age of 18 or anyone under the age of 21 and in the custody of the secretary pursuant to K.S.A. 38-2255, and amendments thereto.

(e)(f) "Child abuse and neglect central registry" means the list of names for individuals identified by the department as substantiated perpetrators.

(f)(g) "Child care facility" has the meaning specified in K.S.A. 65-503, and amendments thereto.

(g)(h) "Department" means Kansas department for children and families.

(h)(i) "Investigation" means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the incident perpetrated by the individual or individuals should be affirmed or substantiated ~~reside, work, or regularly volunteer in a child care facility.~~

(i)(j) "Neglect" has the meaning specified in K.S.A. 38-2202, and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act or failure to act occurred. ~~This term shall include any act or failure to act that occurred in Kansas, regardless of where the child is found or resides.~~

The term "neglect" may include the following:

(1) The birth of an infant who is identified as being affected by or having withdrawal symptoms resulting from prenatal exposure to a legal or an illegal substance; and

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(2) failure of the parent or caregiver to meet that individual's responsibilities to provide for the child's education as required by law.

(j)(k) "Sexual abuse" has the meaning specified in K.S.A. 38-2202, and amendments thereto, and shall include contact solely between children only if the contact also involves force, intimidation, difference in maturity, or coercion. With respect to the determination by the department for children and families of an affirmed or substantiated finding of sexual abuse, difference in age and maturity between the perpetrator and victim and issues of force or coercion may be considered.

(k)(l) "Substantiated perpetrator" and "perpetrator" mean a person, regardless of where the person resides, who has been validated substantiated by the secretary or the secretary's designee, using by a preponderance of evidence, to have either intentionally committed an act of abuse or neglect or failed or refused to protect a child when a reasonable person would have anticipated that the act of abuse or neglect would result in or create abuse or neglect, regardless of where the person resides a likelihood of serious harm, injury, or deterioration to the child. The substantiated perpetrator's name is placed on the Kansas child abuse and neglect central registry, and the person is thereby and who is prohibited from residing, working, or volunteering in a child care facility pursuant to K.S.A. 65-516, and amendments thereto. These terms shall replace the term "validated perpetrator."

(m) "Unsubstantiated alleged perpetrator" means a person who has been determined by the secretary or the secretary's designee, by a preponderance of evidence, to have not committed an alleged act of abuse or neglect. (Authorized by K.S.A. 2015 2018 Supp. 38-2225 and 39-708c; implementing K.S.A. 2015 2018 Supp. 38-2226 and 38-2230; effective Jan. 2, 1989;

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amended Jan. 2, 1990; amended Oct. 1, 1993; amended Jan. 1, 1997; amended Oct. 3, 1997;  
amended July 9, 2004; amended July 6, 2009; amended, T-30-6-1-12, June 1, 2012; amended  
Sept. 14, 2012; amended July 1, 2016; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended  
P-\_\_\_\_\_.)

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**30-46-13. Right to interview.** Each alleged perpetrator shall have an opportunity to be interviewed before a finding is issued affirming or substantiating a the perpetrator under K.A.R. 30-46-15 is issued. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. ~~38-1523~~ 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**30-46-15. Notice of decision.** (a) Each affirmed perpetrator shall be notified in writing of the secretary's decision to affirm the perpetrator for an incident of child abuse or neglect. The notice shall specify the reasons for the finding and shall inform the affirmed perpetrator of the perpetrator's right to appeal the decision.

(b) The Each substantiated perpetrator shall be notified in writing of the secretary's decision to substantiate the perpetrator for the purpose of placing the name of the perpetrator in the child abuse and neglect central registry. The notice shall ~~set forth~~ specify the reasons for the finding and shall inform the substantiated perpetrator of the perpetrator's right to appeal the decision.

(c) Each unsubstantiated alleged perpetrator shall be notified in writing of the secretary's decision that based on a preponderance of evidence, the alleged perpetrator has not committed an alleged act of abuse or neglect. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. ~~38-1523~~ 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**30-46-17. Expungement of record of perpetrator from child abuse and neglect central registry.** (a) Application for expungement.

(1) Any perpetrator of abuse or neglect may apply in writing to the secretary to have the perpetrator's record expunged from the child abuse and neglect central registry when three years have passed since the perpetrator's name was entered on the child abuse and neglect central registry ~~or when information is presented that was not available at the time of the finding of abuse or neglect.~~ Thereafter, if the expungement is denied, an application for expungement may be submitted by the perpetrator to the secretary no more than once every 12 months after the date of the most recent expungement review panel hearing.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the director of ~~children and family~~ prevention and protection services or the director's designee, the chief legal counsel of the department or the counsel's designee, and a representative of the public appointed by the secretary. The director of ~~children and family~~ prevention and protection services or the director's designee shall chair the panel.

(b) Expungement review panel hearing.

(1) A review hearing shall be convened by the panel, at which time the applicant may present evidence supporting expungement of the applicant's name from the child abuse and neglect central registry. The applicant shall have the burden of providing the panel with the basis for granting the ~~application~~ expungement. Evidence in support of or in opposition to the application and a recommendation may be presented by the regional office that conducted the original investigation. ~~An application for expungement from a perpetrator shall be accepted no more than once every 12 months.~~

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(2) Recommendations of the review panel shall be determined by majority vote. The following factors shall be considered by the panel in making its recommendation:

- (A) The nature and severity of the act of abuse or neglect;
- (B) the number of findings of abuse or neglect involving the applicant;
- (C) if specification of whether the applicant was a child at the time of the ~~findings~~ finding of abuse or neglect for which expungement is requested; and the age of the applicant at the time of ~~this the occurrence incident~~;
- (D) circumstances that no longer exist that contributed to the finding of abuse or neglect by the applicant; and
- (E) actions taken by the applicant since the incident to prevent the reoccurrence of abuse or neglect.

(3) The review hearing shall be set within 30 days from the date the application for expungement is received by the department. A written notice shall be sent to the applicant and the regional office that made the finding by the director of ~~children and family~~ prevention and protection services or the director's designee at least 10 days before the hearing. The notice shall state the day, hour, and place of the hearing. Continuances of the hearing may be granted by the secretary or the secretary's designee only for good cause.

(4) A written recommendation to the secretary shall be rendered by the panel within ~~60~~ 45 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall ~~set forth~~ specify the reasons for the recommendation.

(c) Expungement.

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(1) Based upon the application for expungement, other records in the expungement file,  
and the findings and recommendations of the panel, a record may be expunged or  
expungement may be denied by a decision to grant or deny the requested expungement shall be  
made by the secretary and shall be the final agency order. The secretary's decision shall be made  
with 60 days of the expungement hearing.

(2) The applicant shall be informed in writing of the secretary's decision, the specific  
reasons for the decision, and the applicant's right to appeal that decision pursuant to the Kansas  
judicial review act.

(3) Any record may be expunged from the child abuse and neglect central registry by the  
secretary or the secretary's designee ~~of the secretary~~ when 18 or more years have passed since  
the most recent finding of abuse or neglect.

~~(3)~~(4) Each record of a perpetrator who was under 18 at the time of abuse or neglect and  
has not been substantiated for more than a single event or incident while a minor shall be  
expunged five years after the finding of abuse or neglect is entered in the child abuse and neglect  
central registry if the perpetrator has had none of the following after entry in the registry:

(A) A finding of abuse or neglect;

(B) juvenile offender adjudication for any act, other than the event or incident that  
resulted in the offender's name being placed on the child abuse and neglect central registry, that,  
if committed by an adult, would be a class A person misdemeanor or any person felony; or

(C) criminal conviction for a class A person misdemeanor or any person felony.

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(4) ~~The decision of the secretary shall be in writing and shall set forth the reasons for the decision. Denial of the application shall be the final agency order. The applicant shall be informed of the right to appeal pursuant to the Kansas judicial review act.~~ (Authorized by K.S.A. 2018 Supp. 39-708c and K.S.A. 65-516; implementing K.S.A. 65-516; effective Jan. 2, 1989; amended Jan. 1, 1990; amended July 1, 1997; amended July 9, 2004; amended July 6, 2009; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

Department for Children and Families

Beth Lange

296-3967

Agency  
30-46-

Agency Contact

Contact Phone Number

30-46-10, 30-46-13, 30-46-15, 30-46-17  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

30-46-10 adds the definition of affirmed perpetrator.

30-46-13 adds the provision that an alleged perpetrator shall have the opportunity to be interviewed before an affirmed finding of abuse or neglect is made.

30-46-15 adds language that an affirmed perpetrator shall receive notice of finding in writing.

30-46-17 changes made to correctly reflect agency name and program division. Editing done to improve cohesiveness.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

Specific changes are not mandated but compliance with federal statutes is required. Federal legislation provides the framework to allow states to enact statutes and promulgate regulations to ensure compliance. The Child Abuse and Prevention Act (CAPTA), 42 U.S.C. 5101 et seq., as amended by CAPTA Reauthorization Act of 2010, provides definition of sexual abuse and special cases of neglect related to withholding or failing to provide medically indicated treatment but does not provide specific definitions for other types of maltreatment. Each state provides its own definitions of other types of maltreatment within the parameters of civil and criminal statutes. The Comprehensive Addiction and Recovery Act (CARA), PL 114-198, was signed into law 07/22/2016 and is the most recent major federal law regarding education, prevention and treatment of substance addiction legislation. Inclusion in Kansas regulation of definition of substance affected infants relates to this Act. Every Student Succeeds Act (ESSA) is federal law that upholds educational protections for disadvantaged and high needs students. Inclusion in Kansas regulation of definition of education neglect relates to this Act.

**III. Agency analysis specifically addressing following:**

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- A. **The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

Will enhance DCF Prevention & Protection Services' business/practice by needed strengthening and clarification of certain abuse/neglect definitions and will enhance the finding process utilized to determine whether report is valid as required by state law.

- B. **The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

No fiscal impact. Improvement to processes is consistent with best promising practices.

- C. **Businesses that would be directly affected by the proposed rule and regulation;**

Department for Children and Families, Prevention and Protection Services division.

- D. **Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

Benefits far outweigh zero fiscal impact. Supports best promising practices to protect and serve vulnerable children and families who come into contact with DCF.

- E. **Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

No measures taken as there is no anticipated fiscal impact with these requested regulation changes.

- F. **An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0. Work will be absorbed by existing workforce.

**An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES ☐ NO ☒

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

N/A

**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0**

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million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

N/A

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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