

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill
3 No. 265 entitled “An act relating to the Office of the Child, Youth, and Family
4 Advocate” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

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

9 CHAPTER 32. OFFICE OF THE CHILD, YOUTH, AND FAMILY

10 ADVOCATE

11 § 3201. DEFINITIONS

12 As used in this chapter:

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

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 There is established the Office of the Child, Youth, and Family Advocate
3 for the purpose of advancing the interests and welfare of Vermont's children
4 and youths. The Office shall advocate for the welfare of children and youths
5 receiving services from the Department and those involved in the child
6 protection and juvenile justice systems. The Office shall promote reforms
7 necessary to better serve Vermont's children, youths, and families in a manner
8 that addresses racial and social equity. The Office shall act independently of
9 any State agency in the performance of its duties.

10 § 3203. DUTIES AND AUTHORITY

11 (a) The Office shall:

12 (1) work in collaboration with relevant parties to strengthen services for
13 children, youths, and families;

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

17 (3) review complaints concerning the actions of the Department and of
18 any entity that provides services to children, youths, and families through
19 funds provided by the Department; make appropriate referrals; and investigate
20 those complaints where the Advocate determines that a child, youth, or family
21 may be in need of assistance from the Office;

1 (4) support children, youths, and families by providing information
2 about service recipients' rights and responsibilities;

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

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

9 (A) the conditions of placements for Vermont's children and youths;

10 (B) findings related to services for and assistance to children, youths,
11 and families within the child protection and juvenile justice systems;

12 (C) recommendations related to improving services for children,
13 youths, and families; and

14 (D) data disaggregated by race, ethnicity, gender, geographic
15 location, disability status, and any other categories that the Advocate deems
16 necessary.

17 (b) The Office may:

18 (1) review current systems to assess to what extent children and youths
19 placed in the custody of the Department or who are receiving services under
20 the supervision of the Department receive humane and dignified treatment at
21 all times, including consideration by the Advocate as to what extent the system

1 protects and enhances the child's or youth's personal dignity, right to privacy,
2 and right to appropriate health care and education in accordance with State and
3 federal law;

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

6 (3) as part of its annual report pursuant to subdivision (a)(6) of this
7 section, include findings and recommendations related to other services
8 provided to children, youths, and families.

9 § 3204. CHILD, YOUTH, AND FAMILY ADVOCATE

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

15 (b)(1) The Oversight Commission on Children, Youths, and Families
16 established pursuant to section 3211 of this chapter shall recommend qualified
17 applicants for the position of the Child, Youth, and Family Advocate to the
18 Governor for consideration. Subject to confirmation by the Senate, the
19 Governor shall appoint an Advocate within 45 days from among those
20 applicants recommended by the Oversight Commission for a term of four
21 years. The appointment for Advocate shall be made without regard to political

1 affiliation and on the basis of integrity and demonstrated ability. The
2 Advocate shall hold office until reappointed or until a successor is appointed.

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

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

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

1 § 3205. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

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

13 (b) Meetings.

14 (1) The Advocate shall call the first meeting of the Advisory Council to
15 occur on or before March 15, 2023.

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

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

19 (4) The Advisory Council shall cease to exist on July 1, 2028.

20 (c) Confidentiality. In seeking the advice and guidance of the Advisory
21 Council, the Child, Youth, and Family Advocate shall not disclose to the

1 Advisory Council, or any member thereof, individually identifiable
2 information about a child or youth unless the information is already known to
3 the public.

4 (d) Compensation. Members of the Advisory Council shall be entitled
5 to per diem compensation and reimbursement of expenses as permitted under
6 32 V.S.A. § 1010 for not more than eight meetings annually. These payments
7 shall be made from monies appropriated to the Office.

8 § 3206. INCIDENTS AND FATALITIES

9 (a) The Department shall notify the Office of all incidents of actual
10 physical injury to children or youths in the custody of the Commissioner or at
11 significant risk of such harm.

12 (b) The Department shall notify the Office within 48 hours of:

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

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

15 § 3207. ACCESS TO INFORMATION AND FACILITIES

16 (a) Notwithstanding any other provision of law, the Child, Youth, and
17 Family Advocate and the Deputy Advocate shall, upon request, have timely
18 access, including the right to inspect and copy, to records necessary to carry
19 out the provisions of this chapter, including relevant records produced and held
20 by State entities and third parties. As used in this subsection, “third parties”
21 does not include Vermont’s Statistical Analysis Center.

1 **(b) If the Child, Youth, and Family Advocate determines that doing so**
2 **advances the welfare of a child or youth, the Advocate and Deputy Advocate**
3 **may:**

4 **(1) communicate privately and visit with any child or youth who is in**
5 **the custody of the Department; and**

6 **(2) upon first obtaining the consent of a child or youth's parent or**
7 **guardian, communicate privately and visit with a child or youth who is not in**
8 **the custody of the Department.**

9 **(c) Facilities and providers delivering services to children and youths shall**
10 **permit the Child, Youth, and Family Advocate or the Deputy Advocate to**
11 **access their facilities.**

12 **§ 3208. COOPERATION OF STATE AGENCIES**

13 **All State agencies shall comply with reasonable requests of the Child,**
14 **Youth, and Family Advocate and Deputy Advocate for information and**
15 **assistance.**

16 **§ 3209. CONFIDENTIALITY**

17 **(a) The Office shall maintain the confidentiality of all case records, third-**
18 **party records, and court records, as well as any information gathered in the**
19 **course of investigations and systems monitoring duties. These records are**
20 **exempt from public inspection and copying under the Public Records Act and**

1 shall be kept confidential except as provided in subsections (b) and (c) of this
2 section.

3 (b) In the course of carrying out the provisions of this chapter, if the Child,
4 Youth, and Family Advocate or Deputy Advocate reasonably believes that the
5 health, safety, or welfare of a child or youth is at imminent risk, the Advocate
6 or Deputy Advocate may disclose relevant documents or information to the
7 Department or any of the individuals or entities listed in subdivision 4921(c)(1)
8 of this title or both. Determinations of relevancy shall be made by the
9 Advocate.

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

18 (1) individually identifiable information about a child or youth, or the
19 child's or youth's family, foster family, or kin in a kinship placement unless
20 the information is already known to the public; and

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

3 § 3210. CONFLICT OF INTEREST

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

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

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

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

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

1 § 3211. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND
2 FAMILIES

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

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

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

12 (2) one current member of the Senate who serves on the Senate
13 Committee on Health and Welfare, who shall be appointed by the Committee
14 on Committees;

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

18 (4) the Executive Director of Racial Equity established pursuant to
19 3 V.S.A. § 5001 or designee;

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

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

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

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

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

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

11 (1) recommend qualified applicants for the position of the Child, Youth,
12 and Family Advocate to the Governor for consideration pursuant to section
13 3204 of this chapter within 45 days following a vacancy; and

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

17 (d) Assistance. The Commission shall have the administrative assistance
18 of the Agency of Administration.

19 (e) Meetings.

1 (1) The member representing the House Committee on Human Services
2 shall call the first meeting of the Commission to occur on or before August 1,
3 2022.

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

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

7 (f) Compensation and reimbursement.

8 (1) For attendance at meetings during adjournment of the General
9 Assembly, a legislative member of the Commission serving in the member's
10 capacity as a legislator shall be entitled to per diem compensation and
11 reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four
12 meetings annually.

13 (2) Other members of the Commission shall be entitled to per diem
14 compensation and reimbursement of expenses as permitted under 32 V.S.A.
15 § 1010 for not more than four meetings annually. These payments shall be
16 made from monies appropriated to the Office of the Child, Youth, and Family
17 Advocate.

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

19 § 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL

20 ACTION

21 (a) A mandated reporter is any:

* * *

(11) camp counselor; ~~or~~

(12) member of the clergy; or

(13) employee of the Office of the Child, Youth, and Family Advocate

established pursuant to chapter 32 of this title.

* * *

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

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

* * *

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

* * *

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

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

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

* * *

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

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

* * *

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

* * *

(H) the Human Services Board and the Commissioner's Registry
Review Unit in processes required under chapter 49 of this title; ~~and~~

(I) the Department for Children and Families; and

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

* * *

Sec. 5. [Deleted.]

Sec. 6. TRANSITION

The initial term of the Child, Youth, and Family Advocate established
pursuant to 33 V.S.A. chapter 32 shall begin on January 1, 2023.

Sec. 7. APPROPRIATION

The sum of \$120,000.00 is appropriated to the Office of the Child, Youth,
and Family Advocate from the General Fund in fiscal year 2023 for carrying
out the purposes of this act.

Sec. 8. [Deleted.]

Sec. 9. EFFECTIVE DATES

This act shall take effect on July 1, 2022, except that Secs. 2 (reporting
child abuse and neglect; remedial action), 3 (Department's records of abuse

1 and neglect), 4 (records of juvenile judicial proceedings), and 7 (appropriation)
2 shall take effect on January 1, 2023.

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6 (Committee vote: _____)

7

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Senator _____

9

FOR THE COMMITTEE