

HOUSE BILL No. 2345

By Representatives Ousley, Baker, Carlson, Concannon, Curtis, Esau, Finney, Helmer, Hoheisel, Hoyer, Humphries, T. Johnson, Neighbor, Penn, Resman, Rhiley, S. Ruiz and Vaughn

2-10

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1 AN ACT concerning children and minors; relating to the legislature;
2 establishing the office of the child advocate for children's protection
3 and services; prescribing certain powers, duties and functions;
4 amending K.S.A. 2020 Supp. 38-2211, 38-2212, 38-2213, 38-2309 and
5 38-2310 and repealing the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) As used in sections 1 through 5, and amendments
9 thereto:

10 (1) "Child" means any child who is in the custody of the secretary for
11 children and families ~~or receiving child welfare services from the Kansas~~
12 ~~department for children and families or the department's grantees, Kansas~~
13 ~~department for aging and disability services or the office of judicial~~
14 ~~administration~~ or who may be alleged to be a child in need of care, and

as provided in K.S.A. 38-2201 et seq.

15 (2) "office" means the office of the child advocate for children's
16 protection and services within the legislative branch that includes the child
17 advocate and staff.

18 (b) (1) There is hereby established the office of the child advocate for
19 children's protection and services within the legislative branch of the
20 government.

21 (2) The purpose of the office is to ensure that children and families
22 receive adequate coordination of child welfare services, for child
23 maltreatment prevention, protection and care through services offered by
24 the Kansas department for children and families, the Kansas department
25 for aging and disability services, the department of corrections, the
26 department of health and environment and the office of judicial
27 administration. The child advocate shall perform the duties required by
28 sections 1 through 5, and amendments thereto, independently from such
29 departments and offices under review by the office and report directly to
30 the legislature.

31 (c) (1) The office shall be administered by the child advocate, who
32 shall be jointly appointed by the governor and subject to confirmation by
33 the senate as provided in K.S.A. 75-4315b, and amendments thereto, for a
34 term of six years ~~and~~ until a successor has been appointed and confirmed.

or

1 The child advocate will serve under the direction of the legislature.
 2 (2) The child advocate shall be a person that either holds a current
 3 relevant license that would authorize the individual to work as a licensed
 4 professional as a case manager, behavioral health professional or attorney
 5 for a child in need of care or has seven or more years of experience in the
 6 field of child welfare.

7 (3) The child advocate shall be in the unclassified service and shall
 8 receive such compensation as is determined by the legislative coordinating
 9 council, except that such compensation may be increased but not
 10 diminished during such service. Either the house of representatives
 11 standing committee on children and seniors ~~or~~ the senate standing
 12 committee on public health and welfare ~~may~~ recommend to the legislative
 13 coordinating council changes in the compensation of the child advocate.
 14 The child advocate shall receive travel expenses and subsistence expenses
 15 and allowances as provided for members of the legislature in K.S.A. 75-
 16 3212, and amendments thereto, when attending any authorized meeting or
 17 business outside the city of Topeka.

or any relevant joint committee

18 (4) The office of the child advocate for the children's protection and
 19 services shall be under the direct supervision of the child advocate.
 20 Employees in the office shall be employed by and be responsible to the
 21 child advocate who shall fix the compensation of each such employee
 22 subject to approval of the legislative coordinating council and within
 23 budget and appropriations therefor.

24 (d) (1) On or before the first day of the legislative session in 2022,
 25 and each year thereafter, the child advocate shall submit an annual report
 26 to the governor, the house of representatives standing committee on
 27 children and seniors, the senate standing committee on public health and
 28 welfare ~~and the office of judicial administration~~. Such report shall include,
 29 but not be limited to, the number of complaints received by the office, the
 30 disposition of such complaints, the number of children involved in such
 31 complaints, the state entities named in such complaints, whether such
 32 complaints were found to be substantiated and any recommendations for
 33 improving the delivery of child welfare services to reduce complaints or
 34 improving the function of the office.

any relevant joint committee

Such reports shall not include names or personally identifiable information of children, guardians or families in complaints.
 (3)

35 (2) ~~Such reports are not subject to change by the the house of~~
 36 ~~representatives standing committee on children and seniors or the senate~~
 37 ~~standing committee on public health and welfare, except that either~~
 38 ~~committee may request that additional information, not subject to section~~
 39 ~~4, and amendments thereto, that was gathered as part of the report but was~~
 40 ~~not presented in the written report may be added to subsequent copies of~~
 41 ~~the report or may be distributed separately.~~

or any relevant joint committee

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42 New Sec. 2. (a) The child advocate shall:
 43 (1) Address complaints made by or on behalf of a child that relate to

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1 state agencies, service providers, including contractors, subcontractors and
2 any juvenile court, that may adversely affect the health, safety, welfare or
3 civil or human rights of such child;

4 (2) establish a procedure for receiving, processing, responding to and
5 resolving such complaints;

6 (3) conduct an independent review of any entity that has been the
7 subject of three or more review requests in a calendar year, including, but
8 not limited to, the Kansas department for children and families or any
9 guardian ad litem;

10 (4) submit any findings and recommendations to the Kansas
11 department for children and families and recommend changes to the
12 policies and procedures to improve the delivery of child welfare services
13 or the function of any entity review pursuant to subsection (a)(3);

14 (5) make inquiries and review relevant information and records the
15 office deems necessary for investigations required by subsections (a)(1)
16 and (3);

receive and exchange records as provided in K.S.A. 38-2201 et seq.
and 38-2301 et seq., and amendments thereto, to

17 (6) recommend changes to policies, procedures or adopted or
18 proposed rules and regulations of any state or local agency that adversely
19 affect or may adversely affect the health, safety, welfare or civil or human
20 rights of any child;

21 (7) analyze and monitor the development and implementation of
22 federal, state and local laws, rules and regulations and policies with respect
23 to child welfare services in the state and recommend changes in such laws,
24 rules and regulations and polices to the Kansas department for children
25 and families, Kansas department for aging and disability services, the
26 department of health and environment, the department of corrections, the
27 office of judicial administration, the legislature and the governor;

28 (8) inform and educate children, their guardians and families of the
29 child's rights and entitlements under state and federal laws; and

30 (9) fulfill responsibilities in this section guided by generally accepted
31 principles of best practices in child welfare.

32 (b) The office may:

33 (1) Access the following information:

records as provided in K.S.A. 38-2201 et seq. and 38-2301 et
seq., and amendments thereto, related to complaints received;
(2) access all written reports of child abuse and neglect maintained
by the secretary for children and families related to complaints
received;

34 (A) ~~The names and physical locations of all children in protective~~
35 ~~services, treatment or other programs under the jurisdiction of the Kansas~~
36 ~~department for children and families, Kansas department for aging and~~
37 ~~disability services and the office of judicial administration;~~

38 (B) ~~all written reports of child abuse and neglect; and~~

39 (C) ~~all current records required to be maintained pursuant to articles~~
40 ~~22 and 23 of chapter 38 of the Kansas Statutes Annotated, and~~
41 ~~amendments thereto;~~

redesignate paragraphs

42 (2) communicate privately with any child or child's siblings, after
43 consultation with treatment professionals and service providers and with

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1 anyone working with the child, including the family, relatives, employees
 2 of the Kansas department for children and families, Kansas department for
 3 aging and disability services, the office of judicial administration and other
 4 persons or entities providing treatment and child welfare services to such
 5 child;

6 ~~(3) access, inspect and copy relevant child records held by the clerk
 7 of any Kansas court, any public or private institution, law enforcement
 8 agency and other agency or person with whom a particular child has been
 9 either voluntarily or otherwise placed for care or from whom the child has
 10 received treatment within this state or in another state;~~

11 (4) work in conjunction with guardians ad litem;

12 (5) file any of the office's findings or reports regarding a parent or
 13 child with the appropriate court with jurisdiction over a child in need of
 14 care case involving such child, and issue recommendations regarding the
 15 disposition of an investigation to the court and to the investigating agency,
 16 but is prohibited from intervening in divorce, protection from abuse,
 17 juvenile offender, administrative hearings, civil or criminal proceedings;

18 (6) file amicus curiae briefs of the findings and recommendations of
 19 the office in appeals from child in need of care matters;

20 (7) utilize the resources of the office of the attorney general, as
 21 necessary, to carry out any duties of the child advocate for children's
 22 protection and services and receive legal counsel or services;

23 (8) initiate meetings with personnel from the Kansas department for
 24 children and families, Kansas department for aging and disability services
 25 and office of judicial administration;

26 (9) apply for and accept grants, gifts and bequests of moneys from
 27 other state, interstate or federal agencies, independent authorities, private
 28 firms, individuals or foundations to carry out the child advocate's duties
 29 and responsibilities. The moneys shall be deposited in a dedicated account
 30 established within the office. Moneys shall be expended in accordance
 31 with the provisions of the grant or bequest; and

32 (10) establish local panels on a regional or county basis to adequately
 33 and efficiently carry out the functions and duties of the office and address
 34 complaints in a timely manner as appropriate.

35 New Sec. 3. (a) Each finding, conclusion, opinion or recommendation
 36 of the office of the child advocate for the children's protection and services
 37 shall be confidential and shall not be disclosed pursuant to the provisions
 38 of the open records act or under any other law until: (1) The time of the
 39 next scheduled meeting of either the house of representatives standing
 40 committee on children and seniors or the senate standing committee on
 41 public health and welfare held after distribution of the report to members
 42 of such committee; or (2) the time of the next scheduled meeting of
 43 another legislative committee held after distribution of the report to the

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1 members of such committee as authorized by the house of representatives
2 standing committee on children and seniors or the senate standing
3 committee on public health and welfare.

4 (b) For any information obtained from a state agency or other entity
5 under sections 1 through 5, and amendments thereto, the office shall be
6 subject to K.S.A. ~~38-2209 through K.S.A. 38-2213~~, and amendments
7 thereto, and any federal statutory disclosure restrictions and confidentiality
8 requirements that are applicable to the state agency or other entity
9 providing such information to the office.

38-2201 et seq. and 38-2301 et seq.

10 (c) The provisions of this section providing for confidentiality of
11 records shall expire on July 1, 2026, unless the legislature reviews and
12 reenacts such provisions pursuant to K.S.A. 45-229, and amendments
13 thereto, prior to July 1, 2026.

14 New Sec. 4. (a) Any employee of the office shall be immune from
15 suit and liability, in an official capacity and personally, for the good faith
16 performance of duties prescribed in sections 1 through 3, and amendments
17 thereto.

18 (b) (1) No person shall take reprisal or retaliatory action against any
19 recipient of child welfare services or employee of the Kansas department
20 for children and families and such department's grantees, the Kansas
21 department for aging and disability services, the department of corrections,
22 the department of health and environment and the office of judicial
23 administration for any communication made or information given to the
24 office for the purpose of compliance with sections 1 through 3, and
25 amendments thereto. Any person who knowingly violates the provisions of
26 this paragraph shall be guilty of a class A nonperson misdemeanor.

27 (2) No employee of the office of the child advocate for children's
28 protection and services shall:

- 29 (A) Knowingly disclose false information; or
- 30 (B) disclose confidential information without lawful authority.

31 (c) As used in this section, "reprisal or retaliatory action" includes,
32 but is not limited to:

- 33 (1) Letters of reprimand or unsatisfactory performance evaluations;
- 34 (2) transfer;
- 35 (3) demotion;
- 36 (4) reduction in pay;
- 37 (5) denial of promotion;
- 38 (6) suspension;
- 39 (7) dismissal; and
- 40 (8) denial of employment.

41 New Sec. 5. (a) The annual budget request of the office shall be
42 prepared by the child advocate, and the child advocate shall present such
43 budget request to the legislative coordinating council. Such council shall

1 make any changes such council desires in such budget request and upon
2 approval of the budget request by the council, the office of the child
3 advocate shall submit such budget request to the director of the budget as
4 other budget requests are submitted under K.S.A. 75-3717, and
5 amendments thereto.

6 (b) All expenditures from appropriations to the office shall be made
7 upon warrants of the director of accounts and reports issued pursuant to
8 vouchers approved by the child advocate or the child advocate's designee.

9 (c) (1) The secretary for children and families shall enter into
10 agreements with the office for provision of financial assistance to the
11 office by the Kansas department for children and families from available
12 state and federal funds of such department. This financial assistance shall
13 be to assist the child advocate to provide child advocacy services in
14 accordance with sections 1 through 5, and amendments thereto.

15 (2) For the fiscal year ending June 30, 2022, and for each fiscal year
16 thereafter, the secretary for children and families shall include in the
17 budget estimates prepared and submitted to the division of the budget for
18 the Kansas department for children and families under K.S.A. 75-3717,
19 and amendments thereto, in addition to other amounts included in such
20 budget estimates for the Kansas department for children and families,
21 amounts provided to the office during such fiscal year pursuant to this
22 section. The amounts included in such budget estimates to be provided to
23 the office shall include amounts to be appropriated from federal moneys
24 provided to the Kansas department for children and families.

25 (3) Commencing with the fiscal year ending on June 30, 2023, the
26 Kansas department for children and families shall not provide less than the
27 aggregate amount provided to the office the preceding fiscal year, ending
28 on June 30, 2022. The Kansas department for children and families shall
29 adjust the aggregate amounts to be provided to the office appropriately for
30 increases attributable to inflation and other applicable factors.

31 Sec. 6. K.S.A. 2020 Supp. 38-2211 is hereby amended to read as
32 follows: 38-2211. (a) *Access to the official file*. The following persons or
33 entities shall have access to the official file of a child in need of care
34 proceeding pursuant to this code:

35 (1) The court having jurisdiction over the proceedings, including the
36 presiding judge and any court personnel designated by the judge.

37 (2) The parties to the proceedings and their attorneys.

38 (3) The guardian ad litem for a child who is the subject of the
39 proceeding.

40 (4) A court appointed special advocate for a child who is the subject
41 of the proceeding or a paid staff member of a court appointed special
42 advocate program.

43 (5) Any individual, or any public or private agency or institution,

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