

HOUSE BILL No. 2321

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning children; establishing a children's advocate; providing for the powers, duties and functions thereof.

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

Section 1. This act shall be known and cited as the children's advocate act.

Sec. 2. As used in this act:

(a) "Administrative act" means an action, omission, decision, recommendation, practice or other procedure of the department of social and rehabilitation services related to foster care services.

(b) "Advocate" means the children's advocate or any individual designated as an advocate who has received the training required under subsection (f) of section 6, and amendments thereto, and who has been designated by the children's advocate to carry out the powers, duties and functions of the office of the children's advocate.

(c) "Child" means a person who is less than 19 years of age.

(d) "Conflict of interest" means (1) having a pecuniary or other interest in a child placement agency, child care resource and referral agency or child care facility; and (2) being actively employed or otherwise having active involvement in representation of or advocacy for any child placement agency, child care resource and referral agency or child care facility, whether or not such representation or advocacy is individual or through an association or other entity.

(e) "Family foster home" means a private home in which care is given for 24 hours a day for a small number of children away from their parent or guardian and which is licensed under K.A.R. 28-4-311 *et seq.* and shall not include a family day care home as defined in K.S.A. 65-517, and amendments thereto.

(f) "Foster child" means a child under 16 years of age who is living away from such child's parent or guardian with persons who are neither such child's relative nor legal guardian.

(g) "Office" means the office of the children's advocate.

(h) "Person" means any individual, association, partnership, corporation, government, governmental subdivision or other entity.

(i) "Volunteer advocate" means an individual who has satisfactorily

1 completed the training prescribed by the children's advocate under sec-
2 tion 6, and amendments thereto, who is a volunteer assisting in providing
3 advocate services and who receives no payment for such service other
4 than reimbursement for expenses incurred in accordance with guidelines
5 adopted therefor by the children's advocate.

6 Sec. 3. (a) There is hereby established the office of children's advo-
7 cate within the legislative branch of government. The children's advocate
8 shall be elected by a $\frac{2}{3}$ vote in each house of the legislature. The office
9 of children's advocate shall be under the direct supervision of the legis-
10 lative coordinating council.

11 (b) The children's advocate shall serve for a term of two years and
12 until such advocate's successor is appointed and qualified. Such advocate
13 may be reappointed for additional terms. The initial children's advocate
14 shall be appointed to serve until the January 2005 session during which
15 the first two-year term children's advocate shall be appointed with sub-
16 sequent appointments being made every two years.

17 (c) The legislature by a $\frac{2}{3}$ vote in each house may remove the chil-
18 dren's advocate from office but only for mental or physical incapacity to
19 perform the duties of the office or other grounds sufficient for removal
20 of a judge from state court. If the position of children's advocate becomes
21 vacant for some reason, the deputy children's advocate shall serve as act-
22 ing children's advocate until a children's advocate is appointed and
23 qualified.

24 Sec. 4. (a) No person shall be eligible to be appointed to or to hold,
25 the office of children's advocate if such person is subject to a conflict of
26 interest. No person shall be eligible for appointment as children's advo-
27 cate unless such person has:

28 (1) A baccalaureate or higher degree from an accredited college or
29 university;

30 (2) demonstrated abilities to analyze problems of law, administration
31 and public policy; and

32 (3) experience in investigation and conflict resolution procedures.

33 (b) The children's advocate shall administer the office of the chil-
34 dren's advocate in accordance with the provisions of this act.

35 (c) Upon appointment as children's advocate, such advocate shall se-
36 lect and appoint a person as deputy children's advocate.

37 (d) The children's advocate may delegate to staff members any au-
38 thority, power or duty except this power of delegation and such children's
39 advocate's duty to make any report to the legislature or governor under
40 this act. However, the children's advocate may authorize the deputy chil-
41 dren's advocate to act in the children's advocate's stead in the event of
42 illness, absence, leave or disability or when, in the children's advocate's
43 sole discretion, an appearance of impropriety or partiality or a conflict of

1 interest prevents such advocate from discharging such advocate's duty in
2 a particular matter.

3 (e) The office of the children's advocate shall oversee and investigate
4 complaints regarding foster care of children in the custody of the state
5 and shall perform such other duties as may be provided.

6 Sec. 5. (a) Employees in the office of children's advocate shall be in
7 the unclassified service, shall receive such compensation as is provided
8 under this act and shall be covered by the state group health plan and
9 Kansas public employees retirement system to the same extent as other
10 state employees. Employees of the office of children's advocate shall re-
11 ceive travel expenses and subsistence expenses and allowances as pro-
12 vided for other state employees.

13 (b) Employees in the office of children's advocate shall be employed
14 by and be responsible to the children's advocate who shall fix the com-
15 pensation of each employee subject to the approval of the legislative co-
16 ordinating council and within budget and appropriations therefor. The
17 annual budget request of the office shall be prepared by the children's
18 advocate and presented to the legislative coordinating council. Such coun-
19 cil shall make any changes it desires in the budget request and upon
20 approval of the budget request by the council, the children's advocate
21 shall submit such budget to the director of the budget as other budget
22 requests are submitted.

23 (c) All officers and employees of the office of children's advocate shall
24 serve at the pleasure of the children's advocate.

25 Sec. 6. The children's advocate shall:

26 (a) Establish procedures for receiving and processing complaints from
27 complainants, conducting investigations, holding hearings and reporting
28 findings resulting from investigation;

29 (b) investigate and resolve complaints made by or on behalf of a foster
30 child relating to action, inaction or decisions of the foster home or con-
31 tractor or an administrative act of an agency, without regard to the finality
32 of the act;

33 (c) develop continuing programs to inform children, their family
34 members or other persons of the rights and responsibilities of the child,
35 family members or other persons regarding such foster children;

36 (d) provide the legislature and the governor with an annual report
37 containing data, findings and outcomes regarding the types of problems
38 experienced and complaints received by or on behalf of foster children
39 and containing policy, regulatory and legislative recommendations to
40 solve such problems, resolve such complaints and improve the quality of
41 care and life of a foster child when placed under the state's care and shall
42 present such report and other appropriate information and recommen-
43 dations to the senate committee on public health and welfare, the senate

1 committee on ways and means, the house of representatives committee
2 on health and human services and the house of representatives committee
3 on appropriations during each regular session of the legislature;

4 (e) analyze and monitor the development and implementation of fed-
5 eral, state and local government laws, rules and regulations, resolutions,
6 ordinances and policies with respect to foster children in the care of the
7 state and services provided in this state, and recommend any changes in
8 such laws, rules and regulations, resolutions, ordinances and policies
9 deemed by the office to be appropriate;

10 (f) prescribe and provide for the training of each children's advocate
11 and any individual designated as an advocate under subsection (h), and
12 any individual who is an advocate volunteer in (1) federal, state and local
13 laws, rules and regulations, resolutions, ordinances and policies with re-
14 spect to foster children in Kansas, (2) investigative techniques, and (3)
15 such other matters as the state children's advocate deems appropriate;

16 (g) authorize an individual, who is an employee of the office and who
17 has satisfactorily completed the training prescribed by the children's ad-
18 vocate under subsection (f), to be an advocate or a volunteer advocate
19 and to be a representative of the office and such an authorized individual
20 shall be deemed to be a representative of the office for the purposes of
21 and subject to the provisions of the children's advocate act;

22 (h) establish and maintain a system to recruit and train individuals to
23 become volunteer advocates;

24 (i) develop and implement procedures for authorizing and for with-
25 drawing the authorization of individuals to be advocates or volunteer ad-
26 vocates to represent the office in providing advocate services;

27 (j) provide services to foster children in the care of the state through-
28 out the state directly or through service providers to meet needs for ad-
29 vocate services;

30 (k) collaborate with the department of health and environment and
31 the department of social and rehabilitation services to establish a state-
32 wide system to collect and analyze information on complaints about the
33 state foster care system;

34 (l) undertake, participate in or cooperate with persons and agencies
35 in such conferences, inquiries, meetings or studies which might improve
36 the functioning of agencies regarding state foster care or lessen the risks
37 that objectionable administrative acts will occur;

38 (m) have access to and examine and copy, without payment of a fee,
39 any agency records, including records that are confidential by state law;

40 (n) enter and inspect the premises of any agency, including any foster
41 care home or facility;

42 (o) subpoena any person to appear, to give sworn testimony or to
43 produce documentary or other evidence that is reasonably relevant to the

1 matters under investigation;

2 (p) maintain confidentiality regarding any matter related to com-
3 plaints and investigations, including the identities of the complaints and
4 witnesses, except as the children's advocate deems necessary to fulfill the
5 duties of such advocate's office;

6 (q) adopt, promulgate, amend and rescind rules and regulations re-
7 quired for the discharge of the office of children's advocate's duties; and

8 (r) perform such other duties and functions as may be provided.

9 Sec. 7. For the purposes of carrying out the powers and duties of the
10 office of the children's advocate, such advocate may request and accept
11 a grant or donation from any person, firm, association or corporation or
12 from any federal, state or local governmental agency and may enter into
13 contracts or other transactions with any such person or entity in connec-
14 tion with the grant or donation.

15 Sec. 8. Upon receipt of a complaint or on its own initiative, the ad-
16 vocate may:

17 (a) Investigate an administrative act or policy of a foster care home,
18 agency or contractor that is alleged to be contrary to law, rules and reg-
19 ulations or imposed without an adequate statement of reason or based on
20 irrelevant, immaterial or erroneous grounds;

21 (b) decide, in its discretion, whether to investigate a complaint;

22 (c) conduct a preliminary investigation to determine whether the fos-
23 ter care home, contractor or agency may have committed an act that is
24 alleged to be contrary to law; and

25 (d) hold informal hearings and request that persons appear before
26 the advocate and give testimony or produce documentary or other evi-
27 dence the advocate considers relevant to the matter under investigation.

28 Sec. 9. (a) Upon rendering a decision to investigate a complaint the
29 advocate shall notify the complainant of the decision to investigate and
30 shall notify the state foster care home, contractor or agency and any other
31 pertinent state entity referred to in the complaint of the decision to in-
32 vestigate the matter. If the advocate declines to investigate a complaint
33 or continue an investigation, the advocate shall notify the complainant
34 and the other person involved in the decision and the reasons for the
35 decision.

36 (b) The advocate may advise a complainant to pursue all administra-
37 tive remedies or channels of complaint open to the complainant before
38 pursuing a complaint with the advocate's office. Subsequent to the ad-
39 ministrative processing of a complaint, the advocate may conduct further
40 investigations of any complaint upon the request of the complainant or
41 on the advocate's own initiative.

42 (c) If the advocate finds in the course of an investigation that a per-
43 son's action is in violation of state or federal criminal law, the advocate

1 shall report that fact to the county or district attorney or the attorney
2 general. If the complaint is against a state foster care home, the advocate
3 shall refer the matter to the department of social and rehabilitation serv-
4 ices for further action with respect to licensing.

5 Sec. 10. (a) The department of social and rehabilitation services, fos-
6 ster care contractor and a foster care home shall:

7 (1) Upon the advocate's request, grant the advocate or advocate's
8 designee access to all relevant information, records, including the child's
9 medical records, and documents in the possession of such entities that
10 the advocate considers necessary in an investigation;

11 (2) assist the advocate upon request with progress reports concerning
12 the administrative processing of a complaint; and

13 (3) provide the advocate upon request with progress reports con-
14 cerning the administrative processing of a complaint.

15 (b) The department of social and rehabilitation services, foster care
16 home, or foster care contractor shall provide information to a biological
17 parent, prospective adoptive parent, foster parent or other interested
18 party, as defined pursuant to the Kansas code for care of children re-
19 garding the provisions of this act.

20 Sec. 11. (a) The advocate shall prepare a report of the findings of an
21 investigation and make recommendations to the department of social and
22 rehabilitation services if the advocate finds one or more of the following:

23 (1) A matter should be further considered by the department;

24 (2) an administrative act should be modified or canceled;

25 (3) reasons should be given for an administrative act; or

26 (4) other actions should be taken by the department, foster care home
27 or foster care contractor.

28 (b) Before announcing a finding or recommendation that expressly
29 or by implication criticizes a person, the advocate shall consult with that
30 person. When publishing an opinion adverse to the department, foster
31 care home or foster care contractor, the advocate shall include in the
32 opinion any statement made to the advocate by the department, foster
33 care home, foster care contractor or other state entity in defense or mit-
34 igation of the action. The advocate may request to be notified by the
35 department, foster care home, foster care contractor or other state entity,
36 within a specified time, of any action taken on any recommendation
37 presented.

38 (c) The advocate shall notify the complainant of the actions taken by
39 the advocate and the department, foster care home, foster care contractor
40 or other state entity.

41 (d) The advocate shall provide the complainant with a copy of the
42 advocate's recommendations on a complaint.

43 Sec. 12. (a) No person shall willfully interfere with any lawful action

1 or activity of an advocate or a volunteer advocate, including the request
2 for immediate entry into a foster care home or other state entity.

3 (b) No person shall take any discriminatory, disciplinary or retaliatory
4 action against any foster parent, person, officer, employee of a foster care
5 home or against any child or any guardian or family member thereof for
6 any communication by any such individual with an advocate or a volunteer
7 advocate or for any information given or disclosed by such individual in
8 good faith to aid the office in carrying out its duties and responsibilities.

9 (c) Any person that violates the provisions of subsection (a) or (b)
10 shall be guilty of a class C nonperson misdemeanor.

11 Sec. 13. The following persons may make a complaint to the advoc-
12 ate concerning a child alleging that an administrative act is contrary to
13 law, rules and regulations, policy, imposed without an adequate statement
14 of reason or based on irrelevant, immaterial or erroneous grounds:

- 15 (a) The foster child if such child is able to articulate a complaint;
16 (b) a biological or adoptive parent of the foster child;
17 (c) a foster parent of the foster child;
18 (d) a prospective adoptive parent of the foster child;
19 (e) a legally appointed guardian or conservator of the foster child;
20 (f) a guardian ad litem of the foster child;
21 (g) an adult who is related to the foster child or child to the fifth
22 degree by marriage, blood or adoption;
23 (h) a Kansas legislator;
24 (i) an attorney for any person described in subsection (a) through (g);
25 or
26 (j) the advocate upon the advocate's own initiative.

27 Sec. 14. No individual shall investigate any complaint filed with the
28 office of the children's advocate unless the individual has received the
29 training required and designated by the children's advocate as an advocate
30 or a voluntary advocate qualified to investigate such complaints.

31 Sec. 15. A volunteer advocate shall have access to the plan of care
32 and other records or documents kept for or concerning the resident to
33 the same extent and under the same circumstances as an advocate under
34 this section, except that a volunteer advocate shall not have access to any
35 such other records and documents that are privileged medical records.

36 Sec. 16. (a) An advocate or a volunteer advocate is hereby authorized
37 to enter any foster care home and any area within such home at any time
38 with or without prior notice and shall have access to the child of a foster
39 care home at all times.

40 (b) An advocate or a volunteer advocate shall notify immediately the
41 person in charge of a foster care home upon arrival and shall present
42 appropriate identification.

43 (c) A foster child shall have the right to request, deny or terminate

1 visits with an advocate or a volunteer advocate.

2 Sec. 17. All information, records and reports received by or devel-
3 oped by an advocate or a volunteer advocate which relate to a foster child
4 in a foster care home or other state entity, including written material
5 identifying a foster child or other complainant, are confidential and not
6 subject to the provisions of K.S.A. 45-216 to 45-220, and amendments
7 thereto, and shall not be disclosed or released by an advocate or a vol-
8 unteer advocate, either by name of the foster child or other complainant
9 or of facts which allow the identity of the foster child or other complainant
10 to be inferred, except upon the order of a court or unless the foster child's
11 legal representative or other complainant consents in writing to such dis-
12 closure or release by an advocate or a volunteer advocate, except the
13 children's advocate shall forward to the secretary of health and environ-
14 ment and the secretary of social and rehabilitation services copies of re-
15 ports received by the children's advocate relating to the health and safety
16 of a foster child. A summary report and findings shall be forwarded to
17 the appropriate person, exclusive of information or material that identifies
18 a foster child or any other individuals.

19 Sec. 18. An advocate shall have access to all records and documents
20 kept by the department of health and environment, the department of
21 social and rehabilitation services and foster care home concerning the
22 following matters: (a) Licensure of foster care homes dealing with foster
23 children in state care; (b) certification of such homes dealing with foster
24 children in state care; (c) public funding reimbursement for the care of
25 foster children of such homes dealing with foster children; (d) utilization
26 and medical review records; and (e) complaints regarding care of foster
27 children of such foster care homes. The provisions of this section shall
28 not apply to a volunteer advocate.

29 Sec. 19. The authority granted the advocate under this act is in ad-
30 dition to the authority granted under the provisions of any rule and reg-
31 ulation or other act or rule and regulation under which the remedy or
32 right of appeal or objection is provided for a person, or any procedure
33 provided for the inquiry into or investigation of any matter. The authority
34 granted the advocate does not limit or affect the remedy or right of appeal
35 or objection and is not an exclusive remedy or procedure.

36 Sec. 20. (a) On the effective date of this act, all of the powers, duties,
37 functions, records and property of the office of the secretary of social and
38 rehabilitation services, which are prescribed for the office of the chil-
39 dren's advocate by this act, are hereby transferred to and conferred and
40 imposed upon the office of the children's advocate, including the power
41 to expend funds now or hereafter made available in accordance with ap-
42 propriation acts, are hereby transferred to and conferred and imposed
43 upon the office of the children's advocate established by this act, except

1 as is otherwise specifically provided by this act.

2 (b) The office of the children's advocate established by this section
3 shall be the successor in every way to the powers, duties and functions
4 of the office of the secretary of social and rehabilitation services in which
5 such powers, duties and functions were vested prior to the effective date
6 of this act, except as otherwise specifically provided by this act. Every act
7 performed under the authority of the office of the children's advocate
8 established by this act shall be deemed to have the same force and effect
9 as if performed by the office of the secretary of social and rehabilitation
10 services in which such powers, duties and functions were vested prior to
11 the effective date of this act.

12 (c) Subject to the provisions of this act, whenever the office of the
13 secretary of social and rehabilitation services or words of like effect, is
14 referred to or designated by a statute, contract or other document, and
15 such reference or designation relates to a power, duty or function which
16 is transferred to and conferred and imposed upon the office of the chil-
17 dren's advocate that is established by this act, such reference or desig-
18 nation shall be deemed to apply to the office of the children's advocate
19 established by this act.

20 (d) All policies, orders or directives of the office of the secretary of
21 social and rehabilitation services transferred to and conferred and im-
22 posed upon the children's advocate which are in existence on the effective
23 date of this act shall continue to be effective and shall be deemed to be
24 the policies, orders or directives of the children's advocate established by
25 this act, until revised, amended or revoked or nullified pursuant to law.
26 The office of the children's advocate established by this act shall be
27 deemed to be a continuation of the secretary of social and rehabilitation
28 services concerning children which are transferred, conferred and im-
29 posed upon the children's advocate.

30 (e) (1) The children's advocate and the secretary of administration
31 shall provide that all officers and employees of the secretary of social and
32 rehabilitation services, who are engaged in the exercise and performance
33 of the powers, duties and functions of the programs of the office of the
34 children's advocate that are transferred by this act, are transferred to the
35 office of the children's advocate established by this section.

36 (2) Officers and employees of the department of social and rehabil-
37 itation services transferred under this act shall retain all retirement ben-
38 efits and leave rights which had accrued or vested prior to each date of
39 transfer. The service of each officer or employee so transferred shall be
40 deemed to be continuous. All transfers, layoffs and abolition of classified
41 service positions under the Kansas civil service act which may result from
42 program transfers under this act shall be made in accordance with the
43 civil service laws and any rules and regulations adopted thereunder. Noth-

1 ing in this act shall affect the classified status of any person transferred
2 to the office of the children's advocate prior to the date of transfer.

3 (3) If the children's advocate and the secretary of social and rehabil-
4 itation services cannot agree as to how any transfer of an officer or em-
5 ployee is to take place under this section, the children's advocate and the
6 secretary of administration shall be responsible for administering any lay-
7 off that is part of the transfer in accordance with this act.

8 (4) Notwithstanding the effective date of this act, the provisions of
9 this act prescribing the transfer of officers and employees between the
10 office of the children's advocate established by this section and the de-
11 partment of social and rehabilitation services, the date of transfer of each
12 such officer or employee shall commence at the start of a payroll period.

13 Sec. 21. (a) The children's advocate shall ensure that:

14 (1) No individual involved in the authorization of any individual to
15 represent the office as an advocate or a volunteer advocate is subject to
16 a conflict of interest;

17 (2) no officer, employee or other representative of the office is sub-
18 ject to a conflict of interest;

19 (3) policies and procedures are in place to identify and remedy all
20 conflicts of interest specified under paragraphs (1) and (2);

21 (4) legal counsel is available to the office for advice and consultation
22 and that legal representation is provided to any advocate against whom
23 suit or other legal action is brought in connection with the performance
24 of the advocate's official duties; and

25 (5) the office has the ability to pursue administrative, legal and other
26 appropriate remedies on behalf of a child or such child's parent who
27 receives support payments through the Kansas payment center or whose
28 child is in the custody of the state and subject to the processes of a foster
29 care facility or home, or other programs, office or process involving chil-
30 dren whose welfare has been placed under the state's jurisdiction.

31 (b) The children's advocate may enter into contracts with service pro-
32 viders to provide investigative, legal, public education, training or other
33 services as may be required to assist the children's advocate in providing
34 advocate services to foster children whose welfare has been assumed by
35 the state or as otherwise required to carry out the powers, duties and
36 functions of the office. Contracts entered into under this subsection shall
37 not be subject to the competitive bidding requirements of K.S.A. 75-3739,
38 and amendments thereto. No contract may be entered into by the chil-
39 dren's advocate to privatize the office or to otherwise provide that all or
40 substantially all of the advocate services or functions of the office are to
41 be performed by one or more service providers.

42 Sec. 22. (a) Records of the office of children's advocate included un-
43 der the provisions of this act shall not be disclosed directly or indirectly

1 to any person except as authorized by the children’s advocate or such
2 person’s designee.

3 (b) No documents relating to complaints, investigations or studies in
4 the possession of the children’s advocate or any employee of the children’s
5 advocate shall be read, copied or taken by any officer or employee of the
6 state of Kansas except as authorized by the children’s advocate or such
7 person’s designee.

8 Sec. 23. This act shall take effect and be in force from and after its
9 publication in the statute book.

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