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MEMORANDUM

To: Committee on Children and Seniors
From: Office of Revisor of Statutes
Date: February 17, 2021
Subject: House Bill 2345

HB 2345 establishes the Child Advocate and the Office of the Child Advocate for Children's Protection and Services. The bill prescribes the office's duties and functions.

The bill first would define "child" as a child in the custody of the secretary or receiving child welfare services. "Office" would be the Office of the Child Advocate for Children's Protection and Services.

In Section 1, the office would be established within the legislative branch. The office's purpose would be to ensure children and families receive adequate child welfare services. The office would operate independently from departments and offices that the Office of the Child Advocate would review. The office would be administered by the Child Advocate, who would be appointed to serve a term of six years and must meet qualifications of having a relevant degree or seven or more years of experience in the field of child welfare.

Serving under the direction of the Legislature, the Child Advocate's compensation would be determined by the Legislative Coordinating Council and changes could be recommended by either the House committee on Children and Seniors or the Senate committee on Public Health and Welfare. Subject to appropriations and LCC approval, the Child Advocate could hire employees. The Child Advocate would submit an annual report of complaints, entities reviewed and any recommendations for improving the delivery of child welfare services or for improving the office itself.

Section 2 outlines the Child Advocate's duties, which would include:

- (1) Addressing complaints made by or on behalf of a child related to agencies and service providers;
- (2) establishing procedures for addressing such complaints;
- (3) conducting independent reviews of entities;
- (4) submitting findings and recommendations to improve the delivery of child welfare services or any reviewed entity;
- (5) reviewing relevant information and records for addressing complaints and reviewing entities;
- (6) recommending changes to policies, procedures or adopted or proposed rules and regulations of any state or local agency that adversely affect or may adversely affect a child;
- (7) analyzing, monitoring and recommending changes to federal, state and local laws, rules and regulations and policies related to child welfare services;
- (8) informing children, guardians and families of the child's rights and entitlements; and
- (9) fulfilling these responsibilities guided by best practices in child welfare.

In order to fulfill the office's duties, the office could:

- (1) Access the names and locations of children in services and treatments of child in custody;
- (2) access reports of child abuse and neglect;
- (3) access records maintained pursuant to Child in Need of Care cases;
- (4) communicate privately with a child or a child's sibling, after consultation with professionals;
- (5) access relevant records;
- (6) work in conjunction with guardians ad litem;
- (7) file findings related to a child in an appropriate court;
- (8) file amicus curiae briefs;
- (9) use the office of the attorney general;
- (10) initiate meetings with personnel of state agencies;
- (11) apply for and accept grants, gifts and bequests; and
- (12) establish local panels on a regional or county basis to carry out the functions and duties of the office.

Section 3 would establish that findings, conclusions, opinions or recommendations of the office would be confidential and not disclosed until a report is distributed to members of the House committee on Children and Seniors or the Senate committee on Public Health and Welfare and either committee first meets or when another legislative committee authorized to receive the reports by either House Children and Seniors or Senate Public Health and Welfare meets. Additionally, information obtained from another agency would be subject to the same confidentiality requirements as Child in Need of Care cases or any applicable federal restrictions placed on that agency. The exemption to the open records act would expire in 2026, unless the Legislature reviews and reenacts such provisions.

Section 4 would shield the Child Advocate or any employees of the office from suit or liability for the good faith performance of their duties. Also, reprisal or retaliatory action against any recipient of child welfare services or an employee of departments and offices in compliance with the Office of the Child Advocate would be guilty of a class A nonperson misdemeanor. Reprisal or retaliatory action may be, but is not limited to, letters of reprimand, demotions, transfers, denial of promotions, dismissals or denial of employment.

Section 5 would require the Child Advocate to prepare and present a budget request to the Legislative Coordinating Council. Once upon approval of the council, the Child Advocate would submit the budget to the director of the budget. All expenditures would be approved by the Child Advocate or the Child Advocate's designee. Additionally, the Kansas Department for Child and Families would enter into agreements with the Office of the Child Advocate to provide financial assistance from state or federal funds. The department shall include amounts provided to the office in the department's budget estimates. Starting with the fiscal year ending in 2023, the department shall not provide less than the amount provided in the fiscal year ending in 2022 to the office.

The bill would amend K.S.A. 2020 Supp. 38-2211, 38-2212, 38-2213, 38-2309 and 38-2310 to give the Office of the Child Advocate access to files and court records related to a child.