

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill
3 No. 265 entitled “An act relating to the Office of the Child Advocate”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

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

9 ADVOCATE

10 § 3201. DEFINITIONS

11 As used in this chapter:

12 (1) “Child, Youth, and Family Advocate” means an appointed individual
13 who intervenes on behalf of a child, youth, or family to resolve complaints and
14 monitor the welfare of children, youths, and families pursuant to this chapter.

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

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

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

1 § 3202. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE

2 (a) There is established the Office of the Child, Youth, and Family
3 Advocate for the purpose of advancing the interests and welfare of all
4 Vermont’s children and youths, including providing transparent and impartial
5 oversight of the child protection and juvenile justice systems and promoting
6 reforms necessary to better serve Vermont’s children, youths, and families.
7 While the Office shall be embedded in and receive administrative support from
8 the Agency of Administration, the Office shall act independently of any State
9 agency in the performance of its duties.

10 (b) The Office shall:

11 (1) strengthen the State’s services for children, youths, and families by
12 working in collaboration with other State agencies, the Judicial and Legislative
13 Branches of government, and any other individuals or entities necessary to
14 identify and address systemic shortcomings;

15 (2) investigate and resolve complaints on behalf of children, youths, and
16 families, which may include making a referral to the appropriate State agency
17 or entity, making a recommendation to the appropriate State agency or entity
18 for action related to a complaint, and sharing information in any proceeding
19 before any court or State agency in which matters related to the State’s child
20 protection or juvenile justice services are at issue;

1 (3) develop and implement a uniform reporting system to collect and
2 analyze complaints related to the welfare of children, youths, and families,
3 including the ability to disaggregate data by race, ethnicity, gender, geographic
4 location, disability status, or any other categories that the Child, Youth, and
5 Family Advocate deems necessary to carry out the provisions of this chapter;

6 (4) support recipients of children’s, youths’ and families’ services by
7 providing assistance with obtaining services and information about recipients’
8 related rights and responsibilities;

9 (5) ensure that children and youths placed in the custody of the State or
10 who are receiving services under the supervision of the Department in any
11 public or private facility receive humane and dignified treatment at all times
12 with full respect for the child’s or youth’s personal dignity, right to privacy,
13 and right to adequate and appropriate health care and education in accordance
14 with State and federal law;

15 (6) provide assistance to any child, youth, or family whom the Child,
16 Youth, and Family Advocate determines is in need of assistance;

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

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

1 (9) establish procedures for protecting the confidentiality of clients;

2 (10) establish qualifications and training for employees of the Office
3 and monitor their performance;

4 (11) train persons and organizations advocating for the interests of
5 Vermont’s children, youths, and families;

6 (12) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly
7 and the Governor on or before January 15 of each year a report addressing:

8 (A) child, youth, and family welfare in Vermont;

9 (B) the quality of services that the Department provides to children,
10 youths, and families;

11 (C) conditions of placements for children and youth in Vermont;

12 (D) systemic shortcomings in Vermont’s assistance to and services
13 for children, youths, and families, including within the child protection and
14 juvenile justice systems; and

15 (E) recommendations related to improving services for children,
16 youth, and families; and

17 (13) perform such other activities on behalf of Vermont’s children,
18 youths, and families as the Office deems necessary.

19 § 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

20 (a) The Office shall be directed by the Child, Youth, and Family Advocate,
21 an individual with a professional degree in law, social work, public health, or a

1 related field, and shall be qualified by reason of education, expertise, and
2 experience. The Child, Youth, and Family Advocate shall serve on a full-time
3 basis and shall be exempt from classified service.

4 (b)(1) The Oversight Commission on Children, Youths, and Families
5 established pursuant to section 3211 of this chapter shall recommend qualified
6 applicants for the position of Child, Youth, and Family Advocate to the
7 Governor for consideration. Subject to confirmation by the Senate, the
8 Governor shall appoint a Child, Youth, and Family Advocate from among
9 those applicants recommended by the Oversight Commission for a term of four
10 years. The appointment for Child, Youth, and Family Advocate shall be made
11 without regard to political affiliation and on the basis of integrity and
12 demonstrated ability. The Child, Youth, and Family Advocate shall hold his or
13 her office until reappointed or until his or her successor is appointed.

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

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

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

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

13 § 3204. INCIDENTS AND FATALITIES

14 (a) The Department shall provide the Office with a copy of all reports
15 related to actual physical injury to children or youths in the custody of the
16 Commissioner or a significant risk of such harm, including, within 48 hours of
17 the occurrence, reports related to the restraint and seclusion of any child or
18 youth.

19 (b) The Department shall provide the Office with immediate telephone
20 notice of any fatality of a child or youth in its custody. The Department shall

1 provide the Office with a written report of any such incident within 48 hours of
2 the occurrence.

3 § 3205. ACCESS TO INFORMATION AND FACILITIES

4 (a) Upon request, the Child, Youth, and Family Advocate and the Deputy
5 Advocate shall have timely access to:

6 (1) case records, third-party records, including health care and education
7 records of any child or youth receiving services from a State agency, and
8 records filed with the courts;

9 (2) State agencies' policies and procedures, including draft policies and
10 procedures;

11 (3) State agencies' records and reports, including draft records and
12 reports; and

13 (4) autopsy reports from the chief medical examiner.

14 (b) The Child, Youth, and Family Advocate and Deputy Advocate may
15 communicate privately and visit with any child, youth, or family member who
16 has received or is receiving services from the Department or who would
17 benefit from services provided by the Department.

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

1 § 3206. COOPERATION OF STATE AGENCIES

2 (a) All State agencies shall comply with reasonable requests of the Child,
3 Youth, and Family Advocate and Deputy Advocate for information and
4 assistance.

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

7 § 3207. CONFIDENTIALITY

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

14 (b) The Office may disclose confidential information about a child or youth
15 to any individual or entity responsible for or providing services to the child or
16 youth. Any disclosures of confidential information pursuant to this subsection
17 shall be the minimum necessary to ensure proper care and treatment for the
18 child or youth to identify, prevent, or treat the abuse or neglect of a child or
19 youth.

20 (c) Notwithstanding subsection (a) of this section, the Child, Youth, and
21 Family Advocate or Deputy Advocate may publicly disclose the details of

1 investigation findings if the Child, Youth, and Family Advocate or Deputy
2 Advocate determines that the health, safety, and welfare of children and youths
3 are at risk, except:

4 (1) names, addresses, and other identifying information of children and
5 youths shall not be released to the public; and

6 (2) investigation findings shall not be released if there is a pending law
7 enforcement investigation or prosecution.

8 § 3208. IMMUNITY

9 No civil liability shall attach to the Child, Youth and Family Advocate or
10 Deputy Advocate for good faith performance of the duties imposed by this
11 chapter.

12 § 3209. INTERFERENCE AND RETALIATION

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

16 (b) A person who takes discriminatory, disciplinary, or retaliatory action
17 against an employee or a volunteer of a State agency, facility, or provider
18 serving children or youths for any communication made or information
19 disclosed to aid the Office in carrying out its duties and responsibilities shall be
20 imprisoned not more than one year or fined not more than \$5,000.00, or both.

21 Any employee or volunteer of a State agency, facility, or provider may seek

1 damages in Superior Court against a person who takes an action prohibited by
2 this subsection.

3 § 3210. CONFLICT OF INTEREST

4 The Child, Youth, and Family Advocate and his or her employees and
5 contractors shall not have any conflict of interest relating to the performance of
6 their responsibilities under this chapter. For the purposes of this section, a
7 conflict of interest exists whenever the Child, Youth, and Family Advocate or
8 his or her employees or contractors:

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

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

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

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

18 § 3211. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND

19 FAMILIES

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

4 (b) Membership. The Commission shall be composed of the following
5 members:

6 (1) two current members of the House of Representatives, at least one of
7 whom serves on the House Committee on Human Services, who shall be
8 appointed by the Speaker of the House;

9 (2) two current members of the Senate, at least one of whom serves on
10 the Senate Committee on Health and Welfare, who shall be appointed by the
11 Committee on Committees;

12 (3) a member, who shall be appointed by the Vermont Citizen's
13 Advisory Board;

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

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

19 (c) Powers and duties. The Commission shall:

1 (1) recommend qualified applicants for the position of Child, Youth, and
2 Family Advocate to the Governor for consideration pursuant to section 3202 of
3 this section; and

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

7 (d) Assistance. The Commission shall have the administrative, technical,
8 and legal assistance of the Agency of Administration.

9 (e) Meetings.

10 (1) The member representing the House Committee on Human Services
11 shall call the first meeting of the Commission to occur on or before August 1,
12 2021.

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

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

16 (f) Compensation and reimbursement.

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

1 meetings annually. These payments shall be made from monies appropriated
2 to the Agency of Administration.

3 (2) Other members of the Commission shall be entitled to per diem
4 compensation and reimbursement of expenses as permitted under 32 V.S.A.
5 § 1010 for not more than four meetings annually. These payments shall be
6 made from monies appropriated to the Agency of Administration.

7 Sec. 2. APPROPRIATION

8 The sum of \$ X.00 is appropriated to the Agency of Administration from
9 the General Fund in fiscal year 2022 for carrying out the purposes of this act.

10 Sec. 3. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION

11 OVERSIGHT COMMITTEE

12 2015 Acts and Resolves No. 60, § 23 as amended by 2018 Acts and
13 Resolves No. 207, § 2 is repealed.

14 Sec. 4. EFFECTIVE DATE

15 This act shall take effect on January 1, 2022.

16 and that after passage the title of the bill be amended to read: “An act
17 relating to the Office of the Child, Youth, and Family Advocate”

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1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE