

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

H.265

~~SHORT FORM~~

Introduced by Representatives Noyes of Wolcott, Brumsted of Shelburne,
Austin of Colchester, Bluemle of Burlington, Christie of
Hartford, Cina of Burlington, Coffey of Guilford, Colburn of
Burlington, Houghton of Essex, Kornheiser of Brattleboro,
Nicoll of Ludlow, Pajala of Londonderry, Small of Winooski,
Stebbins of Burlington, and Wood of Waterbury

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 an
Office of the Child Advocate, independent from State government, to provide
transparent and impartial oversight of Vermont's justice-involved youth and
child welfare systems. The Office of the Child Advocate shall: (1) collect and
analyze data regarding the well-being of children in Vermont; (2) identify
systemic shortcomings in Vermont's justice-involved youth and child welfare
systems; and (3) make recommendations to the General Assembly regarding
any necessary reforms to better serve Vermont children and youths.

~~An act relating to the Office of the Child Advocate.~~ *An act relating to the
Office of the Child, Youth, and Family Advocate*

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

2 ~~(TEXT OMITTED IN SHORT FORM BILLS)~~

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

CHAPTER 32. OFFICE OF THE CHILD, YOUTH, AND FAMILY

ADVOCATE

§ 3201. DEFINITIONS

As used in this chapter:

(1) “Child, Youth, and Family Advocate” or “Advocate” means an
individual who leads the Office of the Child, Youth, and Family Advocate.

(2) “Department” means the Department for Children and Families.

(3) “Office” means the Office of the Child, Youth, and Family Advocate.

(4) “State agency” means any office, department, board, bureau,
division, agency, or instrumentality of the State.

§ 3202. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE

(a) There is established the Office of the Child, Youth, and Family
Advocate for the purpose of advancing the interests and welfare of Vermont’s
children and youths receiving services from the Department in a manner that
addresses racial and social equity, including providing transparent and
impartial oversight of the child protection and juvenile justice systems and
promoting reforms necessary to better serve Vermont’s children, youths, and

families. The Office shall act independently of any State agency in the performance of its duties.

(b) The Office shall:

(1) work in collaboration with relevant parties to strengthen the Department's services for children, youths, and families;

(2) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to child, youth, and family welfare and recommend changes when appropriate;

(3) review systemic issues in the Department's provision of services to children and youths that may exist and complaints concerning the actions of the Department and of any entity that provides services to children, youths, and families through funds provided by the Department; make appropriate referrals; and investigate those complaints where the Advocate determines that a child, youth, or family may be in need of assistance from the Office;

(4) support children, youths, and families by providing information about recipients' rights and responsibilities related to Departmental services;

(5) review current systems to determine to what extent children and youths placed in the custody of the Department or who are receiving services under the supervision of the Department receive humane and dignified treatment at all times, including consideration by the Advocate as to what extent the system protects and enhances the child's or youth's personal dignity,

right to privacy, and right to appropriate health care and education in accordance with State and federal law;

(6) provide systemic information concerning child, youth, and family welfare to the public; the Governor; State agencies, legislators; and others, as necessary;

(7) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly and the Governor on or before December 1 of each year a report addressing services provided by the Department, including:

(A) the quality of services provided to children, youths, and families;

(B) the conditions of placements for Vermont's children and youths;

(C) systemic findings related to services for and assistance to children, youths, and families within the child protection and juvenile justice systems;

(D) recommendations related to improving services for children, youths, and families; and

(E) data disaggregated by race, ethnicity, gender, geographic location, disability status, and any other categories that the Advocate deems necessary; and

(8) address any challenges accessing information or records that are necessary for carrying out the provisions of this chapter.

§ 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

(a) The Office shall be directed by the Child, Youth, and Family Advocate, an individual who shall be qualified by reason of education, expertise, and experience and who may have a professional degree in law, social work, public health, or a related field. The Child, Youth, and Family Advocate shall serve on a full-time basis and shall be exempt from classified service.

(b)(1) The Oversight Commission on Children, Youths, and Families established pursuant to section 3210 of this chapter shall recommend qualified applicants for the position of the Child, Youth, and Family Advocate to the Governor for consideration. Subject to confirmation by the Senate, the Governor shall appoint an Advocate from among those applicants recommended by the Oversight Commission for a term of four years. The appointment for Advocate shall be made without regard to political affiliation and on the basis of integrity and demonstrated ability. The Advocate shall hold office until reappointed or until a successor is appointed.

(2) The Governor, upon a majority vote of Oversight Commission, may remove the Child, Youth, and Family Advocate for cause, which includes only neglect of duty, gross misconduct, conviction of a crime, or inability to perform the responsibilities of the Office. The Governor's reason for removing the Advocate shall be published electronically on the website of the Office of the Child, Youth, and Family Advocate, and the Speaker of the House and President Pro Tempore shall simultaneously receive notification. Any vacancy

shall be filled by the appointment process set forth in subdivision (1) of this subsection for the remainder of the unexpired term.

(c) The Child, Youth, and Family Advocate shall appoint a Deputy Child, Youth, and Family Advocate, whose duties shall be performed at the direction of the Advocate.

(d) Upon any vacancy in the position of the Advocate, and until such time as a replacement is appointed and confirmed, the Deputy Child, Youth, and Family Advocate shall serve as the acting Child, Youth, and Family Advocate. The acting Child, Youth, and Family Advocate shall have the full responsibilities of the Advocate and shall be entitled to the same compensation as the outgoing Child, Youth, and Family Advocate.

§ 3204. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

(a) Purpose and membership. The Child, Youth, and Family Advocate shall appoint and convene an Advisory Council composed of nine stakeholders who have been impacted by child welfare services provided by the Department for Children and Families. The Advisory Council's membership shall reflect the growing diversity of Vermont's children and families, including individuals who are Black, Indigenous, and Persons of Color, as well as with regard to socioeconomic status, geographic location, gender, sexual identity, and disability status. Members shall provide advice and guidance to the Office of the Child, Youth, and Family Advocate regarding the routine administration

and operation of the Office, including providing advice and guidance to the Advocate upon request.

(b) Meetings.

(1) The Advocate shall call the first meeting of the Advisory ~~Committee~~ Council to occur on or before March 15, 2022.

(2) The Advisory ~~Committee~~ Council shall select a chair from among its members at the first meeting.

(3) A majority of the the membership shall constitute a quorum.

(4) The Advisory ~~Committee~~ Council shall cease to exist on July 1, 2028.

(c) Confidentiality. In seeking the advice and guidance of the Advisory Council, the Child, Youth, and Family Advocate shall not disclose to the Advisory Council, or any member thereof, individually identifiable information about a child or youth unless the information is already known to the public.

(d) Compensation. Members of the Advisory Council shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 12 meetings annually. These payments shall be made from monies appropriated to the Office.

§ 3205. INCIDENTS AND FATALITIES

(a) The Department shall provide the Office with a copy of all reports related to actual physical injury to children or youths in the custody of the Commissioner or a significant risk of such harm.

(b) The Department shall provide the Office with a written report within 48 hours of:

(1) any fatality of a child or youth in its custody; and

(2) the restraint or seclusion of any child or youth in its custody.

§ 3206. ACCESS TO INFORMATION AND FACILITIES

(a) Notwithstanding any other provision of law, the Child, Youth, and Family Advocate and the Deputy Advocate shall, upon request, have timely access, including the right to inspect and copy, to any records necessary to carry out the provisions of this chapter, including relevant records produced and held by State entities and third parties.

(b) The Child, Youth, and Family Advocate and Deputy Advocate may communicate privately and visit with any child or youth who is in the custody of the Department. The Advocate or Deputy Advocate shall obtain the consent of a parent or guardian prior to communicating or visiting with a child or youth who is not in the custody of the Department.

(c) Facilities and providers delivering services to children and youths shall permit the Child, Youth, and Family Advocate or the Deputy Advocate to access their facilities and to communicate privately and visit with children and youths for whom they provide services.

§ 3207. COOPERATION OF STATE AGENCIES

All State agencies shall comply with reasonable requests of the Child, Youth, and Family Advocate and Deputy Advocate for information and assistance.

§ 3208. CONFIDENTIALITY

(a) The Office shall maintain the confidentiality of all case records, third-party records, and court records, as well as any information gathered in the course of investigations and systems monitoring duties. These records are exempt from public inspection and copying under the Public Records Act and shall be kept confidential except as provided in subsections (b) and (c) of this section.

(b) In the course of carrying out the provisions of this chapter, if the Child, Youth, and Family Advocate or Deputy Advocate reasonably believes that the health, safety, or welfare of a child or youth is at imminent risk, the Advocate or Deputy Advocate may disclose relevant documents or information to any of the individuals or entities listed in subdivision 4921(e)(1) of this title. Determinations of relevancy shall be made by the Advocate.

(c) Notwithstanding subsection (a) of this section, the Child, Youth, and Family Advocate or Deputy Advocate may publicly disclose any patterns of conduct or repeated incidents identified by the Advocate or Deputy Advocate in carrying out the provisions of this chapter if the Advocate or Deputy Advocate reasonably believes that public disclosure is likely to mitigate a risk

posed to the health, safety, and welfare of a child or youth, except the Advocate or Deputy Advocate shall not publicly disclose either of the following:

(1) individually identifiable information about a child or youth unless the information is already known to the public; and

(2) investigation findings where there is a pending law enforcement investigation or prosecution.

§ 3209. CONFLICT OF INTEREST

The Child, Youth, and Family Advocate, the Advocate's employees, contractors, and members of the Oversight Commission on Children, Youths, and Families shall not have any conflict of interest with the Department or with any entity that provides services to children, youths, and families through funds provided by the Department relating to the performance of their responsibilities under this chapter. For the purposes of this section, a conflict of interest exists whenever the Child, Youth, and Family Advocate or the Advocate's employees or contractors:

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

(2) has a direct ownership interest in a provider or facility delivering services to children, youths, and families;

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

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

§ 3210. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND

FAMILIES

(a) Creation. There is created the Oversight Commission on Children, Youths, and Families to provide guidance and recommendations to the Office of the Child, Youth, and Family Advocate.

(b) Membership. The Commission shall be composed of the following members who shall not have a conflict of interest with the Department for Children and Families:

(1) one current member of the House of Representatives who serves on the House Committee on Human Services, who shall be appointed by the Speaker of the House;

(2) one current member of the Senate who serves on the Senate Committee on Health and Welfare, who shall be appointed by the Committee on Committees;

(3) a member with professional expertise in childhood trauma, adverse childhood experiences, or child welfare, who shall be appointed by the Governor;

(4) the Executive Director of Racial Equity established pursuant to 3 V.S.A. § 5001 or designee;

(5) one member of a child advocacy group, board, or commission, who shall be appointed by the Speaker of the House;

(6) one member of a child advocacy group, board, or commission, who shall be appointed by the Committee on Committees;

(7) one member of a child advocacy group, board, or commission, who shall be appointed by the Governor;

(8) an adult who was in the custody of the Department for Children and Families within the past five years, who shall be appointed by the Vermont Foster and Adoptive Family Association; and

(9) the relative caregiver of a child or youth involved in the child protection system, who shall be appointed by Vermont Kin as Parents.

(c) Powers and duties. The Commission shall:

(1) recommend qualified applicants for the position of the Child, Youth, and Family Advocate to the Governor for consideration pursuant to section 3203 of this chapter; and

(2) provide oversight of the Office in its efforts to support an equitable, comprehensive, and coordinated system of services and programs for children, youths, and families.

(d) Assistance. The Commission shall have the administrative assistance of the Agency of Administration.

(e) Meetings.

(1) The member representing the House Committee on Human Services shall call the first meeting of the Commission to occur on or before August 1, 2021.

(2) The Commission shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(f) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four meetings annually.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than four meetings annually. These payments shall be

made from monies appropriated to the Office of the Child, Youth, and Family Advocate.

Sec. 2. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL
ACTION

(a) A mandated reporter is any:

* * *

(11) camp counselor; ~~or~~

(12) member of the clergy; or

(13) employee of the Office of the Child, Youth, and Family Advocate established pursuant to 33 V.S.A. chapter 32.

* * *

Sec. 3. 33 V.S.A. § 4921 is amended to read:

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

* * *

(d) Upon request, Department records created under this subchapter shall be disclosed to:

* * *

(4) law enforcement officers engaged in a joint investigation with the Department, an Assistant Attorney General, or a State's Attorney; ~~and~~

*(5) other State agencies conducting related inquiries or proceedings;
and*

*(6) the Office of the Child, Youth, and Family Advocate for the purpose
of carrying out the provisions in chapter 32 of this title.*

* * *

Sec. 4. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

* * *

*(b)(1) Notwithstanding the foregoing, inspection of such records and files
by the following is not prohibited:*

* * *

*(H) the Office of the Child, Youth, and Family Advocate for the
purpose of carrying out the provisions in chapter 32 of this title.*

* * *

Sec. 5. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE;

DUTIES; TEMPORARY LIMITATION

*Notwithstanding 33 V.S.A. § 3202(b), the Office of the Child, Youth, and
Family Advocate shall only assume responsibility for the duties listed in
subdivisions (1) and (2) of subsection (b) through June 30, 2022. The Office
of the Child, Youth, and Family Advocate shall assume full responsibility of all
duties listed in 33 V.S.A. § 3202(b) beginning on July 1, 2022.*

Sec. 6. TRANSITION

The initial term of the Child, Youth, and Family Advocate established pursuant to 33 V.S.A. chapter 32 shall begin on ~~or before~~ January 1, 2022.

Sec. 7. APPROPRIATION

The sum of \$120,000.00 is appropriated to the Office of the Child, Youth, and Family Advocate from the General Fund in fiscal year 2022 for carrying out the purposes of this act.

Sec. 8. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION

OVERSIGHT COMMITTEE

2015 Acts and Resolves No. 60, Sec. 23 as amended by 2018 Acts and Resolves No. 207, Sec. 2 is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2021, except that Secs. 2 (reporting child abuse and neglect; remedial action), 3 (Department's records of abuse and neglect), 4 (records of juvenile judicial proceedings), 5 (Office of the Child, Youth, and Family Advocate; duties; temporary limitation), and 7 (appropriation) shall take effect on January 1, 2022.