

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;

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 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 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

1 four meetings annually. These payments shall be made from monies
2 appropriated 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. 33 V.S.A. chapter 32 is amended 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 appointed individual who intervenes on behalf of a child, youth, or family to
14 resolve complaints and monitor the welfare of children, youths, and families
15 pursuant to this chapter.

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

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

19 (4) “State agency” means any office, department, board, bureau,
20 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. The Office shall act
8 independently of any State agency in the performance of its duties.

9 (b) The Office shall:

10 (1) strengthen the State’s services for children, youths, and families by
11 working in collaboration with other State agencies, the Judiciary, the General
12 Assembly, and any other individuals or entities necessary to identify and
13 address systemic shortcomings;

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

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

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

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

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

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

14 (8) 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 humane and dignified treatment at all times
17 with full respect for the child’s or youth’s personal dignity, right to privacy,
18 and right to adequate and appropriate health care and education in accordance
19 with State and federal law;

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

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

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

6 (12) train persons and organizations advocating for the interests of
7 Vermont’s children, youths, and families;

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

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

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

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

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

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

19 (14) perform such other activities on behalf of Vermont’s children,
20 youths, and families as the Office deems necessary.

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 with a professional degree in law, social work, public health, or a
6 related field, and shall be qualified by reason of education, expertise, and
7 experience. The Child, Youth, and Family Advocate shall serve on a full-time
8 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 providing 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, including, within 48 hours of
18 the occurrence, reports related to the restraint and seclusion of any child or
19 youth.

20 (b) The Department shall provide the Office with immediate telephone
21 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 **§ 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, youth, or family member who
11 has received or is receiving services from the Department or who would
12 benefit from services provided by the Department.

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

17 **§ 3207. COOPERATION OF STATE AGENCIES**

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

1 (b) The Secretary of Human Services may 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. AUTHORITY TO ISSUE SUBPEONA

12 The Office shall have the authority to subpoena witnesses, records,
13 documents, reports, reviews, recommendations, correspondence, data, and
14 other evidence that the Child, Youth, and Family Advocate deems necessary to
15 fulfil the Office's duties under this chapter.

16 § 3211. CONFLICT OF INTEREST

17 The Child, Youth, and Family Advocate and the Advocate's employees and
18 contractors shall not have any conflict of interest relating to the performance of
19 their responsibilities under this chapter. For the purposes of this section, a
20 conflict of interest exists whenever the Child, Youth, and Family Advocate or
21 the Advocate's employees or contractors:

- 1 (4) law enforcement officers engaged in a joint investigation with the
2 Department, an Assistant Attorney General, or a State’s Attorney; ~~and~~
3 (5) other State agencies conducting related inquiries or proceedings; ~~and~~
4 (6) the Office of the Child, Youth, Family Advocate for the purpose of
5 carrying out the provisions in chapter 32 for of this title.

6 * * *

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

8 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

9 * * *

- 10 (b)(1) Notwithstanding the foregoing, inspection of such records and files
11 by the following is not prohibited:
- 12 (A) a court having the child before it in any juvenile judicial
13 proceeding;
 - 14 (B) the officers of public institutions or agencies to whom the child is
15 committed as a delinquent child;
 - 16 (C) a court in which a person is convicted of a criminal offense for
17 the purpose of imposing sentence upon or supervising the person, or by
18 officials of penal institutions and other penal facilities to which the person is
19 committed, or by a parole board in considering the person’s parole or discharge
20 or in exercising supervision over the person;

1 (D) court personnel, the State’s Attorney or other prosecutor
2 authorized to prosecute criminal or juvenile cases under State law, the child’s
3 guardian ad litem, the attorneys for the parties, probation officers, and law
4 enforcement officers who are actively participating in criminal or juvenile
5 proceedings involving the child;

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

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

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

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

17 * * *

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

20 Notwithstanding 33 V.S.A. § 3202(b), the Office of the Child, Youth, and
21 Family Advocate shall only assume responsibility for the duties listed in

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

5 Sec. 6. APPROPRIATION

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

8 Sec. 7. REPEAL; JOINT LEGISLATIVE CHILD PROTECTION

9 OVERSIGHT COMMITTEE

10 2015 Acts and Resolves No. 60, § 23 as amended by 2018 Acts and
11 Resolves No. 207, § 2 is repealed.

12 Sec. 8. EFFECTIVE DATE

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

18 and that after passage the title of the bill be amended to read: "An act
19 relating to the Office of the Child, Youth, and Family Advocate"
20
21

1

2

3 (Committee vote: _____)

4

5

Representative _____

6

FOR THE COMMITTEE