

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 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. While the Office shall
8 be embedded in and receive administrative support from the Agency of
9 Administration, the Office shall act independently of any State agency in the
10 performance of its duties.

11 (b) The Office shall:

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

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

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

4 (4) evaluate procedures for accessing information and protecting the
5 confidentiality of clients;

6 (5) establish qualifications and training for employees of the Office and
7 monitor their performance;

8 (6) investigate and resolve complaints on behalf of children, youths, and
9 families, which may include making a referral to the appropriate State agency
10 or entity, making a recommendation to the appropriate State agency or entity
11 for action related to a complaint, and sharing information in any proceeding
12 before any court or State agency in which matters related to the State’s child
13 protection or juvenile justice services are at issue;

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

17 (8) ensure that children and youths placed in the custody of the State or
18 who are receiving services under the supervision of the Department in any
19 public or private facility receive humane and dignified treatment at all times
20 with full respect for the child’s or youth’s personal dignity, right to privacy,

1 and right to adequate and appropriate health care and education in accordance
2 with State and federal law;

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

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

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

11 (12) establish qualifications and training for employees of the Office
12 and monitor their performance;

13 (13) train persons and organizations advocating for the interests of
14 Vermont’s children, youths, and families;

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

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

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

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

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

4 (E) recommendations related to improving services for children,
5 youth, and families; and

6 (15) perform such other activities on behalf of Vermont’s children,
7 youths, and families as the Office deems necessary.

8 § 3203. CHILD, YOUTH, AND FAMILY ADVOCATE

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

14 (b)(1) The Oversight Commission on Children, Youths, and Families
15 established pursuant to section 3212 of this chapter shall recommend qualified
16 applicants for the position of Child, Youth, and Family Advocate to the
17 Governor for consideration. Subject to confirmation by the Senate, the
18 Governor shall appoint a Child, Youth, and Family Advocate from among
19 those applicants recommended by the Oversight Commission for a term of four
20 years. The appointment for Child, Youth, and Family Advocate shall be made
21 without regard to political affiliation and on the basis of integrity and

1 demonstrated ability. The Child, Youth, and Family Advocate shall hold
2 office until reappointed or until a successor is appointed.

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

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

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

1 § 3204. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

2 (a) Purpose and membership. The Child, Youth, and Family Advocate
3 shall convene an Advisory Council composed of stakeholders who have been
4 impacted by child welfare services from the Department for Children and
5 Families. The Advisory Council’s membership shall reflect the growing
6 diversity of Vermont’s children and families, including individuals who are
7 Black, Indigenous, and Persons of Color, as well as with regard to
8 socioeconomic status, geographic location, gender, sexual identity, and
9 disability status. Members shall provide advice and guidance to the Office of
10 the Child, Youth, and Family Advocate regarding the administration and
11 operation of the Office.

12 (b) Confidentiality. In seeking the advice and guidance of the Advisory
13 Council, the Child, Youth, and Family Advocate may not disclose to the
14 Advisory Council, or any member thereof, individually identifiable
15 information about a child or youth, unless the information is already known to
16 the public.

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

21 § 3205. INCIDENTS AND FATALITIES

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

6 (b) The Department shall provide the Office with immediate telephone
7 notice of any fatality of a child or youth in its custody. The Department shall
8 provide the Office with a written report of any such incident within 48 hours of
9 the occurrence.

10 § 3206. ACCESS TO INFORMATION AND FACILITIES

11 (a) To the extent permitted by law, the Child, Youth, and Family Advocate
12 and the Deputy Advocate shall, upon request, have timely access to:

13 (1) case records, third-party records, including health care and education
14 records of any child receiving services from a State agency, deemed necessary
15 to carry out the provisions of this chapter;

16 (2) State agencies' policies and procedures, including draft policies and
17 procedures;

18 (3) State agencies' records and reports, including draft records and
19 reports; and

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

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

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

9 § 3207. COOPERATION OF STATE AGENCIES

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

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

15 § 3208. CONFIDENTIALITY

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

1 (b) The Office may disclose confidential information about a child or youth
2 to any individual or entity responsible for or providing services to the child or
3 youth. Any disclosures of confidential information pursuant to this subsection
4 shall be the minimum necessary to ensure proper care and treatment for the
5 child or youth to identify, prevent, or treat the abuse or neglect of a child or
6 youth.

7 (c) Notwithstanding subsection (a) of this section, the Child, Youth, and
8 Family Advocate or Deputy Advocate may publicly disclose the details of
9 investigation findings if the Child, Youth, and Family Advocate or Deputy
10 Advocate determines that the health, safety, and welfare of children and youths
11 are at risk, except:

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

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

16 **§ 3209. IMMUNITY**

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

20 **§ 3210. AUTHORITY TO ISSUE SUBPEONA**

1 The Office shall have the authority to subpoena witnesses, records,
2 documents, reports, reviews, recommendations, correspondence, data, and
3 other evidence that Child, Youth, and Family Advocate deems necessary to
4 fulfil the Office’s duties under this chapter.

5 § 3211. CONFLICT OF INTEREST

6 The Child, Youth, and Family Advocate and the Advocate’s employees and
7 contractors shall not have any conflict of interest relating to the performance of
8 their responsibilities under this chapter. For the purposes of this section, a
9 conflict of interest exists whenever the Child, Youth, and Family Advocate or
10 the 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 Sec. 2. 33 V.S.A. § 3212 is added to read:

21 § 3212. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND

1 FAMILIES

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

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

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

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

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

16 (4) the Executive Director established pursuant to 3 V.S.A. § X;

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

19 (6) one member of a child advocacy, board, or commission, who shall
20 be appointed by the Senate Committee on Committees;

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

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

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

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

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

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

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

17 (e) Meetings.

18 (1) The member representing the House Committee on Human Services
19 shall call the first meeting of the Commission to occur on or before August 1,
20 2021.

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

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

4 (f) Compensation and reimbursement.

5 (1) For attendance at meetings during adjournment of the General
6 Assembly, a legislative member of the Commission serving in the member’s
7 capacity as a legislator shall be entitled to per diem compensation and
8 reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four
9 meetings annually. These payments shall be made from monies appropriated
10 to the Agency of Administration.

11 (2) Other members of the Commission shall be entitled to per diem
12 compensation and reimbursement of expenses as permitted under 32 V.S.A.
13 § 1010 for not more than four meetings annually. These payments shall be
14 made from monies appropriated to the Agency of Administration.

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

16 **§ 4921. DEPARTMENT’S RECORDS OF ABUSE AND NEGLECT**

17 *** * ***

18 **(d) Upon request, Department records created under this subchapter shall**
19 **be disclosed to:**

1 (1) the Court, parties to the juvenile proceeding, and the child’s guardian
2 ad litem if there is a pending juvenile proceeding or if the child is in the
3 custody of the Commissioner;

4 (2) the Commissioner or person designated by the Commissioner to
5 receive such records;

6 (3) persons assigned by the Commissioner to conduct investigations;

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

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

10 (6) ~~Repealed.~~ the Office of the Child, Youth, Family Advocate for the
11 purpose of carrying out the duties in chapter 32 for of this title.

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

16 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

17 (a) Except as otherwise provided, court and law enforcement reports and
18 files concerning a person subject to the jurisdiction of the court shall be
19 maintained separate from the records and files of other persons. Unless a
20 charge of delinquency is transferred for criminal prosecution under chapter 52
21 of this title or the court otherwise orders in the interests of the child, such

1 records and files shall not be open to public inspection nor their contents
2 disclosed to the public by any person. However, upon a finding that a child is a
3 delinquent child by reason of commission of a delinquent act which would
4 have been a felony if committed by an adult, the court, upon request of the
5 victim, shall make the child's name available to the victim of the delinquent
6 act. If the victim is incompetent or deceased, the child's name shall be
7 released, upon request, to the victim's guardian or next of kin.

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

10 (A) a court having the child before it in any juvenile judicial
11 proceeding;

12 (B) the officers of public institutions or agencies to whom the child is
13 committed as a delinquent child;

14 (C) a court in which a person is convicted of a criminal offense for the
15 purpose of imposing sentence upon or supervising the person, or by officials of
16 penal institutions and other penal facilities to which the person is committed,
17 or by a parole board in considering the person's parole or discharge or in
18 exercising supervision over the person;

19 (D) court personnel, the State's Attorney or other prosecutor
20 authorized to prosecute criminal or juvenile cases under State law, the child's
21 guardian ad litem, the attorneys for the parties, probation officers, and law

1 enforcement officers who are actively participating in criminal or juvenile
2 proceedings involving the child;

3 (E) the child who is the subject of the proceeding, the child’s parents,
4 guardian, and custodian may inspect such records and files upon approval of
5 the Family Court judge;

6 (F) any other person who has a need to know may be designated by
7 order of the Family Division of the Superior Court;

8 (G) the Commissioner of Corrections if the information would be
9 helpful in preparing a presentence report, in determining placement, or in
10 developing a treatment plan for a person convicted of a sex offense that
11 requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3;

12 (H) the Office of the Child, Youth, Family Advocate for the purpose
13 of carrying out the duties in chapter 32 for of this title.

14 * * *

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

16 **DUTIES; TEMPORARY LIMITATION**

17 Notwithstanding 33 V.S.A. § 3202(b), the Office of the Child, Youth, and
18 Family Advocate shall only assume responsibility for the duties listed in
19 subdivisions (1) through (5) of subsection (b) through June 30, 2022. The
20 Office of the Child Youth and Family Advocate shall assume full

1 responsibility of all duties listed in 33 V.S.A. § 3202(b) beginning on July 1,
2 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. 1 (Office of the
12 Child, Youth, and Family Advocate), Sec. 3 (Department’s records of abuse
13 and neglect), 4 (records of juvenile judicial proceedings), and 6 (appropriation)
14 shall take effect on January 1, 2022.

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

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21 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE