

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2345

As Amended by House Committee on Children
and Seniors

Brief*

HB 2345, as amended, would create the Office of the Child Advocate for Children's Protection and Services (Office) within the Legislative Branch.

Purpose

The bill would state the purpose of the Office is to ensure that children and families receive adequate coordination of child welfare services, for child maltreatment prevention, protection, and care through services offered by the Department for Children and Families (DCF), the Department for Aging and Disability Services (KDADS), the Department of Corrections (KDOC), the Department of Health and Environment (KDHE), and the Office of Judicial Administration (OJA), and the bill would direct that the Child Advocate is to perform the duties required by the bill independently from such departments and offices under review by the Office and report directly to the Legislature.

Definitions

The bill would provide the following definitions:

- "Child" would mean any child in the custody of the Secretary for Children and Families (Secretary) or who may be alleged to be a child in need of care,

*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>

as provided in the Revised Kansas Code for Care of Children (CINC Code); and

- “Office” would mean the Office of the Child Advocate for Children’s Protection and Services within the Legislative Branch that includes the Child Advocate and staff.

Structure of the Office

The Office would be administered by and under the direct supervision of the Child Advocate, who would be jointly appointed by the Governor and the Chief Justice of the Kansas Supreme Court, subject to confirmation by the Senate, for a term of six years or until a successor has been appointed and confirmed. The Child Advocate would serve under the direction of the Legislature, and employees in the Office would be employed by and be responsible to the Child Advocate, who would fix the compensation of each employee subject to the approval of the Legislative Coordinating Council (LCC).

The bill would require the Child Advocate be a person holding a current relevant license authorizing the person to work as a licensed professional case manager, behavioral health professional, or attorney for a child in need of care, or having seven or more years of experience in the field of child welfare.

The Child Advocate would:

- Be in the unclassified service and receive compensation, which could be increased but not diminished during such service, as determined by the LCC, and changes in compensation could be recommended by the House Committee on Children and Seniors, the Senate Committee on Public Health and Welfare, or any relevant joint committee; and

- Receive travel expenses and subsistence expense reimbursement and allowances as provided for members of the Legislature when attending any authorized meeting or business outside the City of Topeka.

Annual Report; Confidentiality

The bill would require the Child Advocate, on or before the first day of each Legislative Session beginning in 2022, to submit an annual report to the Governor, the House Committee on Children and Seniors, the Senate Committee on Public Health and Welfare, relevant joint committees, and OJA. The bill would require the report to include the number of complaints received by the Office, the disposition of such complaints, the number of children involved in such complaints, the state entities named, and whether such complaints were found substantiated and any recommendations for improving delivery of child welfare services to reduce complaints or improving the function of the Office. The bill would prohibit the report from including names or personally identifiable information of children, guardians, or families in complaints, and the report would not be subject to change by the above-named committees, but the committees could request additional information gathered as part of the report, but not included in the written report, be added to subsequent copies of the report or distributed separately.

The bill would prohibit such annual reports from being disclosed pursuant to the Kansas Open Records Act (KORA), or any other law, until:

- The time of the next scheduled meeting of either the House Committee on Children and Seniors or the Senate Committee on Public Health and Welfare held after distribution of the report to members of such committee; or

- The time of the next scheduled meeting of another legislative committee held after distribution of the report to the members of such committee, as authorized by the House Committee on Children and Seniors or the Senate Committee on Public Health and Welfare.

The bill would state the Office would be subject to the CINC Code, the Revised Kansas Juvenile Justice Code (Juvenile Code), and any federal statutory disclosure restrictions and confidentiality requirements applicable to the state agency or other entity providing information to the Office, with regard to the information received from the agency or other entity.

The bill would state the provisions providing for confidentiality of records would expire on July 1, 2026, unless the Legislature reviews and reenacts the provisions, pursuant to KORA, prior to July 1, 2026.

Duties and Powers of the Child Advocate and the Office

The bill would require the Child Advocate to:

- Address complaints made by or on behalf of a child that relate to state agencies and service providers, including contractors, subcontractors, and any juvenile court that may adversely affect the health, safety, welfare, or civil or human rights of such child;
- Establish a procedure for receiving, processing, responding to, and resolving such complaints;
- Compile, collect, and preserve a record of complaints received and processed, which may reveal concerning patterns to be addressed;

- Submit any findings and recommendations to DCF and recommend changes to the agency's policies and procedures to improve the delivery of child welfare services;
- Receive and exchange records as provided in the CINC Code and the Juvenile Code and make inquiries and review relevant information and records the Office deems necessary for required investigations;
- Recommend changes to policies, procedures, or adopted or proposed rules and regulations of any state or local agency that adversely affect or may adversely affect the health, safety, welfare, or civil or human rights of any child;
- Analyze and monitor the development and implementation of federal, state, and local laws, rules and regulations, and policies with respect to child welfare services in the state and recommend changes in such to DCF, KDADS, KDHE, KDOC, JOA, the Legislature, and the Governor;
- Inform and educate children and their guardians and families of each child's rights and entitlements under federal and state laws; and
- Fulfill its responsibilities guided by generally accepted principles of best practices in child welfare.

The bill would allow the Office to:

- Access records as provided in the CINC Code and the Juvenile Code related to complaints received;
- Access all written reports of child abuse and neglect maintained by the Secretary related to complaints received;

- Communicate privately with any child or child's siblings, after consultation with treatment professionals and service providers and with anyone working with the child, including the family, relatives, employees of DCF, KDADS, juvenile courts, and other persons or entities providing treatment and child welfare services to such child;
- Work in conjunction with guardians *ad litem*;
- File any of the Office's findings or reports regarding a parent or child with the appropriate court with jurisdiction over a child in need of care case involving such child, and issue recommendations regarding the disposition of an investigation to the court and to the investigating agency, but the Office would be prohibited from intervening in divorce, protection from abuse, juvenile offender, child in need of care, administrative hearings, civil, or criminal proceedings;
- File *amicus curiae* briefs of the findings and recommendations of the Office in appeals from child in need of care matters;
- Utilize the resources of the Office of the Attorney General, as necessary, to carry out any duties of the Child Advocate and receive legal counsel or services;
- Initiate meetings with personnel from DCF, KDADS, and juvenile courts;
- Apply for and accept grants, gifts, and bequests of moneys from other state, interstate, or federal agencies; independent authorities; private firms; individuals; or foundations to carry out the Child Advocate's duties and responsibilities. The bill would provide requirements for deposit and expenditure of such moneys;

- Establish local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the Office and address complaints in a timely manner as appropriate; and
- Conduct an independent review of any policy, procedure, or practice that is the subject of a complaint submitted as provided in this section.

The bill would specify any duty of action of the Child Advocate provided in the bill would be independent of the judicial and executive branches of government, and that nothing in the bill would create a just cause for delay of court proceedings or excuse any court, district attorney, guardian *ad litem*, or other agency from their duties in proceedings related to a child. Additionally, no review of any complaint would require any licensed professional to engage or not engage in conduct required or prohibited by any governing professional code of responsibility or conduct.

Immunity; Retaliation; Prohibited Actions

The bill would specify that any employee of the Office would be immune from suit and liability, both personally and in official capacity, for the good faith performance of the duties described above.

Any person who knowingly takes “reprisal or retaliatory action,” as defined in the bill, against a recipient of child welfare services or an employee of DCF and its grantees, KDADS, KDOC, KDHE, or juvenile courts for communication made or information given to the Office for the purpose of compliance with the bill would be guilty of a class A nonperson misdemeanor.

The bill would prohibit employees of the Office from knowingly disclosing false information or disclosing confidential information without lawful authority.

Budget

The bill would require the Child Advocate to prepare the annual budget request for the Office and present such request to the LCC, which could make any desired changes. Upon approval of the request by the LCC, the Office would submit the request to the Director of the Budget as other budget requests are submitted. Expenditures from appropriations to the Office would be made upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Child Advocate or their designee.

The bill would direct the Secretary to enter into agreements with the Office for provision of financial assistance to the Office from available state and federal funds of DCF to assist the Child Advocate in providing child advocacy services in accordance with the bill. For each fiscal year, beginning with FY 2022, the bill would require the Secretary to include in DCF's budget estimates the funds provided to the Office during such fiscal year pursuant to the bill, including funds to be appropriated from federal moneys provided to DCF. Beginning with FY 2023, the bill would require DCF to not provide less than the aggregate amount of such funds provided to the Office the preceding fiscal year, and to adjust the aggregate amounts to be provided to the Office appropriately for increases attributed to inflation and other applicable factors.

Access to Information

The bill would amend statutes in the CINC Code and the Juvenile Code to add the Office to the list of entities with access to official files, social files, information from agency records, information in law enforcement records, records of law enforcement officers and agencies, records of municipal courts, and records, reports, and information obtained as part of the juvenile intake and assessment process for juveniles. *[Note:* Such access would be subject to continuing limits

based on relevancy and other factors contained in these statutes.]

The bill also would make technical amendments to these statutes to ensure consistency in statutory phrasing and update a reference to the Commissioner of Juvenile Justice to reflect agency reorganization.

Background

The bill was introduced by Representative Ousley and 17 additional representatives.

House Committee on Children and Seniors

In the House Committee hearing on February 17, 2021, Senator Faust-Goudeau; representatives of Children's Alliance of Kansas, FosterAdopt Connect, Kansas Appleseed, Kansas Kids Matter, and the Missouri Office of Child Advocate; a foster parent; a former foster youth; and five private citizens testified as **proponents** of the bill, stating that establishing an office of the child advocate would provide the opportunity to focus on issues within individual child care situations before the occurrence of a negative outcome and to offer recommendations for improvement in the child welfare system to interested parties, agencies, and courts. Written-only proponent testimony was submitted by a representative of Cornerstones of Care and by two child abuse pediatricians, a former foster parent, a former foster youth, three social workers, and three residents.

Neutral testimony was submitted by a representative of DCF. No **opponent** testimony was provided.

On February 22, 2021, the House Committee amended the bill to:

- Replace certain references to OJA with references to juvenile courts;
- Add the Chief Justice of the Kansas Supreme Court as a joint appointing authority for the Child Advocate;
- Adjust the mandatory and permissive duties of the Child Advocate;
- Clarify the Child Advocate’s relationship to the judicial and executive branches and the duties of other entities, officials, and professionals;
- Adjust the confidentiality requirements related to the Office and its reports;
- Amend the definition of “child”;
- Add references to any relevant joint committee;
- Adjust the Office’s access to records and other information; and
- Clarify statutory references.

Fiscal Information

According to the fiscal note prepared by the Division of the the Budget on the bill, as introduced, Legislative Administrative Services indicates enactment of the bill would have a fiscal effect on the Legislature, and the costs would total \$848,457 from the State General Fund (SGF). The total amount would include salary and fringe benefit expenditures of \$665,707 and 9.0 full-time equivalent (FTE) positions including the Child Advocate, a Deputy Child Advocate, three research analysts, and four administrative assistants, and other operating costs of \$79,750 for contractual services, \$8,000 for commodities, and \$95,000 for capital outlay.

DCF estimates the bill would increase expenditures for the agency by \$187,178 from all funding sources, including \$141,806 from the SGF, for FY 2022; expenditures would include salary and fringe benefit costs of \$169,193 for 3.0 FTE program consultant positions and other operating expenditures of \$17,985. DCF would be responsible for coordinating Office responses, performance improvement efforts, and tracking.

KDADS indicates the bill would increase its salary and fringe benefit expenditures and operating costs by \$93,000 from the SGF for FY 2022. The additional expenditures would be for 1.0 FTE position to research, track, and respond to complaint inquiries.

OJA indicates enactment of the bill would require additional resources to work with the Office and coordinate requests for reports and records requests. The bill would also require additional time to be spent by district court clerks when records are requested. OJA states it is unknown how often records would be requested, but it is estimated at least 1.0 FTE District Court clerk specialist position would be needed to manage statewide coordination with the Office. OJA estimates the cost for salary and fringe benefits would be \$78,234 for FY 2022 and \$84,410 for FY 2023, all from the SGF.

KDHE and KDOC indicate the bill would have no fiscal effect on either agency. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Office of the child advocate; legislature; children and minors