

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2443

As Amended by House Committee on Child
Welfare and Foster Care

Brief*

HB 2443, as amended, would establish the Office of the Child Advocate (OCA) as an independent state agency with the Child Advocate serving as head of the agency and would establish the Child Advocate Advisory Board (Board) to oversee the OCA. The bill would also amend law in the Revised Kansas Code for Care of Children (CINC Code) and the Revised Kansas Juvenile Justice Code (Juvenile Code) to authorize the OCA to have access to certain records concerning a child in need of care.

Definitions (New Section 1)

The bill would define “child” to mean any individual under 18 years of age who:

- Is in the custody of the Secretary for Children and Families (Secretary);
- May be alleged to be a child in need of care pursuant to the CINC Code;
- Is alleged to be a child in need of care pursuant to the CINC Code; or
- Is currently or was receiving services or treatment from the Kansas Department of Corrections (KDOC).

*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>

The bill would define “office” to mean the OCA that includes the Child Advocate and staff.

Office of the Child Advocate

Purpose (New Section 2)

The bill would state the purpose of the OCA is to ensure that children and families receive adequate coordination of child welfare services, child maltreatment prevention, protection, and care through services offered by the Department for Children and Families (DCF) or DCF’s contractors; the Kansas Department for Aging and Disability Services (KDADS); KDOC; the Kansas Department of Health and Environment (KDHE); and juvenile courts.

Organization (New Sections 2 and 5)

The OCA would be established as an independent state agency with the Child Advocate acting as head of the agency. Selection and appointment of the Child Advocate would be made pursuant to New Section 5 of the bill, and the Child Advocate’s required duties would be performed independently from state agencies and other entities under review by the OCA and report directly to the OCA Advisory Board, established by New Section 3 of the bill.

The OCA would be under the direct supervision of the Child Advocate, and the Child Advocate could appoint employees as the OCA may require to fulfill its duties.

Employees (New Sections 5 and 7)

Employees of the OCA would be unclassified employees, with compensation fixed by the Child Advocate, and would serve at the pleasure of the Child Advocate. Any employee of the OCA would be immune from suit and liability, both in their official capacity and personally, for the good faith

performance of duties described by the bill. However, employees of the OCA would be prohibited from knowingly disclosing false information or disclosing confidential information without lawful authority. Disclosure or use of such information received by the OCA for any purpose other than that provided for in law would constitute grounds for removal from office or termination of employment.

Child Advocate

The Child Advocate would be required to receive, investigate, and attempt to resolve complaints from any persons involved with the child welfare system alleging that DCF or DCF's contractors, KDOC, the Judicial Branch, or another child welfare stakeholder has provided inadequate protection or care of children and assist the State in conducting oversight of the child welfare system to improve the safety and well-being of children.

Appointment; Term; Qualifications (New Section 5)

The Child Advocate would be appointed by the Board and subject to confirmation by the Senate for a term of four years. The first Child Advocate would be required to be appointed and confirmed by January 1, 2024, and the Child Advocate would be required to be appointed and confirmed on or before January 1 every four years thereafter.

The Child Advocate would be required to possess one of the following qualifications:

- Holds a current relevant license that would authorize them to work as a licensed professional in the capacity of a case manager, behavioral health professional, or attorney for a child in need of care;
- Has seven or more years of experience in the field of child welfare; or

- Has demonstrated extensive experience in the practice of child welfare in the field.

The Child Advocate could not be currently or within the last twelve months employed as an executive or manager of any program, agency, or contracting agency subject to oversight by the OCA.

Duties of the Child Advocate (New Section 4)

In order to fulfill the purpose of the OCA, the bill would direct the Child Advocate to:

- Independently and impartially investigate complaints, which could include, but not be limited to, referring such complaint to a state agency or other entity for action;
- Address complaints made by or on behalf of a child that relate to state agencies, service providers, including contractors, subcontractors and any juvenile court, that may adversely affect the health, safety, welfare, permanency, or well-being of such child;
- Establish a procedure for receiving, processing, responding to, and resolving such complaints;
- Ensure confidentiality of all complaints, including the identity of a complainant or reporter, unless disclosure is deemed necessary for the Child Advocate to perform the Child Advocate's duties, with consent from such complainant or reporter;
- Receive and exchange records as provided in the CINC Code and Juvenile Code, to make inquiries and review relevant information and records the OCA deems necessary for investigations;

- Compile, collect, and preserve a record of complaints received and processed that may reveal concerning patterns to be addressed;
- Submit any findings and recommendations to DCF and recommend changes to policies and procedures to improve the delivery of child welfare services;
- 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, permanency, or well-being 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 laws, rules and regulations, and policies to DCF or its contractors, entities, KDADS, KDOC, KDHE, juvenile courts, the Legislature, and the Governor;
- Inform and educate children, their guardians, and families of the child's rights and entitlements pursuant to state and federal laws; and
- Fulfill responsibilities in this section guided by generally accepted principles of best practices in child welfare.

Powers of the Child Advocate Related to Complaints Received (New Section 4)

In order to fulfill the purpose of the OCA, the bill would specify the Child Advocate could:

- Access records as provided in the CINC Code and Juvenile Code related to complaints received;

- Access all written reports of child abuse and neglect maintained by the Secretary for Children and Families 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 or its contractors, 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 OCA's findings or reports regarding a parent or child with the appropriate court with jurisdiction over a CINC case involving such child and issue recommendations regarding the disposition of an investigation to the court and to the investigating agency, but the Child Advocate could not intervene in certain judicial proceedings or administrative hearings;
- File *amicus curiae* briefs of the findings and recommendations of the OCA in appeals from CINC 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 or its contractors, 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. Such moneys would be deposited in the OCA Fund and expended in accordance with the provisions of the grant or bequest;

- Establish local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the OCA 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 received.

Limitations Related to Filing and Review of Complaints (New Section 4)

The bill would state nothing in the bill related to the Child Advocate's powers and duties to fulfill the purpose of the OCA could create a just cause for delay of court proceedings or excuse any court, county attorney, or district attorney, guardian *ad litem*, or other agency from their duties in proceedings related to a child. The bill would specify that no review of any complaint could require any licensed professional to engage or not engage in conduct required or prohibited by any governing professional code of responsibility or conduct.

The bill would state the filing of a complaint to the OCA would not establish any relationship between the Child Advocate or an employee of the OCA and a complainant or any other party involved in the complaint, and further specify communications between the Child Advocate or employee of the OCA and a complainant or other involved party would not be privileged.

Advisory Board (New Section 3)

The bill would establish an independent and nonpartisan Child Advocate Advisory Board (Board) to oversee the OCA and Child Advocate. The Board would have the following duties and responsibilities:

- On or before December 1, 2023, appoint the Child Advocate, and as necessary thereafter pursuant to New Section 5 of the bill;
- For good cause and subject to a 2/3 vote of the Board, terminate the Child Advocate;
- Fill any vacancy of the Child Advocate;
- Evaluate and receive feedback on the Child Advocate's performance;
- Develop a public complaint process related to the Child Advocate's performance;
- Oversee and advise the Child Advocate on the OCA's purpose;
- Promote and ensure access to the OCA;
- Provide fiscal oversight of the OCA's budget; and
- Ensure compliance with the provisions of the bill and any state or federal laws relating to child welfare.

Board members would be required to have experience or expertise in the child welfare policy or system, and to the extent practicable, the Board would include individuals from across the state with different abilities and ethnic diversity. Membership of the Board could not exceed 11 members. The bill would direct the Board members to be appointed before August 1, 2023, as follows:

- The Chief Justice of the Kansas Supreme Court would appoint:
 - An individual with experience as a respondent parent's counsel; and
 - An individual with legal experience in CINC cases or who served as a guardian *ad litem*;
- The Governor would appoint:
 - An individual with previous professional experience with a social service agency in a rural area;
 - An individual with previous professional experience with social service agency in an urban area; and
 - An individual with professional experience providing mental health services to a child in need of care;
- The President and Minority Leader of the Senate would appoint:
 - An individual who was a child in need of care;
 - An individual who is a biological parent to a child in need of care; and
 - A member at-large;
- The Speaker and Minority Leader of the House of Representatives would appoint:
 - A current or former foster parent;
 - An individual who has adopted a child through a Kansas court; and
 - A member at-large.

Board members would serve a term of four years, except two members first appointed by the Chief Justice and Governor would serve two-year terms, and one member appointed by each chamber's legislative leaders would serve

a two-year term, as determined by the appointing authority. The Board could suspend or remove any member for failure to perform such member's duties by a majority vote of Board members. Vacancies would be filled in same manner as the vacated appointment, including a vacancy created by removal.

The Board would be required to meet twice a year but could meet additionally as needed, with at least one meeting per year occurring somewhere other than the Topeka metropolitan area. At the Board's initial meeting, and annually at the Board's first meeting subsequent to July 1, the Board would elect from its membership a chairperson, vice-chairperson, and other officers as the Board deems appropriate.

Members would not be compensated for their service but could be reimbursed for actual and reasonable expenses incurred in the performance of the member's duties, paid by the OCA from the OCA Fund.

The Board would be subject to the Kansas Open Meetings Act, except to discuss personnel matters of non-elected personnel and to discuss confidential records and information involving a child in need of care pursuant to the CINC Code and the federal Child Abuse Prevention and Treatment Act. Records of the Board would also be subject to the Kansas Open Records Act (KORA) to the extent no KORA exception otherwise applies.

Annual Report (New Section 6)

The bill would provide on or before the first day of the regular 2024 Legislative Session and each year thereafter, the Child Advocate would be required to submit an annual report to the Governor, the House Committee on Child Welfare and Foster Care (or successor committee), the Senate Committee on Public Health and Welfare (or successor committee), the Joint Committee on Child Welfare

System Oversight, and the Office of Judicial Administration. While the bill would prohibit such committees from changing the OCA's annual report, the committees could request additional information that was gathered for the purposes of making the report but not presented in the written report. Such information could be added to subsequent copies of the report or could be distributed separately.

The report would be required to include, but not be limited to:

- The number of complaints received by the OCA;
- The disposition of such complaints;
- The number of children involved in such complaints;
- Whether such complaints were found to be supported or unsupported; and
- Any recommendations for improving the delivery of child welfare services to reduce complaints or improving the function of the OCA and recommendations for changes in Kansas law.

The bill would specify that the report could not contain names or personally identifiable information of children, guardians, or families involved in complaints received by the OCA.

Annual reports could not be disclosed pursuant to KORA or other law until the time of the next scheduled meeting of either the House Committee on Child Welfare and Foster Care or the Senate Committee on Public Health and Welfare (or respective successor committees) held after distribution of the report to members of those committees. Alternatively, the report could be disclosed at the time of the next scheduled meeting of another legislative committee held after distribution of the report to members of that committee if

authorized by the House Committee on Child Welfare and Foster Care or Senate Committee on Public Health and Welfare. The confidentiality provisions under New Section 6 would expire on July 1, 2028, unless the Legislature reviews and reenacts such provisions pursuant to KORA prior to their expiration.

For information or records obtained from a state agency or other entity, the OCA would be subject to applicable confidentiality provisions contained in the CINC Code, Juvenile Code, and federal law applicable to the state agency or other entity. Information or records obtained could not be further disclosed.

Discovery and Admissibility of OCA Records (New Section 7)

The bill would provide that all oral or written reports, statements, witness testimony, affidavits, memoranda, proceedings, findings, and other records or data submitted to, considered by, or generated by the OCA would be privileged and could not be:

- Disclosed to any person or entity;
- Admissible in any civil action, administrative proceeding, or disciplinary board in the state; or
- Subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding unless the Child Advocate is already a party to such proceedings.

The bill would also specify that information contained in such privileged records could not be discoverable or admissible at trial in the form of testimony of:

- The Child Advocate;

- An individual who is an employee of the OCA; or
- An individual acting on behalf of the Child Advocate.

This restriction would not apply if an individual is already a party to a proceeding described above.

Immunity; Reprisal or Retaliatory Action (New Section 7)

The Child Advocate, any employee of the OCA, or person acting on behalf of the Child Advocate would be immune from liability, both personally and in their official capacity, for claims of property loss or damage or personal injury caused by or arising out of the performance of the duties of the OCA. The immunity could not be construed to protect from suit or liability when intentional, willful, or wanton misconduct is involved.

The bill would prohibit any person from taking “reprisal or retaliatory action,” as defined by the bill, against a recipient of child welfare services or an employee of DCF or its contractors, KDADS, KDOC, KDHE, or juvenile courts for communication made or information given to the OCA for the purpose of compliance with the bill. A person violating this section would be guilty of a Class A nonperson misdemeanor.

Annual Budget and Fund (New Section 8)

The bill would direct the Child Advocate to prepare and present the annual budget request of the OCA to the Board, and upon the Board’s approval, the Child Advocate would then submit the request to the Director of the Budget in the same manner as other agency budget requests are submitted under Kansas law.

The bill would establish the OCA Fund in the State Treasury, in which all moneys appropriated to the OCA would

be deposited. The Child Advocate would administer the Fund, with expenditures from the Fund made only if approved by the Child Advocate or Child Advocate's designee.

Access to Information (Sections 9 - 13)

The bill would amend statutes in the CINC Code and Juvenile Justice Code to add the OCA to the list of entities with access to:

- Official files;
- Social files;
- Information from agency records;
- Information from 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.

[*Note:* Such access would be subject to continuing limits based on relevancy and other factors contained in these statutes.]

Background

The bill was introduced by the House Committee on Appropriations at the request of Representative Concannon.

House Committee on Child Welfare and Foster Care

In the House Committee meeting on March 6, 2023, representatives of the Children's Alliance of Kansas and

Kansas Appleseed Center for Law and Justice testified as **proponents** of the bill. The proponents generally stated this legislation is an attempt to strengthen current practices of the Division of the Child Advocate by making the OCA an independent state agency and by codifying in statute the coordination of efforts to improve children's welfare in the state. Written-only proponent testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas and the Center for the Rights of Abused Children. No other testimony was provided.

The House Committee adopted amendments to:

- Modify membership of the Board;
- Allow for the suspension or removal of Board members and for the filling of vacancies created by such action;
- Provide for the election of Board leadership positions;
- Add a limitation with respect to complaints filed and reviewed by the Child Advocate; and
- Add an additional qualification that could be considered when appointing the Child Advocate.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration (OJA) indicates that enactment of the bill could increase the number of cases filed in district courts because it would create a new crime. This, in turn, would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since this crime carries a misdemeanor penalty, there could also be more supervision of offenders required to be performed by court services officers. In addition, the bill could result in

some additional work for district court and OJA staff to provide information requested by the Child Advocate. The bill could result in the collection of supervision fees in those cases filed under the provisions of the bill. Nevertheless, until the courts have had an opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect on expenditures and revenues by the Judicial Branch cannot be given. The bill could result in the collection of docket fees, fines, and supervision fees in those cases filed under the provisions of the bill, which would be deposited in the State General Fund or other state funds.

Currently, the Kansas Division of the Child Advocate (KDCA) is a division within the Office of Public Advocates and attached to the Department of Administration (DoA) for technical assistance and advice to function independently. Operating in calendar years 2022 and 2023 under Executive Order No. 21-28, KDCA has focused on building a new division. Future workload is expected to increase moving forward as the Division is incorporated into statute, further publicized, and in consideration of the number of children and families involved in the child welfare system. KDCA indicates that enactment of the bill would increase expenditures by \$104,200 from the State General Fund for 2.0 additional FTE Case Investigative Analyst positions in anticipation of workload increases. Also, KDCA currently receives operational support services from the DoA for personnel matters, budgeting, accounting, facility management, and information technology. If that support were not to continue, KDCA would have additional expenditures to cover the services. The fiscal effect for additional support is unknown.

The bill states the OCA may utilize the resources of the Office of the Attorney General (OAG), as necessary, to carry out any duties of the Child Advocate and receive legal counsel or services. It is unclear what that language would require from the OAG, and as such, the OAG is unable to determine a fiscal effect on expenditures.

The DCF and KDADS indicate that enactment of the bill would not have a fiscal effect on either agency.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Child Advocate Act; Office of the Child Advocate; Child Advocate Advisory Board; Child Advocate; Revised Kansas Code for Care of Children; Revised Kansas Juvenile Justice Code; children and minors; children in need of care; confidential records