

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2153**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2153 would create the Child Advocate Act (Act), which would establish the Office of the Child Advocate (Office) within the Office of the Attorney General (OAG). The bill would also create the Joint Committee on Child Welfare System Oversight (Joint Committee).

***Child Advocate Act; Office of the Child Advocate (New
Sections 1 through 5 and Sections 7 through 11)***

Purpose

The bill would state the purpose of the Office is to receive and resolve complaints from legislators and from persons involved with the child welfare system alleging that the Department for Children and Families (DCF), DCF's contracting agencies, or the Department of Corrections (KDOC) has provided inadequate protection or care of children and assist the Legislature in conducting oversight of the child welfare system to improve the safety and welfare of children.

*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>

Definitions

The bill would provide the following definitions:

- “Child” would mean an individual less than 18 years of age at the time such individual:
 - Is in the custody of the Secretary for Children and Families (Secretary);
 - Was previously in the custody of the Secretary;
 - Is alleged to be a child in need of care, as provided in the Revised Kansas Code for Care of Children (CINC Code); or
 - Was receiving services, treatment, or other programs from KDOC; and
- “Office” would mean the Office of the Child Advocate within the OAG and would include the Child Advocate and staff.

Structure of the Office

The Office would be established as a division within and under the jurisdiction of the Attorney General and would be administered by the Child Advocate. The bill would provide, when a vacancy occurs or will occur in the position of the Child Advocate, the Attorney General would promptly notify the chairperson of the Joint Committee (also created by the bill). The Joint Committee would promptly receive applications for the position and recommend three applicants to the Attorney General, who would appoint the Child Advocate, subject to confirmation by the Senate, for a term to expire on January 15 of each even-numbered year, beginning in 2022. The bill would require the Child Advocate to exercise independent judgment in carrying out the duties of the Office and to report to the Attorney General, who could remove the Child Advocate for cause prior to the expiration of the Child Advocate’s term of office.

The bill would require the Child Advocate to be selected without regard to political affiliation and on the basis of integrity and capacity for effectively carrying out the duties of the Office and would prohibit any former or current executive or manager of any program or agency or contracting agency subject to oversight by the Office from being appointed as Child Advocate within 12 months of such individual's period of service within such program or agency.

The Child Advocate would:

- Be in the unclassified service and receive an annual salary equal to that of a district court judge; and
- Have general managerial control over the Office and establish the organizational structure of the Office as the Child Advocate deems appropriate to carry out the responsibilities and functions of the Office.

The bill would provide that all budgeting, purchasing, personnel, and related administrative functions of the Office would be administered under the direction and supervision of the Attorney General, with appropriations for the Office made to the Attorney General by separate line item appropriations for the Office. Within the limits of appropriations, the Attorney General could hire unclassified employees necessary to administer the Office, who would serve at the pleasure of the Attorney General. The Child Advocate could obtain the services of other professionals necessary to independently perform the functions of the Office, including obtaining legal services from the Attorney General as provided elsewhere in statute.

The bill would require the Child Advocate to prepare the annual budget request for the Office and present such request to the Joint Committee. Upon approval of the Joint Committee, the Child Advocate would submit the budget request to the OAG to include with the OAG's annual budget

request to the Director of the Budget as other budget requests are submitted.

Duties and Powers of the Child Advocate and the Office

The bill would require the Office to receive complaints that allege DCF, the DCF's contracting agencies, or KDOC, by act or omission, failed to protect the physical or mental health, safety, or welfare of any child, or failed to follow established laws, rules and regulations, or written policies.

The bill would require the Child Advocate to:

- Establish and implement procedures for receiving complaints;
- Provide DCF with a notice of availability that describes the Office and procedures for contacting the Office. The bill would require DCF ensure this notice is prominently posted in DCF offices and facilities receiving public moneys for the care and placement of children;
- Maintain a publicly available website; and
- Publicize and notify individuals of the Office's services, purpose, and contact information.

The bill would allow the Child Advocate, after consultation with the Joint Committee, to establish limits for the type or number of complaints the Office receives to maintain the Office's ability to properly investigate and resolve such complaints considering the Office's personnel, resources, authority, and expertise.

The bill would require the Office to independently investigate complaints received, if the Office reasonably believes the complaints' allegations may be independently verified through an investigation, and to resolve such complaints. The bill would detail additional specific

requirements and powers for the Office and other agencies and officials in completing the investigation and resolution of complaints, including:

- Information and records that may be accessed;
- Persons with whom the Office may communicate privately;
- Judicial-related procedures that may be used;
- Recommendations the Office may make;
- Submission of findings or recommendations to the Secretary for Children and Families or the Secretary of Corrections, as appropriate;
- Referral of child abuse or neglect to an appropriate law enforcement agency and notification of the OAG; and
- Production of reports of findings of fact or conclusions of law regarding any complaint, which the Attorney General could file in any pending child in need of care case on behalf of the Office.

To assist the Legislature in oversight of the child welfare system, the bill would allow the Office to:

- Meet and discuss any matter in the scope of the Act with the Joint Committee in regular or executive session under the same duties of confidentiality as provided for the Child Advocate;
- Review relevant statutes, rules and regulations, policies, and procedures for the health, safety, and welfare of children;
- Evaluate the effectiveness of and recommend changes to procedures for reports of child abuse and neglect for Child Protective Services,

including, but not limited to, the involvement of DCF, service providers, guardians *ad litem*, court appointed special advocates, and law enforcement agencies; and

- Review and recommend changes to law enforcement investigative procedures for and emergency responses to reports of abuse and neglect.

Duties of Other Agencies and Officials

To assist the Office in its duties under the Act, the bill would require employees of DCF, the DCF's contracting agencies, KDOC, juvenile intake and assessment workers, juvenile community corrections officers, guardians *ad litem*, and court appointed special advocates to:

- Work diligently, promptly, and in good faith to assist the Office;
- Provide full access to and production of records and information requested by the Office, which would not be a violation of confidentiality of such records if provided and produced in good faith for the purposes of the Act;
- Require employees and contractors of such department or agency to comply with requests from the Office;
- Allow employees of such department or agency to file a complaint with or provide records or information to the Office without supervisory approval;
- Not willfully interfere with or obstruct any of the Office's duties; and

- Promptly meet and consult with the Office upon request of the Office.

Annual Report

The bill would require the Child Advocate, on or before the beginning of each regular Legislative Session, to submit an annual report to the Legislature that includes recommendations for changes in statute, proposed annual budget, personnel, and any other topics the Office deems appropriate to properly perform the powers, duties, and functions provided by the Act.

Confidentiality

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.

Any files maintained by the Office would be confidential and disclosed only at the discretion of the Child Advocate, except that the identity of any complainant or child would not be disclosed by the Office unless the complainant or child, or either's legal representative, consents in writing to such disclosure or such disclosure is required by court order.

The bill would provide that any statement or communication made by the Office relevant to a complaint being investigated by the Office and any complaint made or information provided in good faith by any person would be absolutely privileged, and such person would be immune from suit.

The bill would prohibit a representative of the Office conducting or participating in any investigation of a complaint

from knowingly disclosing to any person other than the Office, or a person authorized by the Office, the name of any witness examined or any information obtained or given during such investigation. Such disclosure would be a class A nonperson misdemeanor.

The bill would require the Office conducting or participating in any investigation of a complaint to disclose the final result of the investigation with the consent of the child or the child's legal representative.

The Office could not be required to testify in any court with respect to matters held to be confidential in this section, except as the court may deem necessary to enforce the provisions of the Act, or when otherwise required by court order.

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 the Kansas Open Records Act, prior to July 1, 2026.

Retaliation; Prohibited Actions

Any person who knowingly takes "retaliatory action," as defined in the bill, against a child, DCF employee, or KDOC employee for any communication made or information given to the Office would be guilty of a class A nonperson misdemeanor, except when an employee discloses information the employee knows to be false or information without regard for the truth or falsity of the information, or, without lawful authority, information that is confidential as provided by any other provision of law.

Access to Information (Sections 7 through 11)

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.

***Joint Committee on Child Welfare System Oversight
(New Section 6)***

The bill would establish the Joint Committee, 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

The Joint Committee would be required to review the following:

- The Office report submitted pursuant to Section 3 of the bill, concerning changes in statute, personnel, and any other topics the Office deems appropriate to properly perform the powers, duties, and functions provided by the Act;
- The Office's proposed annual budget;

- 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), KDOC, 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 involved in, or at risk of becoming 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 health care 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; and
- 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:

- 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 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 Speaker of the House of Representatives would be required to appoint the first chairperson from among the members of the Joint Committee appointed by the Speaker of the House of Representatives, within 30 days of the effective date of the bill. The bill would require the positions of chairperson and vice-chairperson to alternate annually between the members appointed by the Speaker of the House of Representatives and the President of the Senate. When appointing a chairperson or vice-chairperson as provided in the bill, the Speaker of the House of Representatives and the President of the Senate 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 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 July 1, 2021, on the call of the chairperson. After the initial meeting, the Joint Committee would be required to meet at least once during each of the first and second calendar quarters when the Legislature is in regular session and at least once during each of 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 bill would require the report 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.

Background

As introduced and passed by the House, HB 2153 contained provisions increasing the criminal penalty for the mistreatment of a dependent adult or elder person when the victim is a resident of an adult care home. The Senate Committee on Judiciary amended HB 2121 to add the contents of HB 2153 as introduced and recommended a substitute bill for HB 2153 containing amended language from SB 301, establishing the Office and the Joint Committee.

SB 301

SB 301 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Baumgardner. [*Note:* As introduced, the bill contained similar subject matter to SB 120 and HB 2115 (establishing the Joint Committee) and HB 2345 (establishing the Office).]

Senate Committee on Judiciary

In the Senate Committee hearing on March 23, 2021, Senator Masterson, Senator Baumgardner, the Attorney

General, and a representative of the OAG testified as **proponents**, stating the bill would provide independent accountability and oversight for the child welfare system.

Representatives of DCF, the Association of Community Mental Health Centers of Kansas, and Kansas Appleseed Center for Law and Justice provided neutral testimony.

Representative Ousley and a representative of Children's Alliance of Kansas testified as **opponents**, expressing concerns regarding the scope of the Office and possible inconsistencies with other Kansas statutes.

A representative of Cornerstones of Care provided written-only **opponent** testimony.

On March 29, 2021, the Senate Committee amended the bill to:

- Clarify the definition of "child";
- Include recommendations from the Joint Committee as part of the Child Advocate appointing procedure;
- Increase the waiting period for appointment of a former or current executive or manager of an entity subject to oversight by the Office to the position of Child Advocate from 6 months to 12 months;
- Reduce the term of the Child Advocate from four years to two years;
- Require the Office to request judicial approval for subpoenas during investigations conducted by the Office; and
- Clarify applicable statutory confidentiality provisions.

The Senate Committee recommended the amended contents be placed in a substitute bill for HB 2153.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 301, as introduced, the OAG indicates enactment of the bill would result in additional expenditures of \$631,204, including \$543,816 for 6.0 FTE positions to staff the Office and \$87,387 for other operating expenditures, all from the State General Fund (SGF). The FTE positions would include a 1.0 FTE Child Advocate position, whose salary is established by the bill as equal to that of a district court judge (\$166,560); 3.0 FTE investigator positions to review and investigate complaints (each with a salary of \$68,704, for a total of \$206,111); 2.0 FTE support staff positions to assist with complaint intake, data entry, and tracking (each with a salary of \$57,421, for a total of \$114,843); and a 0.5 FTE attorney position to provide legal support to the Office (with annual wages totaling \$56,302). The OAG estimates the cost of other operating expenses would be \$87,387 and would include office rent, furnishings, travel, information technology equipment and services, licensing and training, and office supplies and printing.

Legislative Administrative Services states enactment of SB 301 would result in expenditures of \$34,726 from the SGF. Four of the meeting days would have a fiscal effect, resulting in total costs for 13 legislators of \$30,666. Employer costs for fringe benefits are estimated to be \$2,760. Costs for salary and wages and fringe benefits for the committee assistant for six meeting days and follow-up time to create minutes would total \$4,060.

According to KDADS, enactment of the bill would require the agency to have a dedicated staff to research, track down, and timely respond to complaint inquiries received from the Office regarding children who have crossed over from DCF into KDADS licensed facilities or have been placed by a court

into KDADS' custody for care and treatment. The agency estimates it would need 1.0 FTE position for these purposes at a cost of \$93,000 from the SGF annually for salaries and wages, including fringe benefits.

DCF estimates enactment of the bill would result in the need for 3.0 FTE program consultant positions to coordinate Office responses, performance improvement efforts, and tracking, at a cost of \$169,193 for salaries and wages, including fringe benefits, and \$17,985 for other operating expenditures, for a total cost of \$187,178. Of that amount, \$141,806 would be from the SGF and \$45,372 would be from federal funds.

According to the Kansas Department of Education, enactment of the bill would not have a fiscal effect on school districts. The Kansas Bureau of Investigation, the Kansas Highway Patrol, and KDOC state enactment of the bill would have no fiscal effect on their agencies. KDHE indicates enactment of the bill would have no direct effect on the agency, as any requests for data or records would be handled within existing resources.

According to the Kansas Association of Counties, enactment of the bill is unlikely to have any fiscal effect on counties, as the duties created by the bill are assigned to the OAG. Any work done by county or district attorneys would likely fall within the normal course of their duties. The League of Kansas Municipalities indicates enactment of the bill would not be expected to have a fiscal effect on Kansas cities.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Child Advocate Act; Office of the Child Advocate; Attorney General; Joint Committee on Child Welfare System Oversight; children and minors