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H.215

Introduced by Representatives Noyes of Wolcott and Pugh of South
Burlington
Referred to Committee on
Date:
Subject: Human services; child welfare; Office of the Child Advocate
Statement of purpose of bill as introduced: This bill proposes to establish the
Office of the Child Advocate.

An act relating to the Office of the Child Advocate

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 33 V.S.A. chapter 32 is added to read:

CHAPTER 32. OFFICE OF THE CHILD ADVOCATE

§ 3201. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Human Services.

(2) “Child Advocate” means an appointed individual who intervenes on
behalf of a child or family to resolve complaints pursuant to this chapter.

(3) “Office” means the Office of the Child Advocate.

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

Commented [1]: I would not define “Child Advocate” here. The bill details the responsibilities of the child advocate later and those responsibilities go far beyond just intervening on behalf of a child or family to resolve a complaint. Having a more limited definition here in this section could limit the CA’s ability to carry out all the functions detailed below and there’s no need for a definition here because the role is so clearly defined below.

1 § 3202. OFFICE OF THE CHILD ADVOCATE

2 (a) The Agency of Administration shall establish the Office of the Child
3 Advocate by contract with any nonprofit organization for the purpose of
4 protecting and advancing the interests of Vermont’s children and families.
5 Notwithstanding administrative support from the Agency of Administration,
6 the Office shall act independently of any State agency in the performance of its
7 duties.

Commented [2]: I like the idea of locating the CA within a non-profit, but I worry that the job would not be as attractive if it's within a non-profit as it would if it was within state government (with state pay plans and benefits).

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

13 (c)(1) The Vermont Citizen’s Advisory Board (VCAB) shall recommend
14 qualified applicants for the position of Child Advocate to the Governor for
15 consideration. Subject to confirmation by the Senate, the Governor shall
16 appoint a Child Advocate from among those applicants recommended by
17 VCAB for a term of four years. The appointment for Child Advocate shall be
18 made without regard to political affiliation and on the basis of integrity and
19 demonstrated ability. The Child Advocate shall hold his or her office until
20 reappointed or until his or her successor is appointed.

Commented [3]: I would not make VCAB responsible for selecting candidates – especially if they will also be responsible for voting to remove a CA. It seems like asking VCAB to decide whether a CA should be removed could cause a real conflict if VCAB was the organization that suggested them in the first place. I would instead suggest that the administration simply make an appointment and VCAB’s role be oversight and removal if necessary.

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

10 (d) The Child Advocate shall appoint a Deputy Child Advocate, whose
11 duties shall be performed at the direction of the Child Advocate.

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

17 § 3203. RESPONSIBILITIES OF THE OFFICE

18 The Office shall:

19 (1) identify, investigate, and resolve complaints on behalf of children
20 and families receiving services from the Agency and assist service recipients
21 with the filing and pursuit of complaints and appeals;

Commented [4]: It might make more sense to just allow the legislature to impeach the CA if necessary. I think that would be consistent with the structure of other independent appointees (the Defender General, the Human Rights Commissioner, etc.).

1 (2) develop and implement a uniform reporting system to collect and
2 analyze complaints relating to services the Agency provided to children and
3 families as well as complaints relating to conditions and placements in
4 facilities serving children;

5 (3) support recipients of children's and family services by providing
6 assistance with obtaining services and information about recipients' related
7 rights and responsibilities;

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

12 (5) provide information concerning child welfare to the public, State
13 agencies, legislators, and others, as necessary;

14 (6) establish by rule procedures for protecting the confidentiality of
15 clients;

16 (7) establish by rule qualifications and training for employees of the
17 Office and monitor their performance;

18 (8) train persons and organizations in advocating for the interests of
19 Vermont's children and families;

20 (9) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly
21 and the Governor on or before January 15 of each year a report addressing;

Commented [5]: The scope of the CA's role is huge. These two subsections alone could be a full-time job.

1 (A) child welfare in Vermont;

2 (B) the quality of services that the Agency provides to children and
3 families;

4 (C) complaints relating to services provided by the Agency to
5 children and families;

6 (D) conditions of placements for children in Vermont; and

7 (E) recommendations related to improving services for children and
8 families; and

9 (10) perform such other activities on behalf of Vermont's children and
10 families as the Office deems necessary.

11 § 3204. AUTHORITY OF THE CHILD ADVOCATE

12 In fulfilling the responsibilities of the Office, the Child Advocate may:

13 (1) Hire or contract with persons or organizations to fulfill the purposes
14 of this chapter.

15 (2) Issue subpoenas when necessary to an investigation.

16 (3) Communicate and visit with any child or family member receiving
17 services from the Agency, provided that the Child Advocate first obtain
18 permission from the child's guardian or legal representative. Facilities and
19 providers delivering services to children shall permit the Child Advocate
20 access to their facilities and to children for whom they provide services.

Commented [6]: It needs to be clear here that if the CA wants to talk to any party about a case that is ongoing, they need permission from that party's legal representative. It would not be ethical for an attorney or anyone working on behalf of an attorney to speak with a represented person about a matter that is the subject of that representation without permission from that person's attorney.

1 (4) Pursue administrative, judicial, or other remedies on behalf of a child
2 or family receiving services from the Agency, including access orders from a
3 District or Superior Court judge when access under subdivision (3) of this
4 section has been unreasonably denied and all other reasonable attempts to gain
5 access have failed.

6 (5) Represent the interests of a child or family receiving services from
7 the Agency before the Human Services Board pursuant to 3 V.S.A. §§ 3090
8 and 3091.

9 (6) Delegate to employees any part of the Child Advocate's authority.

10 (7) Adopt rules necessary to carry out the provisions of this chapter.

11 (8) Take such further actions as are necessary in order to fulfill the
12 purposes of this chapter.

13 § 3205. COOPERATION OF STATE AGENCIES

14 (a) All State agencies shall comply with reasonable requests of the Child
15 Advocate for information and assistance.

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

18 § 3206. CONFIDENTIALITY

19 In the absence of a court order or the written consent of the guardian or
20 legal representative of a child about whom a concern has been raised, the Child

21 Advocate shall not disclose the identity of the child.

Commented [7]: I think this is too broad – it seems that it would allow the CA to intervene in ongoing CHINS cases, which could have really bad consequences. Every party in a CHINS case is already represented and allowing another entity to come into a case on behalf of a party that already has representation has a lot of sticky ethical problems associated with it. Limiting the CA's intervention on behalf of a child or family to cases where the party is otherwise unrepresented would eliminate this problem.

I also think that the "access orders" provision needs to be fleshed out a lot more. It's not clear which court would grant access orders, what the criteria would be, etc.

Commented [8]: This should be made stronger – the CA should have some level of legal privilege around their communications. That is different (and much more protective) than a mere confidentiality statute.

1 § 3207. IMMUNITY

2 No civil liability shall attach to the Child Advocate or his or her employees
3 for good faith performance of the duties imposed by this chapter.

4 § 3208. INTERFERENCE AND RETALIATION

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

8 (b) A person who takes discriminatory, disciplinary, or retaliatory action
9 against an employee or a volunteer of a State agency, facility, or provider
10 servicing children for any communication made or information disclosed to aid
11 the Office in carrying out its duties and responsibilities shall be imprisoned not
12 more than one year or fined not more than \$5,000.00, or both. Any employee
13 or volunteer of a State agency, facility, or provider may seek damages in
14 Superior Court against a person who takes an action prohibited by this
15 subsection.

16 § 3209. CONFLICT OF INTEREST

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

Commented [9]: I have concerns about this provision – we attorneys often instruct our clients not to speak with anyone about their case. I'd hate to see our clients getting hit with fines and imprisonment because they followed their attorney's instructions. I think that the subpoena power granted earlier in the bill will give the CA all the tools they need to get information and that this provision is unnecessary.

Commented [10]: I support this subsection, but not the penalty portion. I don't think it's appropriate to have this legislation, which is supposed to be protective and remedial in nature, be a driver of incarceration. I think that just prohibiting retaliation and allowing civil damages is sufficient.

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

3 (2) has a direct ownership interest in a provider or facility delivering
4 services to children and families;

5 (3) is employed by or participates in the management of a provider or
6 facility delivering services to children and families; or

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

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect on July 1, 2019.