

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2158**

As Agreed to April 8, 2021

Brief*

HB 2158 would amend statutes regarding the State Child Death Review Board (Board), Advisory Committee on Trauma, law in the Kansas Code for Care of Children concerning investigations for child abuse or neglect, family foster home licensing and eligibility for child care assistance, and would establish the Joint Committee on Child Welfare System Oversight (Joint Committee).

The bill would be effective upon publication in the *Kansas Register*.

State Child Death Review Board

The bill would clarify the language of a current exception to the confidentiality for certain legislators and legislative committees and would add exceptions to confidentiality to allow the Board, or the Board's designee, to disclose information and records to:

- Any person or entity contracting with the Board, if the Board determines disclosure is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

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- Any person or entity, if the information and records being disclosed are statistics or conclusions of the Board of the same type included in the Board's annual report; and
- Any Kansas state or local law enforcement agency, if the Board determines the information and records being disclosed were not previously available to the law enforcement agency for the investigation of the cause of the child's death; and
 - The Board determines the cause of the child's death was from abuse or neglect; or
 - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation based on an official offense report as required in statute of abuse or neglect involving the death of a child;
- Any county or district attorney, if the Board determines the information and records being disclosed were not previously available to the county or district attorney for the prosecution of any crimes related to the cause of the child's death; and
 - The Board determines the cause of the child's death was from abuse or neglect; or
 - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation based on an official offense report as required in statute of abuse or neglect involving the death of a child;
- Any entity established by a city or county for the express purpose of providing a local review of child deaths if the information and records being disclosed are related to a child's death where either such death occurred in such city or county or such

child was a resident of such city or county. The bill would provide this exception would expire on July 1, 2026, unless reviewed and reenacted by the Legislature prior to that date, and would require the Joint Committee created by the bill to review this exception;

- Any licensing body, as defined elsewhere in statute, if:
 - The information and records being disclosed are related to a disciplinary complaint against a person licensed by such licensing body;
 - Any member of the Board is under a professional obligation to make a disciplinary complaint against a person licensed by such licensing body; or
 - A person licensed by such licensing body may have caused or contributed to the child's death; and
- A governmental agency or an organization that has a federal-wide assurance (FWA) for the protection of human subjects in good standing with the U.S. Department of Health and Human Services Officer for Human Research Protections, if:
 - The agency or organization provides documents that an institutional review board designated in the FWA has reviewed the organization's research proposal;
 - Personally identifiable information is redacted from the disclosure;
 - The disclosure is only for the purpose of health or education; and
 - The agency or organization requires all persons granted access to the disclosed information and records to sign a confidentiality agreement prior to receipt of the information and records.

Advisory Committee on Trauma

The bill would remove the sunset date for the Advisory Committee on Trauma (ACT) and regional trauma councils regarding the ability to conduct closed session meetings when reviewing trauma cases and any records or findings that are privileged. In current law, these provisions will sunset on July 1, 2021.

Visual Observation During Investigations for Child Abuse or Neglect (Adrian's Law)

[Note: The bill contains a whereas clause designating these provisions as Adrian's Law.]

Concerning investigations related to reports of child abuse or neglect, the bill would require that a child who was an alleged victim of abuse or neglect be visually observed by either the employee of the Kansas Department for Children and Families (DCF), or the law enforcement agency investigating the report. The bill would allow either the Secretary for Children and Families (Secretary) or the law enforcement agency to appoint a designee for observation.

The bill would provide that in the event of a joint investigation by DCF and law enforcement, both agencies would be required to visually observe such child. All investigation reports required by the bill would have to include the date, time, and location of any such visual observation of a child. The bill would allow both the Secretary and the law enforcement agency to appoint a designee for such observation.

Joint Committee on Child Welfare System Oversight

The bill would establish the Joint Committee and would outline the topics for Joint Committee review, provide for the appointment and compensation of Joint Committee members,

establish the frequency of meetings, require an annual report to designated House and Senate leadership positions and certain standing committees, allow for professional services, and authorize the Joint Committee to make recommendations and introduce legislation.

Topics for Review by Joint Committee

The Joint Committee would be required to review the following:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- Duties, responsibilities, and contributions of DCF, Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;
- Programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or involved in the child welfare system, including:
 - Child maltreatment prevention;
 - Investigation of child maltreatment;
 - In-home family services, including services offered through federal prevention and family preservation funding; and
 - Foster care, reintegration, and adoption services;
- Trends, performance outcomes, activities, and improvement plans related to the federal child and family services reviews;

- Reports from child welfare-related groups, including citizen review panels, the Kansas Supreme Court Permanency Planning Task Force, the Kansas Children’s Cabinet, and any interim study committees or work groups authorized by the Kansas Legislature;
- Implementation of the 2019 Child Welfare System Task Force Report recommendations, including top-tier recommendations related to the child welfare workforce, data technology, access to behavioral healthcare for high-risk youth, and implementation of the federal Family First Prevention Services Act;
- Reports on concerns received from the DCF child welfare ombudsman, customer service department, or similar office;
- Opportunities for Kansas to strengthen the child welfare system through evidence-based interventions and services for children and families;
- Data and trends on family foster home licenses issued pursuant to the exception created elsewhere in the bill;
- The exception added by the bill to confidentiality of Board records for city or county entities reviewing child deaths;
- Any other topic the Joint Committee deems necessary or appropriate.

Membership

The bill would provide for the appointment of 13 members to the Joint Committee as follows:

- Two members of the House Committee on Children and Seniors by the Speaker of the House of Representatives;
- One member of the House Committee on Children and Seniors by the Minority Leader of the House of Representatives;
- Two members of the Senate Committee on Public Health and Welfare by the President of the Senate;
- One member of the Senate Committee on Public Health and Welfare by the Minority Leader of the Senate;
- Two members of the House of Representatives by the Speaker of the House of Representatives;
- One member of the House of Representatives by the Minority Leader of the House of Representatives;
- Two members of the Senate by the President of the Senate;
- One member of the Senate by the Minority Leader of the Senate; and
- One member of the House of Representatives appointed by the Majority Leader of the House of Representatives.

Terms of Membership

The bill would require members be appointed for terms coinciding with the legislative terms for which such members were elected or appointed. Appointments to fill vacancies or to succeed members appointed to the Joint Committee would occur in the same manner as the original appointment of the member succeeded.

*Appointment of Chairperson, Vice-Chairperson, and Ranking
Minority Member*

The President of the Senate would be required to appoint the first chairperson from among the members of the Joint Committee appointed by the President of the Senate, within 30 days of the effective date of the bill. The chairperson and vice-chairperson would be required to alternate annually between the members appointed by the President of the Senate and the Speaker of the House of Representatives. When appointing a chairperson or vice-chairperson as provided in the bill, the President of the Senate and the Speaker of the House of Representatives would be required to appoint a member from their respective chambers.

The bill would require the ranking minority member of the Joint Committee be from the same chamber as the chairperson. When appointing a ranking minority member as provided in the bill, the Minority Leader of the Senate and the Minority Leader of the House of Representatives would be required to appoint members from their respective chambers.

Member Compensation

Joint Committee members would be paid compensation, amounts for travel expenses, and subsistence expenses or allowances for attendance at any meeting of the Joint Committee or any subcommittee meeting authorized by the Joint Committee.

Professional Services

The bill would allow the Legislative Coordinating Council (LCC) to provide for professional services as requested by the Joint Committee.

Recommendations and Introduction of Legislation

The bill would authorize the Joint Committee to make recommendations and introduce legislation it deems necessary in performing its functions.

Meetings

The bill would require the first meeting of the Joint Committee to be held on or after January 1, 2021, on the call of the chairperson. After the initial meeting, the Joint Committee would be required to meet at least once during the first and second calendar quarters when the Legislature is in regular session and at least once during the third and fourth calendar quarters, on the call of the chairperson. The Joint Committee would be limited to six meetings in a calendar year.

Seven Joint Committee members would constitute a quorum.

Annual Report

At the beginning of each regular session of the Legislature, the bill would require the Joint Committee submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Children and Seniors, and the Senate Committee on Public Health and Welfare. The report would be required to include any recommended changes to current laws, rules and regulations, and policies regarding the safety and well-being of children in the child welfare system in the state.

Eligibility for Child Care Assistance

The bill would amend law governing eligibility for non-temporary assistance for needy families (non-TANF) child care by adding an exemption to the 20-hour-per-week work

participation requirement for adult caretakers of a child in custody of the Secretary in out-of-home placement and needing child care assistance.

Family Foster Home Licensing

The bill would amend a statute governing restrictions on persons maintaining or residing, working, or volunteering at a child care facility. Specifically, the bill would allow the Secretary to license a family foster home when a person who has been adjudicated as a juvenile offender for certain otherwise disqualifying acts under continuing law:

- Was a child in the custody of the Secretary and placed with such family foster home by the Secretary;
- Is 18 years of age or older; and
- Maintains residence at such family foster home or has been legally adopted by any person who resides at such family foster home.

To grant a license under this provision, the Secretary would be required to determine there is no safety concern and six months would have had to pass since the date of adjudication.

The otherwise disqualifying acts covered by this provision would include:

- Acts that if done by an adult would constitute the commission of a felony that is a crime against persons;
- Any act described in the articles of the Kansas Criminal Code covering crimes against persons, sex offenses, or crimes affecting family relationships and children; and

- Certain acts described in the articles of the Kansas Criminal Code covering crimes involving violations of personal rights, crimes against the public safety, and crimes against the public morals.

[*Note:* Although the statute makes other references to the Secretary of Health and Environment, who generally oversees child care licensing, 2015 Executive Reorganization Order No. 43 transferred responsibility for foster care licensing to the Secretary for Children and Families.]

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2158, as amended by the Senate Committee on Public Health and Welfare, regarding exceptions to confidentiality of Board records and trauma case review. The Conference Committee further agreed to add a five-year sunset date for the city and county entity exception unless reenacted by the Legislature and to require the Joint Committee to review this exception. The Conference Committee also agreed to add the contents of:

- HB 2088, as passed by the House, regarding visual observations during investigations of child abuse or neglect (Adrian's Law);
- HB 2115, as amended by the Senate Committee on Public Health and Welfare, establishing the Joint Committee, modified to allow the President of the Senate to appoint the first chairperson, and to add topics for review regarding the foster home licensing exception and city and county entity exception for Board records created by the bill;
- HB 2116, as amended by the Senate Committee on Public Health and Welfare, regarding eligibility for child care assistance; and

- HB 2448, as passed by the House, regarding family foster home licensing, modified by requiring a six-month period to elapse after a juvenile adjudication before the Secretary could license a family foster home under this circumstance.

Background

The Conference Committee agreed to add to HB 2158, as amended by the Senate, the contents of HB 2088, as passed by the House; HB 2115, as amended by the Senate; HB 2116, as amended by the Senate; and HB 2448, as passed by the House.

HB 2158 (State Child Death Review Board and Advisory Committee on Trauma)

HB 2158, as introduced, would have removed the sunset date for the ACT and regional trauma councils regarding the ability to conduct closed session meetings when reviewing trauma cases and any records or findings that are privileged. The Senate Committee on Public Health and Welfare amended the bill to add the contents of HB 2062, as amended by the Senate Committee, regarding the exceptions to confidentiality of the Board.

HB 2158 was introduced by the House Committee on Health and Human Services at the request of Representative Arnberger.

[*Note:* The provisions of HB 2158, as introduced, were similar to the provisions of 2020 HB 2527, as recommended by the House Committee on Rural Revitalization.]

*House Committee on Financial Institutions and Rural
Development*

In the House Committee hearing, the Executive Director of the Emergency Medical Services Board, Director of the Trauma Program at KDHE, and the State Chair of the Kansas Chapter of the Committee on Trauma of the American College of Surgeons provided **proponent** testimony. The proponents stated the closed session meetings and privileged records and findings are part of the ACT's and regional trauma councils' peer review process, in which there is critical assessment of trauma system access and function, incident care delivery, and monitoring of the implementation of site-specific trauma protocols.

Written-only proponent testimony was provided by the Chairperson of ACT and representatives of the Kansas Chapter of the American College of Emergency Physicians, Kansas Chapter of the American College of Surgeons, Kansas Emergency Medical Services Association, Kansas Hospital Association, Kansas Medical Society, and Southeast Kansas Rural Trauma Council.

No other testimony was provided.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, **proponent** testimony was provided by the Executive Director of the Emergency Medical Services Board and the Director of the Trauma Program at KDHE.

Written-only **proponent** testimony was provided by the Chairperson of ACT and the Vice Chairperson of the North East Regional Trauma Council, and representatives of the Kansas Association of Osteopathic Medicine, Kansas Emergency Medical Services Association, Kansas Hospital Association, and Kansas Medical Society.

No other testimony was provided.

The Senate Committee amended the bill to insert the contents of HB 2062, as amended by the Senate Committee, that pertain to the State Child Death Review Board.

HB 2062 (State Child Death Review Board)

HB 2062 was introduced by the House Committee on Children and Seniors at the request of the Office of the Attorney General.

House Committee on Children and Seniors. In the House Committee hearing, representatives of the Board testified as **proponents** of the bill, stating the bill would allow information related to the Board's work to be disclosed for additional limited purposes related to law enforcement investigations, professional licensure disciplinary complaints, record keeping, and approved research projects. Written-only proponent testimony was submitted by representatives of the Kansas Association of Chiefs of Police, Kansas County and District Attorneys Association, Kansas Peace Officers Association, Kansas Sheriffs Association, and Safe Kids Kansas. A representative of the National Center for Fatality Review and Prevention testified as a neutral conferee.

No other testimony was provided.

Senate Committee on Public Health and Welfare. In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officers Association and the Senior Assistant Attorney for the Board. Proponents generally stated the allowance of the limited exceptions will assist the State Child Death Review Board in its goal of working to prevent future child deaths. The representative of the law enforcement associations expressed their desire to work on a clarifying

amendment on the confidentiality exception to law enforcement.

Written-only **proponent** testimony was provided by a representative of Safe Kids Kansas.

No other testimony was provided.

The Senate Committee amended the bill to add one exception to confidentiality to allow the Board, or the Board's designee, to disclose information and records to any entity established by a city or county for the express purpose of providing a local review of child deaths if the information and records being disclosed are related to a child's death where either:

- Such death occurred in such city or county; or
- Such child was a resident of such city or county.

[*Note:* The Conference Committee retained this amendment and added a five-year sunset and review requirements.]

Additionally, the Senate Committee amended the confidentiality exception to law enforcement and any county or district attorney by clarifying the language by stating:

- Any Kansas state or local law enforcement agency if the Board determines the information and records being disclosed were not previously available to such law enforcement agency for the investigation of the cause of the child's death; and either:
 - The Board determines that the cause of the child's death was from abuse or neglect; or
 - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation

based on an official offense report as required in statute of abuse or neglect involving the death of a child;

- Any county or district attorney if the Board determines the information and records being disclosed were not previously available to such county or district attorney for the prosecution of any crimes related to the cause of the child's death; and either:
 - The Board determines the cause of the child's death was from abuse or neglect; or
 - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation based on an official offense report as required in statute of abuse or neglect involving the death of the child.

[Note: The Conference Committee retained these amendments.]

HB 2088 (Visual Observation During Investigations for Child Abuse or Neglect (Adrian's Law))

HB 2088 was introduced by the House Committee on Federal and State Affairs at the request of Representative Louis Ruiz.

House Committee on Federal and State Affairs

At the House Committee hearing on February 1, 2021, Representative Louis Ruiz, a representative of DCF, and a private citizen testified as **proponents** of the bill, stating that the bill would provide a safeguard to ensure the safety of children who are victims of abuse and neglect. Written-only proponent testimony was submitted by representatives of Children's Alliance of Kansas and FosterAdoptConnect.

Opponent testimony was submitted by a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officer's Association, and the Kansas Sheriffs Association, stating that in some cases law enforcement may lack the legal authority to demand viewing the child. A representative of League of Kansas Municipalities submitted written neutral testimony.

The House Committee amended the bill by adding provisions that would allow a designee of either the Secretary or investigating law enforcement agency to to meet the visual observation requirement. [Note: This amendment was retained by the Conference Committee.]

HB 2115 (Establishing the Joint Committee on Child Welfare System Oversight)

HB 2115 was introduced by the House Committee on Children and Seniors at the request of Representative Concannon.

House Committee on Children and Seniors

In the House Committee on Children and Seniors hearing on February 4, 2021, the Secretary for Children and Families and representatives of Children's Alliance of Kansas and Kansas Appleseed Center for Law and Justice testified as **proponents** of the bill, stating the bill would address needs within the State's child welfare system, and the oversight and input of the Joint Committee would assist in crafting solutions that would advance the safety and well-being of children and families impacted by the child welfare system. Written-only proponent testimony was submitted by Representatives Hawkins and Humphries and the Kansas Association of School Boards. No other testimony was provided.

The House Committee amended the bill to add two members to the Joint Committee and modify the time frame during which the Committee would be required to meet. [Note: The Conference Committee retained these amendments.]

House Committee of the Whole

On February 17, 2021, the House Committee of the Whole adopted a technical amendment to add a word inadvertently omitted from the bill.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, a representative of Kansas Appleseed Center for Law and Justice provided **proponent** testimony. Written-only proponent testimony was provided by the Secretary for Children and Families and representatives of the Children's Alliance of Kansas and the Kansas Association of School Boards.

The Senate Committee amended the bill to change the effective date from upon publication in the *Kansas Register* to upon publication in the statute book. [Note: The Conference Committee did not retain this amendment.]

HB 2116 (Eligibility for Child Care Assistance)

HB 2116 was introduced by the House Committee on Children and Seniors at the request of a representative of DCF.

House Committee on Children and Seniors

In the House Committee on Children and Seniors hearing, a representative of DCF testified as a **proponent** of

the bill, stating the bill would allow the State to provide federal funds for child care costs to caregivers of foster children working under 20 hours per week. Written-only proponent testimony was submitted by a representative of Children's Alliance of Kansas. No other testimony was provided.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, a representative of DCF testified as a **proponent** of the bill. No other testimony was provided.

The Senate Committee amended the bill to change its effective date to upon the publication in the *Kansas Register*. [Note: This amendment was retained by the Conference Committee.]

HB 2448 (Family Foster Home Licensing)

HB 2448 was introduced by the House Committee on Appropriations at the request of Representative Concannon.

House Committee on Children and Seniors

In the House Committee hearing on March 24, 2021, representatives of DCF and KVC Kansas testified as **proponents**, stating the bill would provide DCF with discretion to license a family foster home where a former foster youth who has been adjudicated as a juvenile offender resides, helping such youth achieve permanency and to facilitate placements for other foster youth. A representative of Children's Alliance of Kansas and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided written-only proponent testimony. No other testimony was provided.

Fiscal Information

HB 2088 (Visual Observation During Investigations for Child Abuse or Neglect [Adrian's Law])

According to the fiscal note prepared by the Division of the Budget on HB 2088, as introduced, DCF, the Kansas Bureau of Investigation, the Office of Judicial Administration, the KDADS, and the Kansas Department of Corrections indicate enactment of the bill would not have a fiscal effect on their respective agencies.

The Attorney General's Office indicates the bill could result in additional criminal cases being referred to the Office for prosecution. However, the fiscal effect cannot be estimated because cases are referred at the discretion of local county or district attorneys and it is unknown how many cases can be referred. The Kansas Association of Counties states that the bill would have a negligible fiscal effect on counties. Any fiscal effect associated with HB 2088 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2158 (Advisory Committee on Trauma)

According to the fiscal note prepared by the Division of the Budget on HB 2158 as introduced, KDHE indicates the bill would have no fiscal effect on agency operations, and support for ACT would continue within existing resources.

HB 2062 (Child Death Review Board)

According to the fiscal note prepared by the Division of the Budget on HB 2062 as introduced, the Office of the Attorney General (Office) indicates enactment of the bill would allow the Board to participate in a national database which is free for participating states to use. The Office may receive case referrals from county or district attorneys to

request case prosecution, but the Office cannot predict the number of additional cases that could arise and a fiscal effect cannot be estimated. DCF indicates there could be an increase in records requests; however, the number cannot be estimated and any additional costs would be absorbed within existing resources. The Kansas Association of Counties states a fiscal effect cannot be determined because it cannot estimate the number of additional requests it could receive. Any fiscal effect is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2115 (Establishing the Joint Committee on Child Welfare System Oversight)

According to the fiscal note prepared by the Division of the Budget on HB 2115, as introduced, enactment of the bill could have a fiscal effect on expenditures of the Judiciary, however the Office of Judicial Administration indicates the cost of staff is unknown. Legislative Administrative Services indicates enactment of the bill would increase expenditures by \$30,009 from the State General Fund in FY 2022. The amount includes expenditures for 11 members for salaries, subsistence, mileage, tools, and other expenses of \$25,949. There would also be committee assistant costs of \$4,060. The Kansas Department of Corrections and KDHE indicate enactment of the bill would have no fiscal effect on the agencies. Any fiscal effect associated with HB 2115 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2116 (Eligibility for Child Care Assistance)

According to the fiscal note prepared by the Division of the Budget on HB 2116 as introduced, enactment of the bill would have no fiscal effect because Child Care and Development Fund funds are currently being claimed for these cases. If it was determined the current claiming methodology was not allowable, approximately \$160,000 in State General Fund moneys would be needed to fully fund the services annually. KDADS, the Kansas Department of

Corrections, and the Office of Judicial Administration indicate enactment of the bill would have no fiscal effect on the agencies or the Judicial Branch, respectively.

HB 2448 (Family Foster Home Licensing)

According to the fiscal note prepared by the Division of the Budget on HB 2448 as introduced, DCF indicates enactment of the bill would have no fiscal effect on its operations.

Child death review board; Adrian's law; Joint Committee on Child Welfare System Oversight; Child care assistance eligibility 20-hour-per-week requirement; DCF license exemption; Former foster care youth with juvenile adjudication

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