

HOUSE BILL No. 2443

By Committee on Appropriations

2-23

House Committee on Child Welfare and Foster Care
Prepared by: Office of Revisor of Statutes

1 AN ACT concerning children and minors; establishing the office of the
2 child advocate as an independent state agency and the child advocate
3 advisory board; prescribing certain powers, duties and functions
4 thereof; allowing disclosure of confidential records to the child
5 advocate; amending K.S.A. 38-2213, 38-2309 and 38-2310 and K.S.A.
6 2022 Supp. 38-2211 and 38-2212.

7
8 *Be it enacted by the Legislature of the State of Kansas:*
9 New Section 1. (a) As used in sections 1 through 8, and amendments
10 thereto:

- 11 (1) "Child" means any individual under 18 years of age who:
 - 12 (A) Is in the custody of the secretary for children and families;
 - 13 (B) may be alleged to be a child in need of care as provided in K.S.A.
 - 14 38-2201 et seq., and amendments thereto;
 - 15 (C) is alleged to be a child in need of care as provided in K.S.A. 38-
 - 16 2201 et seq.; or
 - 17 (D) is currently or was receiving services or treatment from the
 - 18 department of corrections; and

19 (2) "office" means the office of the child advocate that includes the
20 child advocate and staff.

21 New Sec. 2. (a) There is hereby established the office of the child
22 advocate, the head of which shall be the child advocate. In the
23 performance of the powers, duties and functions prescribed by law, the
24 office shall be an independent state agency. The child advocate shall be
25 appointed pursuant to section 5, and amendments thereto.

26 (b) The purpose of the office is to ensure that children and families
27 receive adequate coordination of child welfare services, child maltreatment
28 prevention, protection and care through services offered by the Kansas
29 department for children and families or the department's contracting
30 entities, the Kansas department for aging and disability services, the
31 department of corrections, the department of health and environment and
32 juvenile courts.

33 (c) The child advocate shall receive, investigate and attempt to
34 resolve complaints from any persons involved with the child welfare
35 system alleging that the Kansas department for children and families or the
36 department's contracting entities, the department of corrections, the

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1 judicial branch or another child welfare stakeholder has provided
2 inadequate protection or care of children and assist the state of Kansas in
3 conducting oversight of the child welfare system to improve the safety and
4 wellbeing of children.

5 (d) The child advocate shall perform the duties required by sections 1
6 through 8, and amendments thereto, independently from state agencies and
7 other entities under review by the office and report directly to the office of
8 the child advocate advisory board.

9 New Sec. 3. (a) There is hereby established an independent and
10 nonpartisan child advocate advisory board.

11 (b) The board has the following duties and responsibilities in
12 overseeing the office of the child advocate:

13 (1) On or before December 1, 2023, appoint the child advocate, and
14 as necessary thereafter pursuant to section 5, and amendments thereto;

15 (2) for good cause and subject to a 2/3 vote of the board, terminate the
16 child advocate;

17 (3) fill any vacancy of the child advocate;

18 (4) evaluate the child advocate's performance and receive feedback
19 on the child advocate's performance;

20 (5) develop a public complaint process related to the child advocate's
21 performance;

22 (6) oversee and advise the child advocate on the office's purpose;

23 (7) promote and ensure access to the office;

24 (8) provide fiscal oversight of the office's budget; and

25 (9) ensure compliance with the provisions of sections 1 through 8,
26 and amendments thereto, and any state or federal laws relating to child
27 welfare.

28 (c) Membership of the board shall not exceed ~~12~~ members and to the
29 extent practicable, include individuals from across the state, with different
30 abilities and ethnic diversity. All members shall have child welfare policy
31 or system expertise or experience.

11

32 (d) The board members shall be appointed before August 1, 2023, as
33 follows:

34 (1) The chief justice of the Kansas supreme court shall appoint:

35 (A) An individual with experience as a respondent parents' counsel;

and

36 (B) ~~an individual with experience defending juveniles in court~~
37 ~~proceedings;~~

38 (C) ~~an individual with legal experience in child in need of care cases~~
39 ~~or who served as a guardian ad litem; and~~

40 (D) ~~an individual with experience in juvenile justice;~~

41 (2) the governor shall appoint:

42 (A) An individual with previous professional experience with a social
43 service agency in a rural area;

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1 ~~(B) an individual with previous professional experience with the~~
2 ~~Kansas department for children and families;~~

3 ~~(C) an individual with previous professional experience with a social~~
4 ~~service agency in an urban area; and~~

5 ~~(D) an individual with professional experience in primary or~~
6 ~~secondary education,~~

(C) an individual with professional experience providing
mental health services to a child in need of care

7 (3) the president and minority leader of the Senate shall appoint:

8 (A) An individual who was a child in need of care; and

9 ~~(B) an individual with professional experience providing mental~~
10 ~~health services to a child in need of care; and~~

an individual who is a biological parent to a child in need
of care; and
(C) a member at-large

11 (4) the speaker and the minority leader of the House of
12 Representatives shall appoint:

13 (A) A current or former foster parent; and

14 ~~(B) a healthcare professional with previous experience with child~~
15 ~~abuse and neglect cases.~~

an individual who has adopted a child through a Kansas
court; and
(C) a member at-large

16 (e) Board members shall serve for a term of four years, except that
17 two members first appointed by the chief justice and the governor and one
18 member appointed by the president and minority leader of the senate and
19 the speaker and the minority leader of the house of representatives shall
20 serve a term of two years determined by the appointing authority.

21 (f) Whenever a vacancy occurs, such vacancy shall be filled in the
22 same manner as the vacated appointment.

The board may suspend or remove any member of the board for
failure to perform such member's duties by majority vote of the
board. Vacancy created by removal shall be filled in the same
manner as the original appointment.
(g)

23 ~~(g) The board shall meet twice a year and may meet additionally as~~
24 ~~needed. At least one meeting per year shall not be held in the Topeka~~
25 ~~metropolitan area.~~

(h)(1)

26 ~~(h) Members of the board shall serve without compensation, but may~~
27 ~~be reimbursed for actual and reasonable expenses incurred in the~~
28 ~~performance of the board member's duties. Such expenses shall be paid by~~
29 ~~the office of the child advocate from the office of the child advocate fund.~~

(2) At the board's initial meeting and annually at the board's first
meeting subsequent to July 1, the board shall elect a chairperson,
vice-chairperson and other officers as the board deems appropriate
from the board's membership.

redesignate subelements

30 (i) The board shall be subject to the provisions of the open meetings
31 act, except to discuss personnel matters of non-elected personnel and to
32 discuss matters relating to the care of children pursuant to K.S.A. 38-2212
33 or 38-2213, and amendments thereto, and the federal child abuse
34 prevention and treatment act.

35 (j) The records of the board shall be subject to the provisions of the
36 open records act, except records pursuant to K.S.A. 45-221, and
37 amendments thereto.

38 New Sec. 4. (a) To fulfill the purpose of the office pursuant to section
39 2, and amendments thereto, the child advocate shall:

40 (1) Independently and impartially investigate complaints submitted to
41 the office. The child advocate may seek resolution of the complaint, which
42 may include, but not be limited to, referring a complaint to a state agency
43 or other entity for action;

- 1 (2) address complaints made by or on behalf of a child that relate to
2 state agencies, service providers, including contractors, subcontractors and
3 any juvenile court, that may adversely affect the health, safety, welfare,
4 permanency or wellbeing of such child;
- 5 (3) establish a procedure for receiving, processing, responding to and
6 resolving such complaints;
- 7 (4) ensure confidentiality of all complaints, including the identity of a
8 complainant or reporter, unless disclosure is deemed necessary for the
9 child advocate to perform the child advocate's duties, with consent from
10 such complainant or reporter;
- 11 (5) receive and exchange records as provided in K.S.A. 38-2201 et
12 seq. and 38-2301 et seq., and amendments thereto, to make inquiries and
13 review relevant information and records that the office deems necessary
14 for investigations;
- 15 (6) compile, collect and preserve a record of complaints received and
16 processed that may reveal concerning patterns to be addressed;
- 17 (7) submit any findings and recommendations to the Kansas
18 department for children and families and recommend changes to policies
19 and procedures to improve the delivery of child welfare services;
- 20 (8) recommend changes to policies, procedures or adopted or
21 proposed rules and regulations of any state or local agency that adversely
22 affect or may adversely affect the health, safety, welfare, permanency or
23 wellbeing of any child;
- 24 (9) analyze and monitor the development and implementation of
25 federal, state and local laws, rules and regulations and policies with respect
26 to child welfare services in the state and recommend changes in such laws,
27 rules and regulations and polices to the Kansas department for children
28 and families or the department's contracting entities, the Kansas
29 department for aging and disability services, the department of health and
30 environment, the department of corrections, juvenile courts, the legislature
31 and the governor;
- 32 (10) inform and educate children, their guardians and families of the
33 child's rights and entitlements pursuant to state and federal laws; and
- 34 (11) fulfill responsibilities in this section guided by generally
35 accepted principles of best practices in child welfare.
- 36 (b) To fulfill the purpose of the office pursuant to section 2, and
37 amendments thereto, the child advocate may:
- 38 (1) Access records as provided in K.S.A. 38-2201 et seq. and 38-2301
39 et seq., and amendments thereto, related to complaints received;
- 40 (2) access all written reports of child abuse and neglect maintained by
41 the secretary for children and families related to complaints received;
- 42 (3) communicate privately with any child or child's siblings, after
43 consultation with treatment professionals and service providers, and with

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1 anyone working with the child, including the family, relatives, employees
2 of the Kansas department for children and families or the department's
3 contracting entities, Kansas department for aging and disability services,
4 juvenile courts and other persons or entities providing treatment and child
5 welfare services to such child;

6 (4) work in conjunction with guardians ad litem;

7 (5) file any of the office's findings or reports regarding a parent or
8 child with the appropriate court with jurisdiction over a child in need of
9 care case involving such child, and issue recommendations regarding the
10 disposition of an investigation to the court and to the investigating agency,
11 but shall not intervene in divorce, protection from abuse, juvenile offender,
12 child in need of care, administrative hearings, civil or criminal
13 proceedings;

14 (6) file amicus curiae briefs of the findings and recommendations of
15 the office in appeals from child in need of care matters;

16 (7) utilize the resources of the office of the attorney general, as
17 necessary, to carry out any duties of the child advocate and receive legal
18 counsel or services;

19 (8) initiate meetings with personnel from the Kansas department for
20 children and families or the department's contracting entities, Kansas
21 department for aging and disability services and juvenile courts;

22 (9) apply for and accept grants, gifts and bequests of moneys from
23 other state, interstate or federal agencies, independent authorities, private
24 firms, individuals or foundations to carry out the child advocate's duties
25 and responsibilities, and such moneys shall be deposited in the office of
26 the child advocate fund and shall be expended in accordance with the
27 provisions of the grant or bequest;

28 (10) establish local panels on a regional or county basis to adequately
29 and efficiently carry out the functions and duties of the office and address
30 complaints in a timely manner as appropriate; and

31 (11) conduct an independent review of any policy, procedure or
32 practice that is the subject of a complaint submitted as provided in this
33 section.

34 (c) Nothing in this section shall create a just cause for delay of court
35 proceedings or excuse any court, county attorney or district attorney,
36 guardian ad litem or other agency from their duties in proceedings related
37 to a child.

38 (d) No review of any complaint shall require any licensed
39 professional to engage or not engage in conduct required or prohibited by
40 any governing professional code of responsibility or conduct.

41 New Sec. 5. (a) The office shall be administered by the child
42 advocate, who shall be appointed by the child advocate advisory board and
43 subject to confirmation by the senate as provided in K.S.A. 75-4315b, and

(e) The filing of a complaint to the office shall not establish any relationship between the child advocate or an employee of the office and a complainant or any other party involved in the complaint. There is no privilege as to any communication between the child advocate or an employee of the office and a complainant or any other party involved in the complaint.

(1)

1 amendments thereto, for a term of four years. The first child advocate shall
2 be appointed and confirmed on or before January 1, 2024, and on or before
3 January 1 every four years thereafter.

4 (b) The child advocate shall be a person that either holds a current
5 relevant license that would authorize the individual to work as a licensed
6 professional as a case manager, behavioral health professional or attorney
7 for a child in need of care or has seven or more years of experience in the
8 field of child welfare. The child advocate shall not be a current, or have
9 been employed within the past 12 months as an executive or manager of
10 any program or agency or contracting agency subject to oversight by the
11 office.

12 (c) The office of the child advocate shall be under the direct
13 supervision of the child advocate.

14 (d) The child advocate may appoint employees as the office may
15 require to fulfill the office's duties. Employees in the office shall be in the
16 unclassified service and serve at the pleasure of the child advocate. The
17 child advocate shall fix the compensation of each such employee subject to
18 appropriations therefor.

19 (e) Any employee of the office shall be immune from suit and
20 liability, in an official capacity and personally, for the good faith
21 performance of duties prescribed in sections 1 through 8, and amendments
22 thereto.

23 New Sec. 6. (a) On or before the first day of the regular legislative
24 session in 2024, and each year thereafter, the child advocate shall submit
25 an annual report to the governor, the house of representatives standing
26 committee on child welfare and foster care, the senate standing committee
27 on public health and welfare, or any successor committees thereof, the
28 joint committee on child welfare system oversight and the office of
29 judicial administration.

30 (b) Such report shall include, but not be limited to, the number of
31 complaints received by the office, the disposition of such complaints, the
32 number of children involved in such complaints, the state agencies or other
33 entities named in such complaints, whether such complaints were found to
34 be supported or unsupported and any recommendations for improving the
35 delivery of child welfare services to reduce complaints or improving the
36 function of the office and recommendations for changes in Kansas law.

37 (c) Such reports shall not include names or personally identifiable
38 information of children, guardians or families in complaints.

39 (d) Such reports are not subject to change by the the house of
40 representatives standing committee on child welfare and foster care, the
41 senate standing committee on public health and welfare, or any successor
42 committees thereof, or the joint committee on child welfare system
43 oversight except that any such committee may request additional

:
(A)

; (B)

; or
(C) has demonstrated extensive experience in the
practice of child welfare in the field.
(2)

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