

Senate proposal of amendment

H. 265

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

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

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. The Office shall advocate for the welfare of children and youths receiving services from the Department directly, or through funds provided by the Department, and those involved in the child protection and juvenile justice systems. The Office shall promote reforms necessary to better serve Vermont’s children, youths, and families in a manner that addresses racial and social equity. The Office shall act independently of any State agency in the performance of its duties.

§ 3203. DUTIES AND AUTHORITY

(a) The Office shall:

(1) work in collaboration with relevant parties to strengthen 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 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 respond to 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 service recipients' rights and responsibilities;

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

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

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

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

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

(b) The Office may:

(1) review current systems to assess 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;

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

(3) as part of its annual report pursuant to subdivision (a)(6) of this section, include findings and recommendations related to other services provided to children, youths, and families.

§ 3204. 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 3211 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 within 45 days 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 the 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 Speaker of the House and President Pro Tempore shall simultaneously receive notification from the Governor of the Advocate's removal. 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.

§ 3205. 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 Council to

occur on or before March 15, 2023.

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

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

(4) The Advisory 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 eight meetings annually. These payments shall be made from monies appropriated to the Office.

§ 3206. INCIDENTS AND FATALITIES

(a) The Department shall notify the Office of:

(1) all incidents of actual physical injury to children or youths in the custody of the Commissioner or at significant risk of such harm; and

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

(b) The Department shall notify the Office within 48 hours of any fatality of a child or youth in its custody.

§ 3207. 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 records necessary to carry out the provisions of this chapter, including relevant records produced and held by State entities and third parties. As used in this subsection, “third parties” does not include Vermont’s Statistical Analysis Center.

(b) If the Child, Youth, and Family Advocate determines that doing so advances the welfare of a child or youth, the Advocate and Deputy Advocate may:

(1) communicate privately and visit with any child or youth who is in the custody of the Department; and

(2) upon first obtaining the consent of a child or youth’s parent or guardian, communicate privately and visit 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.

§ 3208. 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.

§ 3209. 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 carrying out individual complaint and systems reviews. 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 the Department or any of the individuals or entities listed in subdivision 4921(e)(1) of this title or both. 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, or the child's or youth's family, foster family, or kin in a kinship placement unless the information is already known to the public; and

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

§ 3210. CONFLICT OF INTEREST

The Child, Youth, and Family Advocate, the Advocate's employees or 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, the Advocate's employees or contractors, or a member of the Oversight Commission on Children, Youths, and Families:

(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.

§ 3211. 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 3204 of this chapter within 45 days following a vacancy; 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, 2022.

(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 chapter 32 of this title.

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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.

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

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

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

* * *

(H) the Human Services Board and the Commissioner's Registry Review Unit in processes required under chapter 49 of this title; ~~and~~

(I) the Department for Children and Families; and

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

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Sec. 5. [Deleted.]

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 January 1, 2023.

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 2023 for carrying out the purposes of this act.

Sec. 8. [Deleted.]

Sec. 9. EFFECTIVE DATES

This act shall take effect on July 1, 2022, 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), and 7 (appropriation) shall take effect on January 1, 2023.