

TESTIMONY OF MIKE FONKERT
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KANSAS SENATE JUDICIARY COMMITTEE
NEUTRAL TESTIMONY ON SENATE BILL 301
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My name is Mike Fonkert; I am the director of the Just Campaign for the Kansas Appleseed Center for Law and Justice, a nonprofit, nonpartisan organization dedicated to the belief that Kansans, working together, can build a state full of thriving, inclusive, and just communities.

Kansas Appleseed is offering neutral testimony on SB 301.

The Kansas foster care system is in crisis.¹ Too many children are in the foster care system. Children are entering care at racially disproportionate rates, and are too likely to re-enter the system after leaving.² Education outcomes for children in care are shockingly poor.³ Fixing the crisis will take a coordinated effort that addresses issues on several fronts, including increased resources and support for Kansas families, improving conditions and training for those working in the system, and independent oversight.

The 2018 Child Welfare System Task Force Working Groups studied Kansas’s child welfare system and recommended “The State of Kansas shall fund and establish the Office of the Child Advocate (OCA) for Children’s Protection and Services within the Kansas Department of Administration to identify challenges across the child welfare system, provide oversight, and propose solutions.”⁴

According to the National Conference of State Legislatures [NCSL], Kansas is one of a minority of states that does not currently have either an Office of the Child Advocate/Children’s Ombudsman Office or a statewide Ombudsman program addressing concerns that include children’s services.⁵ The United States Ombudsman Association [USOA] has established best practices for Ombudsman Offices in government. According to these best practices, “Independence is a core defining principle of an effective and credible Ombudsman.”⁶

¹ Strengthen Families Rebuild Hope. “Addressing the Foster Care Crisis in Kansas: Recommendations from the Strengthen Families Rebuild Hope Coalition.” Retrieved at: http://www.rebuildhopekansas.org/uploads/2/1/9/2/21929892/sfrh_2018report_final.pdf

² Kansas Appleseed analysis of DCF data and Census Bureau population estimates reveal Black children are entering foster care at more than twice the rate of white children. The re-entry rate within 12 months has been over 10% every month in fiscal year 2021. <http://www.dcf.ks.gov/services/PPS/Pages/PPSreports.aspx>

³ Less than 35% of the kids aging out of foster care in fiscal years 2020 and 2021 have graduated high school. http://www.dcf.ks.gov/services/PPS/Documents/FY2021DataReports/FCAD_ContractOutcomes/Completed_grd12FY2021.pdf

⁴ Kansas Child Welfare System Task Force. “Report of the Child Welfare System Task Force to the 2019 Kansas Legislature.” 2019.

⁵ National Conference of State Legislatures. “Children’s Ombudsman Offices | Office of the Child Advocate.” Retrieved at: <http://www.ncsl.org/research/human-services/childrens-ombudsman-offices.aspx>

⁶ United States Ombudsman Association. “Governmental Ombudsman Standards.” p. 2. Retrieved at: <http://www.usombudsman.org/site-usoa/wp-content/uploads/USOA-STANDARDS1.pdf>

An office that reports and acts independently of the Kansas Department for Children and Families and the Department of Corrections - offers the highest level of independence among the state models outlined by the NCSL. Analysis of the 11 states that have such an independent oversight office with a focus on the child welfare system reveals that states that involve multiple branches of government in the appointment process were more likely to see a decrease in the number of kids in care during the 10 years following implementation.⁷

Recent news reports also make clear the need for strong oversight of the foster care system in Kansas. Allegations of significant mismanagement regarding foster care contractor St. Francis Ministries were only brought to light by independent journalism long after a whistleblower complaint had been filed.⁸ Documents from a Saint Francis investigation show they invested \$11 million in the business of the CEO's friend for software that crashed and destroyed the organization's financial records. St. Francis also spent millions on lavish food, travel, and entertainment. A whistleblower complaint was filed in November 2019 with the Department of Children and Families, and nothing was done about the situation for over a year.⁹

We support having an independent entity whose budget and staffing are not dependent on the agencies whose work may be the subject of the child advocate's review. Over the last decade, the average foster care expenditure per child was \$25,819 in Kansas.¹⁰ For FY 2020, it was \$32,317. The fiscal note for previous bills that would have created an OCA estimated the OCA would require a little over \$750,00. Using the 10-year average figure, the OCA would pay for itself if it results in just 30 fewer kids in foster care.¹¹ The cost of the OCA is just 0.004% of the 2020 state budget - just four pennies per \$1,000.¹²

In order to support the independence of the Office of the Child Advocate, Kansas Appleseed recommends that the office be independent of direct control of the people appointing the office. House Bill 2345, a previous bill sponsored jointly by a bipartisan group of 18 Representatives that passed unanimously out of the Committee on Children and Seniors earlier this session, would have established the office inside the legislative branch while having the Governor and Chief Justice of the Kansas Supreme Court appoint the Advocate subject to confirmation by the Senate. This method ensured that the office was independent and was modeled off of the NCSL recommendations and the appointment system in Missouri - a neighboring state that saw significant improvements following the establishment of their OCA.

⁷ Analysis by Kansas Appleseed reviewing AFCARS data for the 11 states outlined by the NCSL.

<https://www.ncsl.org/research/human-services/childrens-ombudsman-offices.aspx>

⁸ Smith, S. "Kansas foster care leader charged \$469K to credit cards, hid financial losses." Kansas Reflector. 2020.

<https://kansasreflector.com/2020/12/20/kansas-foster-care-leader-charged-469k-to-credit-cards-hid-financial-losses/>

⁹ Smith, S. "Financial scandal intensifies interest in independent oversight for Kansas foster care." Kansas Reflector. 2021.

<https://kansasreflector.com/2021/01/10/financial-scandal-intensifies-interest-in-independent-oversight-for-kansas-foster-care/>

¹⁰ Data analyzed by Kansas Appleseed. Sources included: DCF Testimony to the House Social Services Budget Committee, Kansas Division of the Budget 2020 Comparison Report, and Reports on Removals, Exits and Out of Home Placement from DCF

¹¹ \$766,064 (cost of OCA) / \$25,819 (cost of foster care per kid) = 29.67

¹² \$66,064 / \$18,410,958,177 = 0.004%. Source for total expenditures: Kansas Division of the Budget 2020 Comparison Report

[\(https://budget.kansas.gov/comparison-reports/\)](https://budget.kansas.gov/comparison-reports/)

Under SB 301, the office would be appointed by the attorney general, exist within the office of the attorney general, report directly to the attorney general, be subject to removal from office by the attorney general, have all budgetary powers controlled by the attorney general, have all employees in the office hired and serving at the pleasure of the attorney general, have the attorney general responsible for filing any findings of the OCA. Kansas Appleseed has serious concerns about the independence of an office created in such a manner. All aspects of the office would be controlled directly by an elected politician, rather than by an independent child welfare expert. While the current bill language does specify that the child advocate shall exercise independent judgment in carrying out the duties of the office, exercising true independence is difficult if one is appointed by, can be fired by, all of their employees are hired by, and any report is filed by one elected official. We propose amending the appointment process to include all three branches of government and ensuring the office's independence by allowing the OCA to act independently of any directly elected executive branch member.

SB 301 also currently specifies that no former or current executive or manager of any program or agency or contracting agency subject to office oversight be appointed within six months of that individual's period of service. Kansas Appleseed supports preventing a revolving door between the OCA and the agencies and contractors over which the office provides oversight, but recommends that time period be significantly longer than six months to address this potential conflict.

House Bill 2345, the previously mentioned bipartisan bill that would have created the OCA earlier this session, also specified that the Child Advocate "shall be a person that either holds a current relevant license that would authorize the individual to work as a licensed professional as a case manager, behavioral health professional or attorney for a child in need of care or has seven or more years of experience in the field of child welfare." Kansas Appleseed recommends that SB 301 be amended to include a similar provision of necessary requirements ensuring the Child Advocate has relevant expertise in child welfare.

The current bill language for SB 301 also contains vagueness as it relates to contractors. Kansas Appleseed recommends that pg. 5 lines 33-35 be amended to make that New Section 3 (i) (4) applies to contractors as well as department and agency employees. We also recommend that New Section 5 (a) on pg. 6 lines 30-34 be amended to also prevent retaliation against any employee of any contractor of DCF or DOC.

SB 301 also would establish a joint committee on child welfare system oversight in New Section 6. Kansas Appleseed supports the codified establishment of this joint committee, and has testified in favor of nearly identical language included in HB 2115.



Kansas kids deserve the best support we can provide them. Vulnerable children entering state care need an independent entity looking out for their interests. The best available information tells us that independent oversight is an important piece of providing the best for our children. Establishing an Office of the Child Advocate is a crucial and necessary component to successful foster care reform in Kansas. We are happy that this bill seeks to do this. We hope that SB 301 can be amended to ensure that it is truly independent.

Thank you for your time and consideration on this important issue.