

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

6 (b) The Office shall:

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

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

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

18 (4) support children, youth, and families in providing information about
19 recipients’ related rights and responsibilities;

20 (5) review current systems to determine to what extent children and
21 youths placed in the custody of the Department or who are receiving services

1 under the supervision of the Department receive humane and dignified
2 treatment at all times, including consideration by the Advocate as to what
3 extent the system protects and enhances the child’s or youth’s personal dignity,
4 right to privacy, and right to appropriate health care and education in
5 accordance with State and federal law;

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

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

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

13 (B) conditions of placements for children and youths in Vermont;

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

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

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

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

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

5 § 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

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

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

20 (2) The Governor, upon a majority vote of Oversight Commission, may
21 remove the Child, Youth, and Family Advocate for cause, which includes only

1 neglect of duty, gross misconduct, conviction of a crime, or inability to
2 perform the responsibilities of the Office. The Governor’s reason for
3 removing the Advocate shall be published electronically on the website of the
4 Office of the Child, Youth, and Family Advocate, and the Speaker of the
5 House and President Pro Tempore shall simultaneously receive notification.
6 Any vacancy shall be filled by the appointment process set forth in subdivision
7 (1) of this subsection for the remainder of the unexpired term.

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

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

17 § 3204. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

18 (a) Purpose and membership. The Child, Youth, and Family Advocate
19 shall convene an Advisory Council composed of stakeholders who have been
20 impacted by child welfare services provided by the Department for Children
21 and Families. The Advisory Council’s membership shall reflect the growing

1 diversity of Vermont’s children and families, including individuals who are
2 Black, Indigenous, and Persons of Color, as well as with regard to
3 socioeconomic status, geographic location, gender, sexual identity, religion,
4 and disability status. Members shall provide advice and guidance to the Office
5 of the Child, Youth, and Family Advocate regarding the administration and
6 operation of the Office.

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

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

16 § 3205. INCIDENTS AND FATALITIES

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

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

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

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

3 § 3206. ACCESS TO INFORMATION AND FACILITIES

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

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

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

18 § 3207. COOPERATION OF STATE AGENCIES

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

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

3 § 3208. CONFIDENTIALITY

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

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

16 (c) Notwithstanding subsection (a) of this section, the Child, Youth, and
17 Family Advocate or Deputy Advocate may publicly disclose any patterns of
18 conduct or repeated incidents identified by the Advocate or Deputy Advocate
19 in carrying out the provisions of this chapter if the Advocate or Deputy
20 Advocate reasonably believes that public disclosure is likely to mitigate a risk
21 posed to the health, safety, and welfare of a child or youth, except the

1 Advocate or Deputy Advocate shall not publicly disclose either of the
2 following:

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

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

7 § 3209. IMMUNITY

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

11 § 3210. INTERFERENCE AND RETALIATION

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

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

20 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 § 3211. CONFLICT OF INTEREST

4 The Child, Youth, and Family Advocate and the Advocate’s employees and
5 contractors shall not have any conflict of interest with the Department or with
6 any entity that provides services to children, youths, and families through
7 funds provided by the Department relating to the performance of their
8 responsibilities under this chapter. For the purposes of this section, a conflict
9 of interest exists whenever the Child, Youth, and Family Advocate or the
10 Advocate’s employees or contractors:

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

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

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

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

20 * * *

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

1 § 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

2 * * *

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

5 * * *

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

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

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

11 * * *

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

13 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

14 * * *

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

17 * * *

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

20 * * *

1 Sec. 5. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE;
2 DUTIES; TEMPORARY LIMITATION

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

8 Sec. 6. APPROPRIATION

9 The sum of \$ 110,000.00 is appropriated to the Office of the Child, Youth,
10 and Family Advocate from the General Fund in fiscal year 2022 for carrying
11 out the purposes of this act.

12 Sec. 7. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION
13 OVERSIGHT COMMITTEE

14 2015 Acts and Resolves No. 60, § 23 as amended by 2018 Acts and
15 Resolves No. 207, § 2 is repealed.

16 Sec. 8. EFFECTIVE DATE

17 This act shall take effect on July 1, 2021, except that Secs. 2 (Office of the
18 Child, Youth, and Family Advocate), 3 (Department's records of abuse and
19 neglect), 4 (records of juvenile judicial proceedings), 5 (Office of the Child,
20 Youth, and Family Advocate; duties; temporary limitation), and
21 6 (appropriation) shall take effect on January 1, 2022.

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

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6

7 (Committee vote: _____)

8

9

Representative _____

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FOR THE COMMITTEE