



**Opponent Testimony on SB301
Senate Judiciary Committee
March 23, 2021**

Chair Warren, Vice Chair Wilborn, Ranking Member Haley, and Members of the Committee, my name is Rachel Marsh, CEO of the Children's Alliance of Kansas. The Alliance is an association of 18 private, non-profit child welfare agencies that collectively provide a full array of services for children and families in child abuse and neglect prevention, family preservation, foster care, adoption, independent living, and parent, youth, and child skill-building, mental health, and substance use treatment.

Thank you for your consideration of this bill and for the opportunity to share our observations and concerns about SB301 with you today. The Children's Alliance supports the part of SB301 related to the Joint Committee on Child Welfare oversight and the concept of an independent ombudsman or child advocate. However, we have serious concerns with the construct and clarity around the Office of Child Advocate (OCA) proposed in SB301, and therefore we cannot support SB301 on balance. We encourage this committee to oppose the broad expansion of government scope and authority and the limitations on individual liberties present in SB301.

As you may be aware, the child welfare system can be complex and confusing, which creates real barriers for children, parents, and relatives in knowing what to expect when they become involved in the system. We believe there are a variety of appropriate and helpful approaches to implement a child welfare ombudsman to drive education, information, support, and navigation for children, parents, relatives, foster parents, and even case managers. However, SB301 includes language – perhaps unintended - that **expands government authority well beyond matters related to child welfare**. Within the details of SB301 are provisions **not tethered to critical principles of the limited role of government in family life** and that put Kansas families and foster families at risk. Additionally, multiple aspects of SB301 create inconsistencies between the Kansas Child in Need of Care Code (CINC), the Juvenile Offender Code (JO) and other Kansas statutes, meaning that hoped-for support for improved education, information, and navigation may be impossible. The Children's Alliance stands against adding confusion and delay to the experiences of children and families during child welfare involvement, and against **expanding government at the expense of individual liberties** of Kansas families.

SB301 expands unprecedented government authority over Kansas families, caregivers, and providers. As proposed in SB301, the OCA will have extraordinary investigatory power, unbridled subpoena power, unchecked power to seize materials, and legal authority to compel appearance from **any Kansas resident with almost no critical nexus to child welfare matters**. Particularly for those situations where no CINC case is open, this new undefined subpoena power contains no guardrails or procedures. Without subpoena guardrails, SB301 would grant the OCA **more power over individual family lives than any current law enforcement, DCF investigation, legislative, or judicial authority has today in Kansas**. This vast expansion of governmental power and authority in an OCA is not necessary to achieve a strong ombudsman function.

SB301 creates unresolved conflicts of laws for courts, families, and providers. SB301 would grant the OCA access to records, materials, and individuals in a manner that is inconsistent and conflicting with the Kansas CINC and JO code sections governing discovery, confidentiality, and exchange of information; and with other Kansas and federal statutes.

- SB301 inserts civil discovery concepts into Kansas child welfare matters. SB301 would open the use of traditional tools of civil discovery to the OCA, a non-party in a child welfare matter, when the parties themselves are limited from using the same tools. SB301 stands in contrast to existing language in the Kansas CINC code which only permits traditional tools of discovery that a court, after hearing, finds will expedite proceedings. These current discovery limits prevent child welfare matters becoming protracted multi-year custody battles. Providing for the OCA - but not for case parties - to use civil discovery would create in itself a due process concern for parties subject to lengthy litigation. We recommend that the current balance of only court-ordered and court-managed discovery be maintained.
- SB301 creates confusion and conflict about information sharing with the OCA. SB301 adds the OCA into some - but not all - of the CINC and JO code frameworks for information sharing and confidentiality, while also creating language inconsistent with the CINC and JO frameworks, HIPAA, and confidentiality for *guardians ad litem*. Consider just a few of the providers involved in Kansas CINC and JO cases – health, mental health, substance use, parent skills, domestic violence, education, batterer’s intervention, I/DD - whose records may be sought. These providers by legal necessity will be trapped between conflicting requirements, whenever those inconsistencies become relevant. Meanwhile, the OCA may be citing language from SB301 that employees and providers must comply with requests and must not interfere with the office. We recommend that any OCA framework ensure providers have clear and consistent guidance across the CINC and JO code, HIPAA, confidentiality, and privilege laws.
- SB301 may eliminate therapist and physician client privilege for OCA requests. Existing state law regarding medical and mental health privilege does not apply for “information which is required to be reported to a public official.” A key question in SB301 is whether the OCA access to records framework would eliminate medical and mental health privilege for clients subject to the OCA’s exercise of authority – and whether that reach is necessary or intended. If SB301 moves forward, social workers, counselors, psychologists, and physicians may be required to defend client privilege against a subpoena or records request – but in many cases without access to a clear legal process to do so. Until the inconsistency would be settled in a court of law, health care providers may not be able to assure longstanding and important principles of privilege for their clients.

Sorting out and clarifying which Kansas laws should be followed will cause delay, increase demands on our courts, and extend the traumatizing impact of uncertainty on Kansas children and families. We can reasonably assume that if these conflicts are not resolved, the benefits of the OCA will be extremely diminished as these issues get litigated. We recommend clarity and alignment of OCA functions within the current statutory scheme for discovery and information sharing matters, HIPAA and confidentiality laws, and health care privilege.

SB301 excludes help for high risk populations that could safely avoid foster care: SB301 does not permit OCA support for families caring for youth at risk of entering foster care for non-abuse and neglect reasons. A significant number of recent foster care referrals have been for children exhibiting juvenile justice behaviors,

mental health crisis, substance use disorders, and unmet intellectual/developmental disability needs; yet SB301 definitions exclude the OCA from reviewing child welfare cases until after a report of abuse is made or a CINC case is opened. Our child welfare system must continue to look upstream to child maltreatment prevention and early intervention, and we should ensure that any policy moves in this area support coordination and review of services prior to referral. Our Kansas system is still recovering from damaging gaps in access to PRTF beds, secure care access, crisis services, juvenile justice services, and substance use treatment, but SB301 would exclude OCA support for these children most in need of effective service coordination to avoid foster care. Neither providers nor families would want to make a report of abuse to seek OCA assistance for youth otherwise likely to enter foster care.

SB301 may delay resolution for children and families who seek help. SB301 does not center “child time” as a critical goal of our child welfare system. The federal Adoption and Safe Families Act (ASFA) requires that states achieve timely permanency for children in child welfare. Accordingly, federal outcome standards make timely permanency a key indicator of state performance in child welfare. The importance of child time and timely permanency are reflected across the Kansas child in need of care code, DCF policies and procedures, and standards for human service providers. We recommend language that would place clarity and guardrails around the OCA’s role, to avoid delays in investigations, hearings, placement decisions, and countless other day-to-day decisions in child welfare. SB301 does not contain any language or direction to the OCA, courts, or DCF to clearly prevent lengthy delay in case resolution due to OCA involvement.

SB301 takes service time and attention away from children and families. A common concern from other states is that when an ombudsman/OCA is not an experienced child welfare professional, the workforce spends extensive time educating the ombudsman about laws, practices, and policies basic to child welfare. We believe that introducing standards and qualifications for the OCA would ensure that limited taxpayer resources are focused squarely on improving outcomes for children. SB301 does not include same, and affirmatively excludes those with current knowledge of our system of care. If the OCA does not share a common and foundational understanding of essential principles of child welfare practice with child welfare professionals, SB301 will create avoidable demands on our workforce that divert services away from supporting children and families.

With all of these aspects together, we are concerned about the following unintended consequences from SB301:

- Increased conflicts, confusion, and delays as the role of the OCA’s new scope of power without procedural guardrails are explored and tested -- harming children, families, and caregivers, and ultimately harming our system capacity to make decisions in child-time.
- Reduced morale in caregiver and foster parent recruitment and retention, harming our system capacity to make appropriate, stable, and timely placement for youth in foster care – directly causing trauma to impacted children.
- Reduced confidence in the mental health care system, delaying individuals from seeking help for mental health treatment, due to fear of lack of confidentiality protections – putting parents and children at risk of challenges escalating into crisis, and potentially children in harm’s way.
- Reduced morale in the child welfare and treatment provider workforce, increasing case manager and therapist turnover, decreasing staff retention and experience, and diminishing system capacity to provide quality care for children and families.

Our concerns about SB301 need not be inherent in the concept of a child welfare ombudsman or OCA. The Children’s Alliance continues to support an ombudsman that offers clarity of scope and role, consistency and

predictability in our system of laws, and is grounded in principles of limited government. I would be glad to work with legislators or any other interested parties to further discuss the concerns we have highlighted today.

Thank you for your consideration of SB301. I am happy to stand for questions at the appropriate time.

Members of the Children's Alliance of Kansas:

CALM, Emporia
Cornerstones of Care, Overland Park
DCCCA, Lawrence
Eckerd, Wichita
EmberHope, Wichita
Florence Crittenton, Topeka
FosterAdopt Connect, Olathe
Great Circle, Lawrence
Kansas Children's Service League, Topeka
KVC Kansas, Olathe
KidsTLC, Olathe
Prairie Band Potawatomi Nation, Mayetta
Restoration Family Services, Wichita
Saint Francis Ministries, Salina
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