



## House Children and Seniors Committee:

March 20, 2018

*Testimony on:*

**HB 2751**

Presented By:

Brian Dempsey

Kansas Department for Children and Families

**Testimony of:**

Brian Dempsey, Attorney  
Kansas Department for Children and Families  
Topeka, Kansas

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**Chair Davis, Vice Chair Gallagher, Ranking Member Ousley and Members of the Committee:**

I am Brian Dempsey, attorney, with the Kansas Department for Children and Families (DCF). DCF Secretary Gina Meier-Hummel asked that I testify on her behalf today, and apologizes she cannot be here herself to testify in opposition to this bill. While we firmly understand the intent of this bill and obviously support oversight, accountability and transparency, we do not believe this is the most effective way to accomplish this. As you are all aware, the Secretary has made transparency and accountability two of her top priorities.

The child welfare system in Kansas provides a safety net for vulnerable children and their families. Kansas child welfare is a many-layered system that is as broad in scope as it is deep in complexity.

One of DCF's primary responsibilities and goals is to ensure the safety of children in the Secretary's custody and care, promote permanency with the priority of returning them to their families when it is safe to do so, and promote their well-being.

House Bill 2751 establishes the office of the child advocate for children's protection and services within the Kansas Department of Administration. This would be an entity separate and apart from DCF, the State's IV-E child welfare agency.

New Section 2. (b) provides the child advocate shall be appointed "jointly by the governor and the chief justice of the Kansas Supreme Court with the advice and consent of the senate". This position would oversee DCF as well as be granted access to records of children and families who are involved with DCF. There is no language in the bill specifically requiring background checks of the staff of office of child advocate, either for criminal history or history with DCF. Thus, if this bill moves forward, we recommend consideration of all child advocate staff to undergo background checks.

New Section 3. proposes access for the office of child advocate to receive extensive information about all children in "protective services", which is not clearly defined, "treatment" (not clearly defined) "or other programs" under the jurisdiction of DCF or KDOC. DCF is concerned "other programs" may include all DCF divisions—Prevention and Protection Services (PPS), Economic and Employment Services, Child Support Services, and Rehabilitation Services. Each program possesses various federal and State confidentiality rules. There is provision to communicate "privately by any means possible" with anyone working with the child. This includes family, relatives, courts and

DCF employees. There is no notice requirement to the courts or others as is the case in the Child In Need of Care (CINC) Code with respect to requests for records/information or related to the multiple aspects and stages of the CINC proceedings, which may be impacted by the duties and powers set forth in the proposed bill. There is also no informed consent reference in this bill or release of information discussed in this bill. Communication with the courts without other parties present would generally and ethically be disallowed, as it is considered *ex parte* communication. The access to records and persons involved with children and families, as described in the act, is very broad in scope and quite expansive and perhaps overly intrusive without strict ethical or policy guidelines. This oversight and allowed contact outside of the CINC Code processes and, absent clear processes and required notice, could create confusion and duplication and additional trauma to children and families already under stress.

New Section 3. also allows for filing any “findings or reports” regarding the parent or child with certain recommendations. The section further allows for the office of child advocate to file “amicus curiae” (friend of the court) briefs on behalf of the interests of the parent or child. There is no stated requirement in the bill that the person filing be a duly-licensed attorney in Kansas or a specific process for such filings. Courts currently allow and receive pleadings from prosecutors, Guardians ad Litem (GALs), parent attorneys and interested parties. In addition, courts allow and receive reports from DCF, DCF contractors, CASA, foster parents and children, when appropriate. There is also no language in the bill requiring the standard be the “best interest of the child”, which is the basis for actions taken, findings made and orders issued in CINC proceedings in Kansas. There is also no requirement that copies of all such “findings or reports” be provided to all parties in CINC actions, as is required in the CINC Code.

New Section 4. sets out provisions regarding mediation. The term “qualified mediators” is used, but mediators must be certified in Kansas and must be attorneys or “approved mediators”, pursuant to the Kansas Dispute Resolution Act, K.S.A. 5-501 et seq. There is language regarding mediation, which would involve school districts. The bill provides that schools and students may engage in mediation when allegations of child abuse arise in the school setting. Teachers, licensed mental health professionals and school administrators are mandated reporters and should comply with K.S.A. 38-2223 in making a report to DCF. Kansas law already requires an investigation process related to allegations of abuse/neglect, as set forth in K.S.A. 38-2226. Mediation seems unwarranted in situations involving possible abuse, and perhaps may interfere with any ongoing investigations or possible criminal proceedings.

New Section 5. establishes procedures to receive and process complaints made by or on behalf of children who are recipients of services from DCF or the Kansas Department of Corrections (KDOC). DCF has an Office of Client Services and a Foster Parent and Foster Youth Ombudsman who receive concerns/questions/complaints from the public and families involved with DCF. The Secretary also receives feedback from KFAN, KFAPA and KYAC. The regional DCF staff and DCF PPS staff, along with the agency’s Legal division are available to research and contribute to needed responses as well as requests for records. Quality and complete responses require access to

records and confidential information. This is currently handled by DCF, and the office of child advocate adds another governmental administrative layer that will complicate and delay needed responses. The issue of confidentiality and compliance with federal law (Child Abuse Prevention and Treatment Act (CAPTA) and State law (CINC Code and Kansas Open Records Act)) are priorities to protect the information of children and families whom DCF serves.

The Secretary is committed to strengthening transparency of the agency and reviewing how DCF handles issues and complaints. She has instituted new practice and asked staff to review each complaint or concern with a fresh perspective. Concerns are reviewed with the Secretary who can instantaneously make policy and procedural decisions where warranted. The Office of Client Services tracks concerns for quality assurance, determining trends for review to positively impact practice. DCF listens to our partners, stakeholders and the public we serve. The office of child advocate would only add another governmental administrative layer that, again, will complicate and delay needed responses.

New Section 6. Grants authority to conduct an independent review of any “entity” within a county that has had three or more reports of abuse/neglect in a calendar year, including “but not limited to”, DCF, KDOC or a GAL. It is unclear why a GAL or KDOC would be receiving reports of Abuse/Neglect, as there is no statutory basis for this in Kansas. This will require additional DCF staff to track the more than 75,000 reports/intakes received annually by county and report to the child advocate office. This creates a cumbersome process without clarity as to actual specific processes. All GALs in Kansas must be attorneys. Kansas Supreme Court Rule 110A sets out the Standards for Guardians Ad Litem.

DCF is subject to much ongoing monitoring and oversight, both by State and federal entities and processes including, but not limited to, Citizen Review Panels, Kansas Supreme Court Task Force on Permanency Planning, Kansas Attorney General’s Abuse/Neglect and Exploitation Unit, federal Child Family and Services Review (CFSR), other federal reviews and State Legislative Post Audits. Existing oversight includes general systems and outcomes reviews, case-specific reads/reviews and resulting recommendations. There are also internal review processes, some of which support the external review processes, such as case reads/reviews, customer services, etc.

With respect to fiscal impact on DCF, the bill would require DCF to provide the office of the child advocate with names, locations of children “under the jurisdiction” of DCF and written reports of child abuse and neglect. An additional position within DCF would be needed to perform the additional reporting. Other provisions in the bill allow for recommendations for policy and practice changes that could result in required information technology system enhancements/changes. The potential costs of such changes cannot at this time be calculated. The DCF Office of Client Services’ role would be expanded to coordinate with the office of child advocate regarding concerns and complaints. This would require the hiring of a new DCF administrative officer. Additionally, DCF currently receives approximately 50 concerns related to PPS on a

weekly basis. It is anticipated four new DCF staff would be required (one for each of the four DCF regions) to compile needed information from case files upon receipt of requests from the office of child advocate.

DCF continually works to protect children and serve such children and their families who experience contact with the agency. Current statutes and processes provide structure and the framework for reporting, investigating, monitoring/oversight, CINC actions, customer service complaints and processing of requests for records. The goal should be to strengthen and improve, as needed, system structures and supports, and not overly complicate or duplicate. The proposed office of child advocate would add to the complexity and bureaucracy of an already-extremely complex system.

DCF is opposed to HB 2751. Thank you for the opportunity to present this testimony to the Committee.