

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

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

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

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

19 § 3202. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE

20 (a) There is established the Office of the Child, Youth, and Family  
21 Advocate for the purpose of advancing the interests and welfare of Vermont’s

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

7 (b) The Office shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

6           § 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

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

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

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

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

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

19           § 3204. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

20           (a) Purpose and membership. The Child, Youth, and Family Advocate  
21           shall convene an Advisory Council composed of **nine** stakeholders who have

1 been impacted by child welfare services provided by the Department for  
2 Children and Families. The Advisory Council’s membership shall reflect the  
3 growing diversity of Vermont’s children and families, including individuals  
4 who are Black, Indigenous, and Persons of Color, as well as with regard to  
5 socioeconomic status, geographic location, gender, sexual identity, and  
6 disability status. Members shall provide advice and guidance to the Office of  
7 the Child, Youth, and Family Advocate regarding the routine administration  
8 and operation of the Office, including providing advice and guidance to the  
9 Advocate upon request.

10 (b) Meetings.

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

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

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

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

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

1           (d) Compensation. Members of the Advisory Council shall be entitled  
2           to per diem compensation and reimbursement of expenses as permitted under  
3           32 V.S.A. § 1010 for not more than 12 meetings annually. These payments  
4           shall be made from monies appropriated to the Office.

5           § 3205. INCIDENTS AND FATALITIES

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

9           (b) The Department shall provide the Office with a written report within  
10          48 hours of:

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

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

13          § 3206. ACCESS TO INFORMATION AND FACILITIES

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

19          (b) The Child, Youth, and Family Advocate and Deputy Advocate may  
20          communicate privately and visit with any child or youth who is in the custody  
21          of the Department. The Advocate or Deputy Advocate shall obtain the consent

1 of a parent or guardian prior to communicating or visiting with a child or youth  
2 who is not in the custody of the Department.

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

7 § 3207. COOPERATION OF STATE AGENCIES

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

11 § 3208. CONFIDENTIALITY

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

18 (b) In the course of carrying out the provisions of this chapter, if the Child,  
19 Youth, and Family Advocate or Deputy Advocate reasonably believes that the  
20 health, safety, or welfare of a child or youth is at imminent risk, the Advocate  
21 or Deputy Advocate may disclose relevant documents or information to any of

1 the individuals or entities listed in subdivision 4921(e)(1) of this title.

2 Determinations of relevancy shall be made by the Advocate.

3 (c) Notwithstanding subsection (a) of this section, the Child, Youth, and  
4 Family Advocate or Deputy Advocate may publicly disclose any patterns of  
5 conduct or repeated incidents identified by the Advocate or Deputy Advocate  
6 in carrying out the provisions of this chapter if the Advocate or Deputy  
7 Advocate reasonably believes that public disclosure is likely to mitigate a risk  
8 posed to the health, safety, and welfare of a child or youth, except the  
9 Advocate or Deputy Advocate shall not publicly disclose either of the  
10 following:

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

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

15 **§ 3209. CONFLICT OF INTEREST**

16 The Child, Youth, and Family Advocate and the Advocate’s employees and  
17 contractors shall not have any conflict of interest with the Department or with  
18 any entity that provides services to children, youths, and families through  
19 funds provided by the Department relating to the performance of their  
20 responsibilities under this chapter. For the purposes of this section, a conflict

1 of interest exists whenever the Child, Youth, and Family Advocate or the  
2 Advocate’s employees or contractors:

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

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

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

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

12 § 3210. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND  
13 FAMILIES

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

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

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

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

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

10           (4) the Executive Director of Racial Equity established pursuant to  
11           3 V.S.A. § 5001 or designee;

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

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

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

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

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

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

4           (1) recommend qualified applicants for the position of the Child, Youth,  
5 and Family Advocate to the Governor for consideration pursuant to section  
6 3203 of this chapter; and

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

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

12          (e) Meetings.

13          (1) The member representing the House Committee on Human Services  
14 shall call the first meeting of the Commission to occur on or before August 1,  
15 2021.

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

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

19          (f) Compensation and reimbursement.

20          (1) For attendance at meetings during adjournment of the General  
21 Assembly, a legislative member of the Commission serving in the member's

1 capacity as a legislator shall be entitled to per diem compensation and  
2 reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than  
3 four meetings annually.

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

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

10 § 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL

11 ACTION

12 (a) A mandated reporter is any:

13 \* \* \*

14 (11) camp counselor; or

15 (12) member of the clergy; or

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

18 \* \* \*

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

20 § 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

21 \* \* \*

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

3 \* \* \*

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

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

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

9 \* \* \*

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

11 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

12 \* \* \*

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

15 \* \* \*

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

18 \* \* \*

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

20 DUTIES; TEMPORARY LIMITATION

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

6        Sec. 6. TRANSITION

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

9        Sec. 7. APPROPRIATION

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

13       Sec. 8. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION

14                    OVERSIGHT COMMITTEE

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

17        Sec. 9. EFFECTIVE DATE

18        This act shall take effect on July 1, 2021, except that Secs. 2 (reporting  
19        child abuse and neglect; remedial action), 3 (Department's records of abuse  
20        and neglect), 4 (records of juvenile judicial proceedings), 5 (Office of the

1 Child, Youth, and Family Advocate; duties; temporary limitation), and  
2 7 (appropriation) shall take effect on January 1, 2022.

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

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8

9 (Committee vote: \_\_\_\_\_)

10

\_\_\_\_\_

11

Representative \_\_\_\_\_

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FOR THE COMMITTEE