



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Testimony in Support of Senate Bill 301

**Presented to the Senate Committee on the Judiciary
By Deputy Attorney General Steven Karrer**

March 23, 2021

Chair Warren, Ranking Minority Member Haley, Members of the Committee:

Thank you for the invitation to testify on behalf of Kansas Attorney General Derek Schmidt in support of Senate Bill 301, which proposes to create the Office of Child Advocate.

I have served as the Deputy Attorney General in charge of the Fraud and Abuse Litigation Division (FALD) since its inception in July of 2016. The statutorily mandated Abuse Neglect and Exploitation Unit became a part of FALD upon the creation of the division. I also have served previously as the Chairperson of the Kansas Child Death Review Board. It is with this experience in mind I provide my testimony today.

Senate Bill 301, centers its review of the Kansas Child Welfare system through a complaint mechanism. The types of complaints we anticipate would be received can be divided into three categories. First, many complaints will be related to reports of child abuse or neglect that were unsubstantiated by DCF, meaning the child was never taken into protective custody. Second, complaints will be made where DCF did substantiate the complaint and took custody of the child. This complaint will often be rooted in the idea that DCF should not have taken custody of the child. The final area of complaints will be in regards to whom was given custody of the child. For instance, a complaint about a foster parent or relative placement.

The first authority given to the Office of the Child Advocate under new section 3 allows the office to establish and implement procedures for receiving these complaints. In my experience, even when the process objectively works as designed and has an objectively correct result, there are still individuals who will be upset with the outcome, because the result was not the one requested by them. This combined with the many cases where the system has objectively failed the child will result in a tremendous amount of complaints. It is extremely important the Office of the Child Advocate have the authority to screen and triage the complaints to determine an appropriate response. It is my belief that they will not be able to designate resources to fully review and investigate every complaint. There will simply be too many.

The Office of the Child Advocate is given certain investigatory authorities under new section 3(d). They are allowed access to the various records kept by DCF and their contracting agencies. This is important to any investigation into the treatment of a child. But, Section 3(d)(3) also allows the Office of the Child Advocate to communicate privately with the child or child's siblings and anyone working with the child, including employees of DCF. This is also an important authority. It is one thing to review records but often times not all relevant information is recorded, and they often do not provide the reasoning behind a decision. In order to obtain this, investigators must be able to speak to a specific social worker, foster parent, child, etc. One of the obstacles I witnessed through my work with the Child Death Review Board and the ANE Unit, is the requirement to get permission to speak directly to a child's social worker. Often they would have to obtain permission through a supervisor or only a supervisor would speak on behalf of DCF. This creates the situation where censoring of information or reasoning is a distinct possibility. Section 3(d)(3) will help prevent this.

Section 3(d)(6) provides subpoena authority to the Office of the Child Advocate. This not only gives the Child Advocate the ability to require individuals to provide testimony under oath but also allows them to obtain records from private entities such as banks, telephone companies, etc. Often this information is crucial in understanding exactly what occurred and if there was in fact a failure by DCF or one of their contracting agencies. Section 3(d)(6) would require access by the Child Advocate to an attorney to assist them. SB 301 does this through its association with the Office of the Kansas Attorney General.

Finally, SB 301 gives the Office of the Child Advocate several authorities to resolve complaints and assist the legislature in oversight of the child welfare system. I understand these authorities under new section 3(e) and (f) are rather extensive. The State Child Death Review Board and the ANE Unit (prior to 2016) had reporting requirements only. These reports, while helpful to the Legislature to establish policy and law for future cases, did nothing to change the circumstances of a particular child. Put another way, if SB 301 only proposed reporting authority to the Office of the Child Advocate, every complainant under the new law would be extremely disappointed because even if the Advocate found there was a failure by DCF, they would stand helpless to correct it in that particular case, with their only remedy being to report the findings to the Legislature. The authorities given in this bill are an attempt to remedy this.

Thank you again for the opportunity to testify today.

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