

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 23, 2021
Subject: Bill Brief for SB 301

Senate Bill 301 establishes the office of the child advocate within the office of the attorney general and the joint committee on child welfare system oversight.

New Section 1 names Sections 1 through 5 the child advocate act and provides definitions. As used in the act, “child” means an individual less than 18 years of age at the time such individual was receiving: (1) Services from the Kansas department for children and families (DCF) or any contracting agency, for whom DCF has an open case file, or who has been, or whose siblings, parents or other caretakers have been the subject of a report of abuse or neglect to DCF within the previous five years; or (B) services, treatment or other programs from the department of corrections (DOC).

New Section 2 establishes the office of the child advocate within the office of the attorney general. The office shall be administered by the child advocate, who shall be appointed by the attorney general and subject to Senate confirmation. A person appointed to the position of the child advocate shall serve for a term that shall expire on January 15 of each year in which the whole Senate is sworn in for a new term, which would mean a maximum term of four years. The child advocate shall exercise independent judgment in carrying out the duties of the office and may be removed from office by the attorney general for cause.

New Section 3 provides that the purpose of the office of the child advocate is to receive and resolve complaints from legislators and from persons involved with the child welfare system alleging that DCF, the department’s contracting agencies or DOC has provided inadequate protection or care of children and assist the Legislature in conducting oversight of the child welfare system to improve the safety and welfare of children. The office shall receive complaints that allege DCF, the department’s contracting agencies or DOC by act or omission, failed to protect the physical or mental health, safety or welfare of any child or failed to follow established laws,

KANSAS OFFICE *of*
REVISOR *of* STATUTES
LEGISLATURE *of* THE STATE *of* KANSAS

rules and regulations or written policies. The office shall independently investigate complaints if the office reasonably believes the complaint's allegations may be independently verified through an investigation. As part of such investigation, the office is granted access to reports, records, and other information as provided in subsection (d) and Sections 7 through 11.

New Section 3 also provides that to assist the Legislature in oversight of the child welfare system, the office may: (1) Meet and discuss any matter in the scope of the child advocate act with the joint committee on child welfare system oversight; (2) review relevant statutes, rules and regulations, policies and procedures for the health, safety and welfare of children; (3) evaluate the effectiveness of and recommend changes to procedures for reports of child abuse and neglect for child protective services; and (4) review and recommend changes to law enforcement investigative procedures for and emergency responses to reports of abuse and neglect. On or before the beginning of each regular session of the Legislature, the office shall prepare and submit a report to the Legislature that includes recommendations for changes in statute, proposed annual budget, personnel and other topics the office deems appropriate. Finally, subsection (i) requires employees of DCF, the department's contracting agencies, DOC, juvenile intake and assessment workers, juvenile community corrections officers, guardians ad litem and court appointed special advocates to assist the office in the office's duties under the child advocate act.

New Section 4 provides that for any information obtained from a state agency or other entity under the child advocate act, the office shall be subject to the same state and federal statutory disclosure restrictions and confidentiality requirements that are applicable to the state agency or other entity. Other files, statements, and communications described in the section are confidential and privileged, subject to disclosure only as provided in the section. Subsection (d) provides that a representative of the office conducting or participating in any investigation of a complaint shall not knowingly disclose to any person other than the office, or a person authorized by the office, the name of any witness examined or any information obtained or given during such investigation. Violation of this subsection is a class A nonperson misdemeanor. Subsection (g) provides that the provisions of this section providing for confidentiality of records expire on July 1, 2026, unless the Legislature reenacts such provisions.

New Section 5 provides that no retaliatory action shall knowingly be taken against any child or employee of DCF or DOC for any communication made or information given to the office. Violation of this paragraph is a class A nonperson misdemeanor. The retaliatory action prohibition does not apply to an employee who discloses: (1) Information that such employee knows to be false or information without regard for the truth or falsity of the information; or (2) without lawful

authority, information that is confidential as provided by any other provision of law. The section provides a nonexclusive list of retaliatory actions.

New Section 6 establishes the joint committee on child welfare system oversight. The joint committee shall review: (1) The office of the child advocate's annual report submitted to the Legislature; (2) the office's proposed annual budget; (3) data on child maltreatment and demographic trends impacting the child welfare system; (4) the duties, responsibilities and contributions of governmental entities that comprise and impact the child welfare system; (5) the programs, services and benefits offered directly or through grants or contracts by governmental entities that impact children and families at risk of becoming involved or who are involved in the child welfare system; (6) trends, performance outcomes, activities and improvement plans related to federal child and family services reviews; (7) reports from child welfare-related groups; (8) implementation of the 2019 child welfare system task force report recommendations; (9) reports on concerns received from the Kansas department for children and families child welfare ombudsman, customer service department or similar office; (10) opportunities for Kansas to strengthen the child welfare system through evidence-based interventions and services for children and families; and (11) any other topic the joint committee deems appropriate.

The joint committee shall consist of 13 members of the Legislature, including 7 House members and 6 Senate members, and 7 members shall constitute a quorum. The joint committee shall meet upon the call of the chairperson on or after July 1, 2021, and shall meet at least once during each of the first and second calendar quarters when the Legislature is in regular session and at least once during each of the third and fourth calendar quarters, on the call of the chairperson, but not to exceed six meetings in a calendar year. The joint committee shall submit an annual report to the Legislature that shall include recommended changes to statutes, rules and regulations and policies regarding the safety and well-being of children in the child welfare system in the state of Kansas.

Sections 7 through 11 amend statutes in the revised Kansas code for care of children and the revised Kansas juvenile justice code concerning access to records and information. Section 7 amends K.S.A. 38-2211 to grant the office of the child advocate access to the official file and the social file of a child in need of care proceeding. Section 8 amends K.S.A. 38-2212 to grant the office access to information contained in confidential agency records concerning a child alleged or adjudicated to be in need of care. Section 9 amends K.S.A. 38-2213 to grant the office access to information contained in confidential law enforcement records concerning a child alleged or adjudicated to be in need of care. Section 10 amends K.S.A. 38-2309 to grant the office access to

KANSAS OFFICE *of*
REVISOR *of* STATUTES
LEGISLATURE *of* THE STATE *of* KANSAS

the official file and the social file of a juvenile justice code proceeding, including an official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense. Finally, Section 11 amends K.S.A. 38-2310 to grant the office access to law enforcement records concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age and to all records, reports and information obtained as a part of the juvenile intake and assessment process.