

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 115**

As Agreed to April 3, 2024

Brief*

SB 115 would enact the Child Advocate Act (Act) which would establish the Office of the Child Advocate (OCA) as an independent state agency. The bill would also amend law in the Revised Kansas Code for Care of Children (CINC Code) and the Revised Kansas Juvenile Justice Code (Juvenile Code) to specify the OCA would have access to certain files and records of a child subject to proceedings under these Codes.

Definitions

The Act would define the following terms:

- “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);
 - May be alleged to be a child in need of care;
 - Is alleged to be a child in need of care; or
 - Is currently or was receiving services or treatment from the Kansas Department of Corrections (KDOC) within the previous five years; and
- “Office” would mean the OCA and would include the Child Advocate and staff.

Establishment of OCA

The Child Advocate would be established as the independent head of the OCA, and the bill would specify nothing in the Act would be construed to permit any governmental agency to exercise control or supervision over the Child Advocate or the OCA.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

Selection and Appointment of Child Advocate

The Child Advocate would be appointed by the Governor and subject to confirmation by the Senate.

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 OCA. The bill would require the Child Advocate to be an individual with extensive experience in the practice of case management, clinical services, or legal services to children and families involved in the child welfare system. The bill would prohibit any former or current executive or manager of any program or agency or contracting agency subject to oversight by the OCA from being appointed as Child Advocate within 12 months of the end of such individual's period of service within the program or agency.

The Child Advocate would serve a term of five years or until a successor has been appointed and confirmed. The Child Advocate would be in the unclassified service and receive an annual salary equal to that of a district court judge. The bill would require the Child Advocate to exercise independent judgment in carrying out the duties of the office.

The bill would specify the Child Advocate would have general managerial control over the OCA and would be required to establish the organizational structure of the OCA as appropriate to carry out the responsibilities and functions of the OCA.

The bill would provide that all budgeting, purchasing, personnel, and related administrative functions of the OCA would be administered under the direction and supervision of the Child Advocate.

Within the limits of appropriations, the Child Advocate could hire unclassified employees necessary to administer the OCA who would serve at the pleasure of the Child Advocate. The Child Advocate could obtain the services of other professionals necessary to independently perform the functions of the OCA, including obtaining legal services from the Attorney General as provided elsewhere in statute. The Child Advocate could enter into agreements with the Secretary of Administration for the provision of personnel, facility management, and information technology services.

Purpose of the OCA

The bill would identify the purpose of the OCA is to ensure that children and families receive adequate coordination of child welfare services for child protection and care through services offered by:

- Department for Children and Families (DCF) or its contracting agencies;
- Kansas Department for Aging and Disability Services (KDADS);
- KDOC;
- Kansas Department of Health and Environment (KDHE); and
- Juvenile courts.

Duties and Powers of the OCA and the Child Advocate

The bill would require the OCA to:

- Receive and resolve complaints that allege that DCF or DCF's contracting agencies by act or omission have:
 - Provided inadequate protection or care of children;
 - 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, processing, responding to, and resolving complaints made by or on behalf of children that adversely or may adversely affect the health, safety, and welfare of such children that relate to:
 - State agencies;
 - Service providers, including contractors and subcontractors; and
 - Any juvenile court.
- Provide DCF with a notice of availability that describes the OCA and how to contact the OCA, which DCF would be required to prominently display in DCF offices and facilities receiving public moneys for the care and placement of children;
- Maintain a public website;
- Publicize and notify individuals of the OCA's services, purpose, and contact information;
- Compile, collect, and preserve a record of complaints received and processed, which may reveal concerning patterns to be addressed; and
- Recommend changes to policies, procedures, or adopted or proposed rules and regulations of any state or local agency that adversely affect or may adversely affect the health, safety, and welfare of any child.

Investigation of Complaints

The OCA would be required to independently investigate complaints received if the OCA reasonably believes the complaint's allegations may be independently verified through an investigation. In conducting such investigations, the OCA would be required to:

- Establish and implement procedures for investigating complaints;
- Have access to the following information related to complaints received:
 - Names and physical locations of all children in protective services, treatment, or other program under the jurisdiction of DCF or KDOC;
 - All written reports of child abuse and neglect;

- All records as provided by the CINC and Juvenile Codes and
- All current records required to be maintained as provided in the CINC Code and the Juvenile Code;
- Communicate privately with the following persons or entities, after consultation with treatment professionals and service providers:
 - Any child or child's siblings; and
 - Anyone working the child, including the family, relatives, employees of DCF, employees of KDOC, and other persons or entities providing treatment and services;
- Have access to, including the right to inspect and copy, relevant records of a child that may be disclosed pursuant to the CINC Code and the Juvenile Code;
- Work in conjunction with:
 - Juvenile intake and assessment workers;
 - Juvenile community corrections officers;
 - Guardians *ad litem*; and
 - Court-appointed special advocates;
- Take statements under oath and obtain judicial enforcement of compulsory processes; and
- Subpoena materials or witnesses using procedures specified in the bill [*Note*: The procedures to be followed would be similar to the procedures that must be followed when subpoenas are issued in proceedings under the CINC Code].

Complaint Resolution by the OCA

The bill would require the OCA to resolve complaints by:

- Establishing and implementing procedures to resolve the complaints;
- Independently reviewing the complaints and accompanying documents;
- Recommending the appropriate agency or department do one of the following:
 - Review the matter further;
 - Modify or cancel the actions;
 - Change a rule, order, or internal policy;
 - Explain the action further; or
 - Within a reasonable amount of time, provide the OCA information as to the implementation or not of the recommendation by the appropriate agency or department;
- Submitting any findings and recommendations to DCF or KDOC as appropriate;

- Making referrals of child abuse or neglect to law enforcement agencies if there is reason to believe a criminal investigation is warranted and notifying the Abuse, Neglect, and Exploitation Unit of the Office of the Attorney General; and
- Producing reports of findings of fact or conclusions of law regarding any complaint, and if appropriate, the Attorney General could file such reports in any pending CINC case on behalf of the OCA.

Child Welfare System Oversight Assistance

The bill would outline the actions the OCA may take to assist the Legislature in oversight of the child welfare system. The OCA could:

- Meet and discuss any matter in the scope of the Act with the Joint Committee on Child Welfare System Oversight in regular or executive session under applicable duties of confidentiality;
- 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.

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 Governor, Chief Justice of the Supreme Court and the Office of Judicial Administration, Secretary for Children and Families, President of the Senate, Speaker of the House of Representatives, Joint Committee on Child Welfare Oversight, House Committee on Child Welfare and Foster Care (or successor committee), Senate Committee on Judiciary (or successor committee), and any other relevant legislative committee.

The reports would be required to include the following items:

- The number of complaints received by the OCA;
- The disposition of the complaints;
- The number of children involved in such complaints;
- The outcome of such complaints;
- Recommendations for changes in statute, policies, procedures, or rules and regulations;

- The OCA's proposed annual budget; and
- Any other topics the OCA deems appropriate to properly perform the powers, duties, and functions provided by the Act.

Cooperation with OCA

The bill would require DCF and its contracting agencies, KDOC, juvenile intake and assessment workers, juvenile community corrections officers, guardians *ad litem*, and court appointed special advocates to cooperate with the OCA and take the following actions:

- Work diligently, promptly, and in good faith to assist the OCA in performing its powers, duties, and functions provided by the Act;
- Provide full access to and production of records and information requested by the OCA. Such access would not be a violation of confidentiality 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 OCA;
- Allow employees of such department or agency to file a complaint with or provide records or information to the OCA without supervisory approval;
- Not willfully interfere with or obstruct any of the OCA's duties; and
- Promptly meet and consult with the OCA upon request.

Confidentiality of OCA Files

The bill would state the OCA would be subject to the same state and federal statutory disclosure restrictions and confidentiality requirements applicable to the state agency or other entity providing information to the OCA, with regard to the information received from the agency or other entity.

Any files maintained by the OCA 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 OCA 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 prohibit a representative of the OCA conducting or participating in any investigation of a complaint from knowingly disclosing to any person other than the OCA, or a person authorized by the OCA, the name of any witness examined or any information obtained or given during such investigation. Such disclosure would be a class A nonperson misdemeanor. However, the bill would require the OCA to disclose the final result of the investigation of a complaint with the consent of the child or the child's legal representative.

The OCA 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, 2029, unless the Legislature reviews and reenacts the provisions, pursuant to the Kansas Open Records Act (KORA), prior to July 1, 2029.

Immunity

The bill would provide that any person who, without malice, participates in any compliant or provides information in good faith to the OCA, would be immune from civil liability. The bill would also provide that the Child Advocate, the OCA and any employee of the OCA would be immune from civil liability, either personally or in their official capacity, for property damage or loss or personal injury that is caused by or arises out of the performance of the duties of the OCA. The bill would specify any immunity would not apply when caused by the intentional, willful, or wanton misconduct of a person.

Privilege

The bill would provide any written or oral statement or communication made by the Child Advocate, the OCA, or employee of the OCA relevant to a complaint being investigated would be privileged and could not be:

- Disclosed to any person or entity;
- Admissible in any civil action, administrative proceeding, or disciplinary board proceeding in this state;
- Subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity; or
- Admissible in evidence in any judicial or administrative proceeding, unless the Child Advocate is already a party to such proceeding.

Retaliation; Improper Disclosure

Any person who knowingly takes “retaliatory action,” as defined in the bill, against a child, DCF employee, an employee of contracting agencies of DCF, or KDOC employee for any communication made or information given to the OCA would be guilty of a class A nonperson misdemeanor, except when an employee discloses the following:

- 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.

Employees of the OCA would be prohibited from knowingly disclosing false information or disclosing confidential information without legal authority.

Amendments to CINC Code and Juvenile Code

The bill would amend statutes in the CINC Code and the Juvenile Code to add the OCA 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 would also include the House Committee on Child Welfare and Foster Care as a named committee that would have specified access to confidential records.

The bill also would make technical amendments to ensure consistency in statutory phrasing and update a reference to the Commissioner of Juvenile Justice to reflect agency reorganization.

Conference Committee Action

As it entered conference, SB 115, as amended by the House Committee on Child Welfare and Foster Care, contained provisions concerning notice in adoption petitions. The Conference Committee agreed to remove the contents of SB 115, insert the contents of Senate Sub. for HB 2070, as passed by the Senate, and to further amend the bill to:

- Modify the definition of “child”;
- Modify the qualifications of the Child Advocate;
- Remove a reference to “maltreatment prevention” in the section concerning the OCA’s purpose;
- Clarify language regarding the information that the OCA may have access to;
- Clarify language regarding the OCA’s power to privately communicate with certain persons;
- Add procedures to be followed when the OCA subpoenas materials or witnesses with respect to investigations;
- Replace the Senate Committee on Public Health and Welfare with the Senate Committee on Judiciary with respect to those legislative entities the OCA must submit an annual report to;
- Add language to clarify the immunity and privilege that would be afforded to the OCA and its employees, the Child Advocate, and persons making a complaint to the OCA;
- Add the House Committee on Child Welfare and Foster Care as a named committee regarding specified access to confidential records;

- Clarify language with respect to the OCA's duty to disclose a final result of an investigation;
- Update the date by which confidentiality of records would expire;
- Make technical amendments to remove outdated effective dates and statutory references; and
- Make all provisions of the bill effective upon publication in the statute book.

Background

The Conference Committee agreed to replace the contents of SB 115 with the provisions of Senate Sub. for HB 2070, and make further amendments as described above.

[*Note:* The provisions of SB 115, as amended by the House Committee on Child Welfare and Foster Care, were added to HB 2549, as amended by the House Committee of the Whole. HB 2549 was pending enrollment at the time the Conference Committee took action on SB 115.]

Senate Sub. for HB 2070

The Senate Committee on Judiciary recommended a substitute bill incorporating provisions originally contained in Sub. for SB 232, as recommended by the Senate Committee on Judiciary, concerning the establishment of the Office of the Child Advocate, applicability of the Indian Child Welfare Act (ICWA), orders granting custody for adoption, and appeals of orders entered after termination of parental rights. [*Note:* Sub. for SB 232 was referred to the House Committee on Judiciary on March 21, 2024, and on that date, the House Committee recommended a substitute bill be passed containing only provisions pertaining to applicability of ICWA, orders granting custody for adoption, and appeals of orders entered after termination of parental rights.]

HB 2070, as passed by the House, would have expanded eligibility for certain offenders for the nonprison chance of placement in a certified drug abuse treatment (SB 123) program. [*Note:* The provisions of HB 2070 were not retained in the substitute bill but were included in the Conference Committee Report for Senate Sub. for HB 2010 during the 2023 Legislative Session.]

Sub. for SB 232

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Baumgardner.

Senate Committee on Judiciary. In the Senate Committee hearing on February 16, 2023, Senator Masterson testified as a **proponent** of the bill, stating the bill would provide independent oversight to an essential government function. Proponent testimony was also provided by representatives of Kansas Appleseed and Children's Alliance of Kansas, who generally were in favor of the establishment of an independent Office of the Child Advocate but offered some amendments to assist in operations of the office. No other testimony was provided.

The Senate Committee recommended a substitute bill be passed and incorporated amendments to:

- Expand the definition of a “child” [*Note:* The Conference Committee did not retain this amendment];
- Lengthen the term of the Child Advocate to five years and to provide for a successor to be selected prior to the incumbent vacating the position [*Note:* The Conference Committee retained this amendment];
- Provide legal authority for OCA operations [*Note:* The Conference Committee retained this amendment];
- Clarify the purpose of the OCA [*Note:* The Conference Committee retained this amendment];
- Require the OCA to resolve complaints [*Note:* The Conference Committee retained this amendment];
- Expand the complaints to be investigated to include inadequate protection by the OCA [*Note:* The Conference Committee retained this amendment];
- Enhance the procedures required of the OCA [*Note:* The Conference Committee retained this amendment];
- Add reporting responsibilities of the OCA [*Note:* The Conference Committee retained this amendment];
- Expand the affected parties list who are protected from retaliatory actions to include an employee of DCF contracting agencies [*Note:* The Conference Committee retained this amendment];
- Expand the disclosure of information responsibilities of the OCA [*Note:* The Conference Committee retained this amendment];
- Add clarification that the OCA is an independent agency [*Note:* The Conference Committee retained this amendment];
- Add orders granting custody for adoption to the jurisdiction of ICWA [*Note:* The Conference Committee did not retain this amendment];
- Add provisions regarding orders granting custody for adoption proceedings [*Note:* The Conference Committee did not retain this amendment]; and
- Add an appeals process for orders entered after the termination of parental rights. [*Note:* The Conference Committee did not retain this amendment.]

Fiscal Information

Sub. for SB 232

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General states its Abuse, Neglect, and Exploitation Unit would be required to file findings of fact or conclusions of law regarding the complaints and assist in investigations of child abuse. Because of these requirements, the agency would require \$887,556 from the State General Fund for FY 2024 for 3.0 FTE attorney positions, 3.0 FTE investigator positions, and 4.0 FTE program consultant positions along with related operating expenditures for the positions. Of the total, salary and benefits would be \$818,544 and operating expenditures would be \$69,012.

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 OCA 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 that starting in FY 2024 it would need 1.0 FTE position for these purposes at a cost of \$93,000 from the State General Fund annually for salaries and wages, including fringe benefits.

The Judicial Branch indicates the bill could increase the number of cases filed in district courts because it creates a new crime, which would in turn increase the time spent by judicial and non-judicial personnel in processing, researching, and hearing cases. Since the crime carries a misdemeanor penalty, there could also be more supervision of offenders by court services officers. In addition, the bill could result in the collection of docket fees, fines, and supervision fees that would be deposited into the State General Fund.

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

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

According to the Kansas Association of Counties, the bill could have a fiscal effect on counties depending on how often county law enforcement and prosecutors would work with the OCA, but a precise fiscal effect cannot be estimated.

The League of Kansas Municipalities indicates enactment of the bill could have a negligible fiscal effect on Kansas cities.

Child Advocate Act; Office of the Child Advocate; Revised Kansas Code for Care of Children; children and minors

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