

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 § 3212. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND
11 FAMILIES

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

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

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

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

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

7 (4) the Executive Director of Racial Equity established pursuant to
8 3 V.S.A. § 5001 or designee;

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

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

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

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

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

20 (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 of the Office in its efforts to support an equitable,
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 members at the
14 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 the member's
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
21 four meetings annually.

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 in a manner that addresses racial and social
5 equity, including providing transparent and impartial oversight of the child
6 protection and juvenile justice systems and promoting reforms necessary to
7 better serve Vermont’s children, youths, and families. The Office shall act
8 independently of any State agency in the performance of its duties.

9 (b) The Office shall:

10 (1) work in collaboration with other State agencies, the Judiciary, the
11 General Assembly, and any other individuals or entities necessary in an effort
12 to strengthen the State’s services for children, youths, and families;

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

16 (3) review complaints of persons concerning the actions of any State
17 agency providing services to children, youths, and families and of any entity
18 that provides services to children, youths, and families through funds provided
19 by the State, make appropriate referrals and investigate those where the Child,
20 Youth, and Family Advocate determines that a child, youth, or family may be

1 in need of assistance from the Advocate or that a systemic issue in the State’s
2 provision of services to children and youth is raised by the complaint;

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

6 **(5) review current systems to determine to what extent children and**
7 **youths placed in the custody of the State or who are receiving services under**
8 **the supervision of the Department receive humane and dignified treatment at**
9 **all times, including consideration by the Advocate as to what extent the system**
10 **protects and enhances the child’s or youth’s personal dignity, right to privacy,**
11 **and right to appropriate health care and education in accordance with State and**
12 **federal law;**

13 **OR**

14 **(5) ensure that children and youths placed in the custody of the State or**
15 **who are receiving services under the supervision of the Department in any**
16 **public or private facility receive treatment in a serious manner that**
17 **demonstrates both compassion and that children and youths are worthy of**
18 **respect;**

19 (6) as resources and time allows, provide assistance to any child, youth,
20 or family whom the Child, Youth, and Family Advocate determines is in need
21 of assistance;

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

4 (8) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly
5 and the Governor on or before December 1 of each year a report addressing:

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

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

9 (C) conditions of placements for children and youths in Vermont;

10 (D) systemic findings related to Vermont's assistance to and services
11 for children, youths, and families, including within the child protection and
12 juvenile justice systems;

13 (E) recommendations related to improving services for children,
14 youths, and families;

15 (F) data related to the welfare of children, youths, and families,
16 which shall be disaggregated by race, ethnicity, gender, geographic location,
17 disability status, or any other categories that the Child, Youth, and Family
18 Advocate deems necessary; and

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

1 (c) The Office shall be allowed to accept philanthropic contributions for the
2 purpose of carrying out the provisions of this chapter.

3 § 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

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

9 (b)(1) The Oversight Commission on Children, Youths, and Families
10 established pursuant to section 3212 of this chapter shall recommend qualified
11 applicants for the position of Child, Youth, and Family Advocate to the
12 Governor for consideration. Subject to confirmation by the Senate, the
13 Governor shall appoint an Advocate from among those applicants
14 recommended by the Oversight Commission for a term of four years. The
15 appointment for Advocate shall be made without regard to political affiliation
16 and on the basis of integrity and demonstrated ability. The Advocate shall
17 hold office until reappointed or until a successor is appointed.

18 (2) The Governor, upon a majority vote of Oversight Commission, may
19 remove the Child, Youth, and Family Advocate for cause, which includes only
20 neglect of duty, gross misconduct, conviction of a crime, or inability to
21 perform the responsibilities of the Office. The Governor's reason for

1 removing the Advocate shall be published electronically on the website of the
2 Office of the Child, Youth, and Family Advocate, and the Speaker of the
3 House and President Pro Tempore shall simultaneously receive notification.
4 Any vacancy shall be filled by the appointment process set forth in subdivision
5 (1) of this subsection for the remainder of the unexpired term.

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

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

15 § 3204. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

16 (a) Purpose and membership. The Child, Youth, and Family Advocate
17 shall convene an Advisory Council composed of stakeholders who have been
18 impacted by child welfare services provided by the Department for Children
19 and Families and other State agencies. The Advisory Council's membership
20 shall reflect the growing diversity of Vermont's children and families,
21 including individuals who are Black, Indigenous, and Persons of Color, as well

1 as with regard to socioeconomic status, geographic location, gender, sexual
2 identity, and disability status. Members shall provide advice and guidance to
3 the Office of the Child, Youth, and Family Advocate regarding the
4 administration and operation of the Office.

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

10 (c) Compensation. Members of the Advisory Council shall be
11 compensated in accordance with the policies adopted by the Office of the
12 Child, Youth, and Family Advocate and per diems or reimbursement of
13 expenses, or both, shall be dispersed from the Office’s budget.

14 § 3205. INCIDENTS AND FATALITIES

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

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

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

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

1 § 3206. ACCESS TO INFORMATION AND FACILITIES

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

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

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

16 § 3207. COOPERATION OF STATE AGENCIES

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

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

1 § 3208. CONFIDENTIALITY

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

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

13 Determinations of relevancy shall be made by the Advocate.

14 (c) Notwithstanding subsection (a) of this section, the Child, Youth, and
15 Family Advocate or Deputy Advocate may publicly disclose any patterns of
16 conduct or repeated incidents identified by the Advocate or Deputy Advocate
17 in carrying out the provisions of this chapter if the Advocate or Deputy
18 Advocate reasonably believes that public disclosure is likely to mitigate a risk
19 posed to the health, safety, and welfare of a child or youth, except the
20 Advocate or Deputy Advocate shall not publicly disclose either of the
21 following:

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

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

5 § 3209. IMMUNITY

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

9 § 3210. INTERFERENCE AND RETALIATION

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

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

18 Any employee or volunteer of a State agency, facility, or provider may seek
19 damages in Superior Court against a person who takes an action prohibited by
20 this subsection.

21 § 3211. CONFLICT OF INTEREST

1 of the Child Youth and Family Advocate shall assume full responsibility of all
2 duties listed in 33 V.S.A. § 3202(b) beginning on July 1, 2022.

3 Sec. 6. APPROPRIATION

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

6 Sec. 7. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION

7 OVERSIGHT COMMITTEE

8 2015 Acts and Resolves No. 60, § 23 as amended by 2018 Acts and
9 Resolves No. 207, § 2 is repealed.

10 Sec. 8. EFFECTIVE DATE

11 This act shall take effect on July 1, 2021, except that Secs. 2 (Office of the
12 Child, Youth, and Family Advocate), 3 (Department’s records of abuse and
13 neglect), 4 (records of juvenile judicial proceedings), 5 (Office of the Child,
14 Youth, and Family Advocate; duties; temporary limitation), and
15 6 (appropriation) 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