

## **Child Advocate Act; Office of the Child Advocate; SB 115**

**SB 115** enacts the Child Advocate Act (Act), which establishes the Office of the Child Advocate (OCA) as an independent state agency. The bill also amends 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 has access to certain files and records of a child subject to proceedings under these codes.

### ***Definitions***

The Act defines the following terms:

- “Child,” to 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,” to mean the OCA and includes the Child Advocate and staff.

### ***Establishment of Office of Child Advocate***

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

### ***Selection and Appointment of Child Advocate***

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

The bill requires 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 requires 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 prohibits 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 serves a term of five years or until a successor has been appointed and confirmed. The Child Advocate is in the unclassified service and receives an annual salary equal to that of a district court judge. The bill requires the Child Advocate to exercise independent judgment in carrying out the duties of the office.

The bill specifies the Child Advocate has general managerial control over the OCA and is required to establish the organizational structure of the OCA as appropriate to carry out the responsibilities and functions of the OCA.

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

Within the limits of appropriations, the Child Advocate may hire unclassified employees necessary to administer the OCA who serve at the pleasure of the Child Advocate. The Child Advocate may 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 may enter into agreements with the Secretary of Administration for the provision of personnel, facility management, and information technology services.

### ***Purpose of the Office of Child Advocate***

The bill states 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; and
- Juvenile courts.

### ***Duties and Powers of the OCA and the Child Advocate***

The bill requires 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 requires 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 is 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 is 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 is 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 code and Juvenile Code 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 are similar to the procedures that must be followed when subpoenas are issued in proceedings under the CINC Code.]

***Complaint Resolution by the Office of Child Advocate***

The bill requires 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 may file such reports in any pending CINC case on behalf of the OCA.

### ***Child Welfare System Oversight Assistance***

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

- 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 requires 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, 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 bill requires the reports to include the following items:

- The number of complaints received by the OCA, the disposition of such complaints, the number of children involved in such complaints, and 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 Office of Child Advocate***

The bill requires 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 is not 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 Office of Child Advocate Files***

The bill states the OCA is 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 are confidential and disclosed only at the discretion of the Child Advocate, except that the identity of any complainant or child may 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 prohibits 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 is a class A nonperson misdemeanor. However, the bill requires 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 may 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 states the provisions providing for confidentiality of records expire on July 1, 2029, unless the Legislature reviews and reenacts the provisions, pursuant to the Kansas Open Records Act, prior to July 1, 2029.

### ***Immunity***

The bill provides that any person who, without malice, participates in any complaint or provides information in good faith to the OCA is immune from civil liability. The bill also provides that the Child Advocate, the OCA, and any employee of the OCA is 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 specifies any immunity does not apply when caused by the intentional, willful, or wanton misconduct of a person.

### ***Privilege***

The bill provides 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 is privileged and may 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 is 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 are prohibited from knowingly disclosing false information or disclosing confidential information without legal authority.

### ***Amendments to CINC Code and Juvenile Code***

The bill amends 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 is subject to continuing limits based on relevancy and other factors contained in these statutes.]

The bill also includes the House Committee on Child Welfare and Foster Care as a named committee that has specified access to confidential records.