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H.215

Introduced by Representatives Noyes of Wolcott and Pugh of South

Burlington

Referred to Committee on

Date:

Subject: Human services; child welfare; Office of the Child Advocate

Statement of purpose of bill as introduced: This bill proposes to establish the
Office of the Child Advocate.

An act relating to the Office of the Child Advocate

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 33 V.S.A. chapter 32 is added to read:~~

CHAPTER 32. OFFICE OF THE CHILD ADVOCATE

§ 3201. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Human Services.

(2) "Child Advocate" means an appointed individual who intervenes on
behalf of a child or family to resolve complaints pursuant to this chapter.

~~(3) "Office" means the Office of the Child Advocate.~~

1 ~~(4) "State agency" means any office, department, board, bureau,~~
2 ~~division, agency, or instrumentality of the State.~~

3 § 3202. OFFICE OF THE CHILD ADVOCATE

4 (a) The Agency of Administration shall establish the Office of the Child
5 Advocate by contract with any nonprofit organization for the purpose of
6 protecting and advancing the interests of Vermont's children and families.
7 Notwithstanding administrative support from the Agency of Administration,
8 the Office shall act independently of any State agency in the performance of its
9 duties.

10 (b) The Office shall be directed by the Child Advocate, an individual with
11 a professional degree in law, social work, public health, or a related field, and
12 shall be qualified by reason of education, expertise, and experience. The Child
13 Advocate shall serve on a full-time basis and shall be exempt from classified
14 service.

15 (c)(1) The Vermont Citizen's Advisory Board (VCAB) shall recommend
16 qualified applicants for the position of Child Advocate to the Governor for
17 consideration. Subject to confirmation by the Senate, the Governor shall
18 appoint a Child Advocate from among those applicants recommended by
19 VCAB for a term of four years. The appointment for Child Advocate shall be
20 made without regard to political affiliation and on the basis of integrity and

1 ~~demonstrated ability. The Child Advocate shall hold his or her office until~~
2 ~~reappointed or until his or her successor is appointed.~~

3 (2) The Governor, upon a majority vote of VCAB, may remove the
4 Child Advocate for cause, which includes only neglect of duty, gross
5 misconduct, conviction of a crime, or inability to perform the responsibilities
6 of the office. The Governor's reason for removing the Child Advocate shall
7 be published electronically on the website of the Office of the Child Advocate
8 and the Speaker of the House and President Pro Tempore shall simultaneously
9 receive notification. Any vacancy shall be filled by the appointment process
10 set forth in subdivision (1) of this subsection for the remainder of the
11 unexpired term.

12 (d) The Child Advocate shall appoint a Deputy Child Advocate, whose
13 duties shall be performed at the direction of the Child Advocate.

14 (e) Upon any vacancy in the position of the Child Advocate, and until such
15 time as a replacement is appointed and confirmed, the Deputy Child Advocate
16 shall serve as the acting Child Advocate. The acting Child Advocate shall
17 have the full responsibilities of the Child Advocate and entitled to the same
18 compensation as the outgoing Child Advocate.

19 § 3203. RESPONSIBILITIES OF THE OFFICE

20 ~~The Office shall.~~

1 (1) identify, investigate, and resolve complaints on behalf of children
2 and families receiving services from the Agency and assist service recipients
3 with the filing and pursuit of complaints and appeals;

4 (2) develop and implement a uniform reporting system to collect and
5 analyze complaints relating to services the Agency provided to children and
6 families as well as complaints relating to conditions and placements in
7 facilities serving children;

8 (3) support recipients of children's and family services by providing
9 assistance with obtaining services and information about recipients' related
10 rights and responsibilities;

11 (4) analyze and monitor the development and implementation of
12 federal, State, and local laws, regulations, and policies relating to child welfare
13 and providers of child and family services and recommend changes when
14 appropriate;

15 (5) provide information concerning child welfare to the public, State
16 agencies, legislators, and others, as necessary;

17 (6) establish by rule procedures for protecting the confidentiality of
18 clients;

19 (7) establish by rule qualifications and training for employees of the
20 Office and monitor their performance,

- 1 ~~(8) train persons and organizations in advocating for the interests of~~
2 ~~Vermont's children and families;~~
- 3 ~~(9) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly~~
4 ~~and the Governor on or before January 15 of each year a report addressing:~~
- 5 ~~(A) child welfare in Vermont;~~
- 6 ~~(B) the quality of services that the Agency provides to children and~~
7 ~~families;~~
- 8 ~~(C) complaints relating to services provided by the Agency to~~
9 ~~children and families;~~
- 10 ~~(D) conditions of placements for children in Vermont; and~~
- 11 ~~(E) recommendations related to improving services for children and~~
12 ~~families; and~~
- 13 ~~(10) perform such other activities on behalf of Vermont's children and~~
14 ~~families as the Office deems necessary.~~

15 § 3204. AUTHORITY OF THE CHILD ADVOCATE

- 16 In fulfilling the responsibilities of the Office, the Child Advocate may:
- 17 (1) Hire or contract with persons or organizations to fulfill the purposes
18 of this chapter.
- 19 (2) Issue subpoenas when necessary to an investigation.
- 20 (3) Communicate and visit with any child or family member receiving
21 services from the Agency, provided that the Child Advocate first obtain

1 ~~ission from the child's guardian or legal representative. Facilities and~~
2 providers delivering services to children shall permit the Child Advocate
3 access to their facilities and to children for whom they provide services.

4 (4) Pursue administrative, judicial, or other remedies on behalf of a
5 child or family receiving services from the Agency, including access orders
6 from a District or Superior Court judge when access under subdivision (3) of
7 this section has been unreasonably denied and all other reasonable attempts to
8 gain access have failed.

9 (5) Represent the interests of a child or family receiving services from
10 the Agency before the Human Services Board pursuant to 3 V.S.A. §§ 3090
11 and 3091.

12 (6) Delegate to employees any part of the Child Advocate's authority.

13 (7) Adopt rules necessary to carry out the provisions of this chapter.

14 (8) Take such further actions as are necessary in order to fulfill the
15 purposes of this chapter.

16 § 3205. COOPERATION OF STATE AGENCIES

17 (a) All State agencies shall comply with reasonable requests of the Child
18 Advocate for information and assistance.

19 (b) The Secretary of Human Services may adopt rules necessary to ensure
20 the departments within the Agency cooperate with the Office.

21 § 3206. CONFIDENTIALITY

1 In the absence of a court order or the written consent of the guardian or
2 legal representative of a child about whom a concern has been raised, the Child
3 Advocate shall not disclose the identity of the child.

4 § 3207. IMMUNITY

5 No civil liability shall attach to the Child Advocate or his or her employees
6 for good faith performance of the duties imposed by this chapter.

7 § 3208. INTERFERENCE AND RETALIATION

8 (a) A person who intentionally hinders a representative of the Office acting
9 pursuant to this chapter shall be imprisoned not more than one year or fined
10 not more than \$5,000.00, or both.

11 (b) A person who takes discriminatory, disciplinary, or retaliatory action
12 against an employee or a volunteer of a State agency, facility, or provider
13 servicing children for any communication made or information disclosed to aid
14 the Office in carrying out its duties and responsibilities shall be imprisoned not
15 more than one year or fined not more than \$5,000.00, or both. Any employee
16 or volunteer of a State agency, facility, or provider may seek damages in
17 Superior Court against a person who takes an action prohibited by this
18 subsection.

19 § 3209. CONFLICT OF INTEREST

20 The Child Advocate and his or her employees and contractors shall not
21 have any conflict of interest relating to the performance of their

1 ~~responsibilities under this chapter. For the purposes of this section, a conflict of~~
2 ~~interest exists whenever the Child Advocate or his or her employees or~~
3 ~~contractors.~~

4 ~~(1) has direct involvement in the licensing, certification, or accreditation~~
5 ~~of a provider or facility delivering services to children and families;~~

6 ~~(2) has a direct ownership interest in a provider or facility delivering~~
7 ~~services to children and families;~~

8 ~~(3) is employed by or participates in the management of a provider or~~
9 ~~facility delivering services to children and families; or~~

10 ~~(4) receives or has the right to receive, directly or indirectly,~~
11 ~~remuneration under a compensation arrangement with a provider or facility~~
12 ~~delivering services to children and families.~~

13 Sec. 2. EFFECTIVE DATE

14 ~~This act shall take effect on July 1, 2019.~~

*Sec. 1. ASSESSMENT AND RECOMMENDATION; OFFICE OF THE
CHILD ADVOCATE*

(a) The Joint Legislative Child Protection Oversight Committee established pursuant to 2015 Acts and Resolves No. 60, Sec. 23, as amended by 2018 Acts and Resolves No. 207, Sec. 2, shall assess the need for an Office of the Child Advocate in Vermont and explore models adopted by other states to achieve the same. In conducting its assessment and formulating a recommendation, the Committee shall specifically consider:

(1) the scope of an Office of the Child Advocate, including whether the Office would provide systems-wide oversight or review individual complaints, or both;

(2) the degree of independence with which the Office would operate and in which State agency it would be embedded, if any;

(3) the relationship of the Office to the Department for Children and Families' Family Services Division, other government entities with existing child protection responsibilities, and current complaint processes;

(4) the composition of the staff and reporting structure within the Office;

(5) the manner of appointing and confirming a Child Advocate and the composition of any advisory board to the Child Advocate; and

(6) access to confidential data held by the Department for Children and Families and the ability of the Child Advocate to speak directly to a child without the permission of a parent or guardian.

(b) In conducting its assessment, the Committee shall consult with:

(1) the Department for Children and Families;

(2) a representative of the Vermont Foster and Adoptive Family Association;

(3) a representative of Vermont Kin as Parents;

(4) at least one person who was previously in foster care in Vermont;

(5) one or more parents of origin who have experienced Vermont's child protection system and had their parental rights terminated;

(6) one or more parents of origin who have experienced Vermont's child protection system and have been reunited with their child or children;

(7) a representative of Vermont's Judicial Branch;

(8) a guardian ad litem;

(9) the Defender General or designee;

(10) a representative of the Vermont Citizen's Advisory Board; and

(11) any other person or entity from whom the Committee chooses to receive testimony.

(c) The Committee shall provide an opportunity for the public to provide feedback to the Committee on the creation and structure of an Office of the Child Advocate in Vermont.

(d) On or before December 1, 2020, the Committee shall submit any proposed draft legislation to the General Assembly that shall reflect the findings and recommendations of the Committee's assessment conducted pursuant to this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2020.