STATE OF KANSAS

CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612

PHONE: (785) 296-3232
GOVERNOR.KANSAS.GOV

GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 21-28

Establishing the Division of the Child Advocate

WHEREAS, ensuring safe and healthy childhoods is of the highest importance to the state of Kansas;

WHEREAS, increasing support for families, protecting of Kansas children from harm, and ensuring adequate care are vital to improving the delivery of child welfare services;

WHEREAS, independent oversight and greater accountability are critical components of safeguarding Kansas children and deepening confidence in the child welfare system; and

WHEREAS, to systematically improve the protection of Kansas children, there must be effective accountability mechanisms, including the impartial review of policies, procedures, and practices of actors in the child welfare system and the evaluation of concerns voiced by children and families.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby establish the Division of the Child Advocate and order the following:

1. The Division of the Child Advocate shall be a part of the Office of Public Advocates, as established by Executive Order 21-27, and shall be attached to the Department of Administration and located in Topeka, Kansas.

2. The Secretary of the Department of Administration shall provide such technical assistance and advice as the Secretary deems reasonable and necessary to assist the Division of the Child Advocate to function as an independent state agency.

3. The Secretary of the Department of Administration and the Department of Administration shall have no authority over the Division of the Child Advocate.

4. The Division of the Child Advocate shall be under the direct supervision of the Child Advocate. Employees in the division shall be employed by and be responsible to the Child Advocate who shall fix the compensation of each such employee.

5. The Child Advocate shall possess a professional degree in law, social work, public health, or a related field and be qualified by reason of education, experience, and expertise to perform the duties of the office. The Advocate shall have experience in child welfare, and in federal and state laws and policies governing abused, neglected, and dependent children. The Child Advocate shall be appointed by the Governor for a term of five years and may continue to serve beyond such five-year term if needed until a successor is appointed.

a. The Child Advocate shall not be a current or former executive of the Department for Children and Families or any current child welfare case management grantee, unless that individual is 12 months removed from their period of service with DCF or such child welfare case management grantee.

6. The Child Advocate shall be in the unclassified service and shall receive an annual salary set by the Governor's Office. That salary may be increased but not diminished during service.

7. The purpose of the Division of the Child Advocate is to ensure that children and families receive adequate coordination of child welfare services, for child maltreatment prevention, protection and care through services offered by the Department for Children and Families, the Department for Aging and Disability Services, the Department of Corrections, the Department of Health and Environment and juvenile courts. The Division of the Child Advocate shall have access to appropriate information to assist in fulfilling this purpose, in accordance with applicable Kansas law, including K.S.A. 38-2212(c)(13) and 38-2213(c)(7) and/or as authorized by court order.

8. The Division of the Child Advocate shall:

   a. Address complaints made by or on behalf of a child in the custody of the Secretary for the Department for Children and Families or alleged to be a Child In Need of Care that relate to state agencies, service providers, including contractors, subcontractors and any juvenile court, that may adversely affect the health, safety, welfare or civil or human rights of such child;

   b. Establish a procedure for receiving, processing, responding to and resolving such complaints;

   c. Compile, collect and preserve a record of complaints received and processed that may reveal concerning patterns to be addressed;

   d. Submit any findings and recommendations to the Department for Children and Families and recommend changes to the policies and procedures to improve the delivery of child welfare services or the function of any entity review pursuant to subsection (9)(c);

   e. Make inquiries and review relevant information and records the division deems necessary for investigations required by subsections (9)(a) and (c);

   f. 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, welfare or civil or human rights of any child;

   g. Analyze and monitor the development and implementation of federal, state and local laws, rules and regulations and policies with respect to child welfare services in the state and recommend changes in such laws, rules and regulations and polices to the Department for Children and Families, Department for Aging and Disability

Services, the Department of Health and Environment, the Department of Corrections, juvenile courts, the legislature and the governor;

h. Inform and educate children, their guardians and families of the child's rights and entitlements under state and federal laws;

i. Fulfill responsibilities in this section guided by generally accepted principles of best practices in child welfare;

j. Provide the Department for Children and Families with a notice of availability that describes the division and procedures for contacting the division.

k. Maintain a publicly available website, and

l. Publicize and notify individuals of the division's services, purpose, and contact information.

9. The Division of the Child Advocate may:

a. Access records as provided in K.S.A 2020 Supp. 38-2201 *et seq*. and 38-2301 *et seq.*, and amendments thereto, related to complaints received;

b. Access all records of child abuse and neglect maintained by the Secretary of Children and Families related to complaints received;

c. Communicate privately with any child or child's siblings, after consultation with treatment professionals and service providers, and with anyone working with the child, including the family, relatives, employees of the Department for Children and Families, Department for Aging and Disability Services, juvenile courts and other persons or entities providing treatment and child welfare services to such child;

d. Work in conjunction with guardians ad litem;

e. File amicus curiae briefs of the findings and recommendations of the division in appeals from child in need of care matters;

f. Initiate meetings with personnel from the Department for Children and Families, Department for Aging and Disability Services, and juvenile courts;

g. Establish local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the office and address complaints in a timely manner as appropriate;

h. Conduct an independent review of any policy, procedure or practice that is the subject of a complaint submitted as provided in this section.

i. Nothing in this section shall create a just cause for delay of court proceedings or excuse any court, county attorney or district attorney, guardian ad litem or other agency from their duties in proceedings related to a child.

ii. No review of any complaint shall require any licensed professional to engage or not engage in conduct required or prohibited by any governing professional code of responsibility or conduct.

10. The Secretary for the Department for Children and Families and the Division of the Child Advocate shall enter into agreements for the provision of financial assistance to the Division of the Child Advocate by the Department for Children and Families from available state and federal funds of the Department for Children and Families. This financial assistance shall be to assist the Division of the Child Advocate's services in accordance with this order, applicable federal programs, and the provisions of this section. Such agreements shall respect the independent nature of the Division of the Child Advocate.

11. Any relevant state agency and their agents, including the Department for Children and Families, the Department for Aging and Disability Services, the Department of Corrections, and the Department of Health and Environment, shall:

    a. Allow employees of such department, agency, or agents to file a complaint with or provide information to the office without supervisory approval;

    b. Not willingly interfere with or obstruct any of the division's duties provided by the executive order;

    c. Promptly meet and consult with the division upon request of the division.

12. No person within the executive branch shall take reprisal or retaliatory action against any recipient of child welfare services or employee of the Department for Children and Families and such department's grantees, the Department for Aging and Disability Services, the Department of Corrections, the Department of Health and Environment for any communication made or information given to the Division of the Child Advocate for the purpose of compliance with this executive order.

    a. No employee of the Division of the Child Advocate shall:

        i. Knowingly disclose false information; or

        ii. disclose confidential information without lawful authority

    b. As used in this section, "reprisal or retaliatory action" includes, but is not limited to:

        i. Letters of reprimand or unsatisfactory performance evaluations;

ii. transfer;

iii. demotion;

iv. reduction in pay;

v. denial of promotion;

vi. suspension;

vii. dismissal; and

viii. denial of employment

13. On or before the first day of the legislative session in 2022, and each year thereafter, the Child Advocate shall submit an annual report to the Governor, the Chief Justice and/or the Office of Judicial Administration, the Secretary of Administration, the Secretary for Children and Families, the Joint Committee on Child Welfare Oversight, the House Committee on Children and Seniors or other relevant House Committee, the Senate Committee on Public Health or other relevant Senate Committee, and other relevant legislative committees. Such report shall include, but not be limited to, the number of complaints received by the Division of the Child Advocate, the disposition of such complaints, the number of children involved in such complaints, the state entities named in such complaints, whether such complaints were found to be substantiated and any recommendations for improving the delivery of child welfare services to reduce complaints or improving the function of the Division of the Child Advocate. The report shall remain confidential until its submission to the entities outlined in this section.

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

This document shall be filed with the Secretary of State as Executive Order No. 21-28 and shall become effective immediately.

THE GOVERNOR'S OFFICE BY THE GOVERNOR Laura Kelly

DATED 10.4.21

FILED
OCT 04 2021
SCOTT SCHWAB
SECRETARY OF STATE

Secretary of State

Assistant Secretary of State