

<b>Office of the Ombudsman (OO) Outline</b> <i>Primarily based on American Ombudsman Association Public Ombudsman Standards &amp; ABA Recommendations</i>	<b>H.522 Office of the Child Advocate</b> <i>Adds Office within Executive Agency of Administration, 3 V.S.A. Chapter 45, Subchapter 4, Referred to Gov Ops</i>
<b>1. Legislative Findings</b>	
<b>2. Legislative Intent</b>	
<b>3. Definitions</b>	

4. Characteristics	
Independence	
Confidentiality	
Neutrality	
Immunity	No civil liability for good faith performance

5. Scope of Authority	
Jurisdiction	
Investigative discretion	
Access to agency records	May have appropriate access to review the records of state agencies; "All state agencies shall comply wit reasonable requests of the Child Protection Advocate for records, information, and assistance"
Access to vulnerable populations	
Admissibility of evidence	

Subpoena power	
Publish findings	
Public recommendations	
Oversight	
Interference/Retaliation	A person who intentionally hinders the Child Protection Advocate shall be imprisoned or fined up to \$5k or both.
Rule, policies, procedures	May adopt rules, policies, and procedures necessary to carry out the provisions of this chapter, including prohibiting any employee or immediate family member of any employee from having any interest which creates a conflict of interest in carrying out the Advocate's responsibilities
<b>6. Duties</b>	
Inform the Public	Provide information to the public [...] regarding problems and concerns of persons involved in the child protection system, including recommendations relating to such problems and concerns;

Investigate Complaints	1) Investigate and resolve complaints on behalf of persons involved in the child protection system. 2) Develop and implement a uniform reporting system to collect and analyze information relating to complaints by persons involved in the child protection system.
Monitor policy development and implementation	Analyze and monitor the development and implementation of federal, state, and local laws and of regulation and policies relating to child protection and to the DCF, and make recommendations as he/she deems appropriate
Provide Fair Notice to Subjects of Complaints	
Monitor Facilities with Dependent Populations	
Monitor Critical Incidents & Fatalities	

Conduct Special Investigations	
Inform Decision-Makers	Same as duty to inform the public. See above.
Annual Public Report	Submit to the General Assembly and the Governor on or before January 15 of each year a report on the Offices Activities and recommendations.
<i>Citizen Organizations</i>	<i>Promote the development of citizen organizations in the work of the Office and in protecting children from abuse and neglect.</i>
<i>Advocacy Training</i>	<i>Train persons and organizations in advocating for the interests of children and of persons involved in protecting</i>
<i>Representation</i>	N/A
<b>7. Construction.</b>	



Resources	Agency of Administration shall reallocate one position and necessary funding within its existing resources on or before January 1, 2017. The position used shall be transferred and converted from an existing vacant position in the Executive Branch, and shall not increase the total number of authorized State positions.
Effective Date	1-Jul-16



<b>Comments/Suggested Language Changes</b>	<b>H.75 Office of the Child Advocate</b>  <i>Adds Independent Non-Profit to Human Service Statutes, Referred to Human Services</i>
<i>Clarify.</i>	
<i>Clarify.</i>	
<i>Add as needed.</i>	Several, see below.
	Agency = Human Services
	Child Advocate = Appointed individual who intervenes on behalf of child or family to resolve complaints
	Office = Child Advocate
	State Agency = All instruments of the state

<i>Needs attention.</i>	
<i>Add language.</i>	Shall act independently of any state agency
<i>Add language.</i>	Pg. 3, line 14, "establish by rule procedures for protecting confidentiality of clients"; Pg. 6, line 18, cannot disclose a child's identity without consent
<i>This is the shift to an Ombudsman model -- the ivestigative approach is neutral, and advocacy can occur with respect to upholding a fair process.</i>	Not addressed.
<i>No comment, defer to lawyers.</i>	No civil liability for good faith performance

Clarify.	"Human Services" [All chapters w/in Title 33, DCF, VT Health Access, Disabilities, Prevention & Treatment of Substance Abuse, and others noted at the end of this document]?
Clarify complaint investigation criteria (who is/isn't entitled to have their complaints investigated) and whether the office can initiate its own independent investigations and complaints.	Identify complaints to investigate.
Method? Front and back end access to agency information systems?	Pg. 5, line 14, "all state agencies shall comply with reasonable requests of the child advocate for information and assistance"
Specify access.	Pg. 4, line 16, "communicate and visit with any child or family member receiving services from the Agency ... with
Specify inadmissability of evidence in court.	Not addressed.

<i>See comments re: H.75, on the right</i>	Pg 4. Line 15, grants subpoena power
<i>Clarify that investigative findings shall be published for public consumption.</i>	Not addressed.
<i>See above.</i>	Pg. 3 line 10 "recommend changes" to law and policy when appropriate
<i>Require oversight -- children's legislative oversight committee</i>	Not addressed.
	Pg. 6, lines 5-15 – individuals interfering with Office activities or retaliating shall be imprisoned and/or fined. Employees, volunteers, and providers of state may
	Must adopt rules regarding conflicts and confidentiality.
<i>Suggest specifying that the office shall provide information about rights, responsibilities, and clarify way to use existing complaint resolution channels and processes -- prior to formal complaint</i>	Provide "information concerning child welfare to the public, State agencies, legislators, and others as necessary"

<p><i>investigation. This reduces duplication of effort and support existing institutional infrastructure.</i></p>	
<p><i>Suggest adding that "agency actions or inactions" and clarifying which agencies are under the offices jurisdiction. Also clarify who is entitled a complaint investigation (any resident, rather than service recipients).</i></p>	<p>Identify, investigate, and resolve complaints on behalf of children and families <u>receiving services</u> ; develop/implement reporting system;</p>
	<p>Analyze and monitor development and implementation of federal, state. Local laws, regulations, policies related to child welfare and providers of services</p>
<p><i>Amend to clarify that subjects of complaints shall be notified about the complaint, and communicate expectations about the process.</i></p>	
<p><i>Add this, unless another entity is monitoring facilities.</i></p>	<p>Yes, addressed</p>
<p><i>Same as above.</i></p>	

<p><i>Consider office-initiated investigations, and/or standard/systematic monitoring/evaluation of system performance, in addition to individual complaints. Harmonize with any other functions conducting cross agency system monitoring and evaluation. (Models to consider for partnership potential --WA Research Data, Analysis Division. Functional policy research organization in state? ...UVM policy research center? Any consortiums?)</i></p>	
	<p>See annual report.</p>
<p><i>Add public.</i></p>	<p>Pg 3. Line 20, Due January 15, to General Assembly and Governor. Must address:</p> <ul style="list-style-type: none"> <li>· Child welfare in VT</li> <li>· Complaints regarding services</li> <li>· Conditions of facilities</li> <li>· Recommendations re: service improvements</li> </ul>
	<p><i>Pg.3 line 18, train persons and organizations "in advocating for the interests of Vermont's children and families"</i></p>
	<p><i>Represent child/family interests before Human Services Board</i></p>

	Contracted non-profit administratively supported by the Agency of Administration.
	Experience in social services, advocacy, and law
	Governor appoints, Senate confirms.
	4 years, holds office until reappointed or successor is appointed
	Governor may remove for neglect of duty, misconduct, or inability to perform responsibilities.
	Pg. 3, line 18, "establish by rule, qualifications and training for employees and monitor their performance
<i>Clarify. Amend to add H.75 conflict provisions.(See right.)</i>	Advocate/staff conflicts are not allowed, and exist when they are involved in:
	· Licensing,
	· Certification
	· Accreditation of services delivered to children and families,
	· Ownership interest in facility
	· Receives or has the right to receive compensation with a provider or facility

	1-Jul-15



**Comments/Suggested Language Changes**

*Has an informal or formal needs assessment been conducted? What do children and families need to get their needs met through the system? Another advocacy organization? What has the Legislature found to be the need for this bill?*

*Unclear. (Only intended to assist individual children and families who are already receiving services? What about individuals seeking assistance who are not getting their needs met? Is the intent to cover all of Title 33/Human Services? Very broad. Intentionally leaving single people out? How is family defined? If intent is to entertain complaints and air out issues regarding all human services, consider an alternate program/organizational design that harmonizes existing functions/organizations.)*

*Amend to clarify in statute that all complaints (complainants, subject of complaints, and complaint investigation activities) shall remain confidential.*

*In my opinion, this is the dividing line between an advocate and an ombudsman. The benefit to neutrality is a dispassionate approach to ensuring laws are upheld, and amended when necessary, for all parties. Once all facts are investigated, and roles and responsibilities are clarified – advocacy occurs under the conditions of existing law. NOTE: Advocates for children (CASA/GAL, attorneys) and parents (public defenders, VPRC) already functionally exist. If there are deficits in those advocacy functions, why not strengthen those programs rather than create ANOTHER, potentially duplicate advocacy function? On the other hand, a 3<sup>rd</sup> party neutral investigative function would support existing functions – serving as a net to catch whatever issue or case is falling through cracks in the system –triaging and shining a light on issues -- for appropriate decision-makers. They promote system strengthening. Draft 2 bills: 1) establishing an ombudsman with ability contract with university/research entities for system investigations, 2) supplementing socially supportive legal advocacy services.*

*No comment. Defer to lawyers.*

*Harmonize existing human service statutes (i.e.: Long-term care ombuds, etc. needs research to cull through Title 33 and validate existing programs) and programmatic activities; OR reduce, refine, clarify jurisdiction.*

*Clarify complaint investigation criteria (who is/isn't entitled to have their complaints investigated) and whether the office can initiate its own independent investigations and complaints.*

*Amend to strengthen language. Busy folks will easily allege information requests are unreasonable. "Agencies shall provide all information requested."*

*Amend Pg. 5, line 1, regarding access – indent so subsection of 3 is clear.*

*If move to a neutral 3<sup>rd</sup> party investigation model, then amend to shield ombudsman investigations from court proceedings.*

*In my opinion, if a neutral Ombudsman (who advocates for a fair process after an investigation of facts, law, policy, procedures, etc.) approach is taken, then subpoena power should be removed if the agency has adequate statutory access to agency records. An ombudsman would not have a role in the court processes, rather it would facilitate resolution through administrative processes, and refer to legal resources and existing decision-makers as needed, and if those actions were insufficient would appeal to the press (and implicitly, the public) to make the issue known.*

*Amend to clarify investigative findings and interventions must be reported to the public and decision-makers.*

*Specify how recommendations will be issued, to who, and when. Amend to include in the annual report process, and make annual reports available to the*

*Amend to include legislative, executive, and perhaps judicial oversight. (How can a contracted independent entity have subpoena power regarding any agency*

*Amend to clarify that all individuals identified throughout the course of an investigation shall remain free of retaliation.*

*Pg. 3, line 12, amend to specify the type of information to be provided*

*· rights,*

· *responsibilities,*

· *clarify ways to use existing complaint resolution channels and processes prior to formal investigation and intervention (support existing institutional processes, and reduce duplication of effort)*

*Pg. 2, line 20, amend to include authority to investigate allegations of agency failures to act (i.e.: provide services) -- Clarify who is entitled to have their complaint investigated, and basis for inclusion/exclusion in the findings and intent section. (Why exclude any party who believes they are entitled to services, or has questions about rights under the law?)*

*How are child welfare services defined? Provide statutory references for practical guidance.*

*Amend to clarify that subjects of complaints shall be notified about the complaint, and communicate expectations about the process.*

*Doesn't specify government dependent populations.*

*See notes below.*

*Given broad authority granted under Title 33, consider office-initiated investigations, and/or standard/systematic monitoring/evaluation of system performance, in addition to individual complaints. Harmonize with any other functions conducting cross agency system monitoring and evaluation. (Models to consider -- Public Health/Health and Human Services, Research Data, Analysis Division (See WA RDA, WSIPP). Functional policy research organization in state? ...UVM policy research center?)*

*Amend to include public.*

*Pg.4, lines 9-10, strike or amend. Intent is unclear as stated.*

*Not an Ombuds or ABA standard component.*

*Strengthen existing advocacy/representation functions rather than create duplication.*



*Traditionally, public ombudsman offices are functionally located within the executive or legislative branches to ensure they have adequate authority to*

*No comment.*

*Amend to ensure appointment of the Advocate does not coincide with the election cycles.*

*(Ombudsman/Advocate should be non-partisan and See above.*

*Amend to clarify that the Advocate, staff, and contracted designees shall be compensated fairly in alignment with professional standards.*

<i>Amend the date.</i>