

Amendment to SB 295-FN

1 Amend the bill by replacing sections 1 and 2 with the following:

2
3 1 New Chapter; Office of the Child Advocate. Amend RSA by inserting after chapter 21-U the
4 following new chapter:

5 CHAPTER 21-V

6 OFFICE OF THE CHILD ADVOCATE

7 21-V:1 Definitions. In this chapter, and unless the specific context indicates otherwise:

8 I. "Agency" means any department, institution, bureau, or office of the state, as well as other
9 public and private children and youth service organizations providing services under contract or
10 agreement with an executive agency; provided that "agency" shall not include the judicial council or
11 any entity for which the council provides services.

12 II. "Child advocate" means the administrative head of the office of the child advocate.

13 III. "Critical incident" means:

14 (a) A fatality of a child, including, but not limited to, circumstances of accident, child
15 abuse, child neglect, homicide or other violence, natural cause, overdose, suicide, or terminal illness.

16 (b) A near fatality or serious bodily or emotional injury of a child.

17 (c) Abduction of a child.

18 (d) Human trafficking of a child, including, but not limited to, labor trafficking, sex
19 trafficking, or child sexual abuse images.

20 (e) The death of a parent or guardian of a child.

21 (f) An accident involving division staff with a child, parent, or provider.

22 (g) Suicide or attempted suicide by a child.

23 (h) Rape or other sexual assault of a child.

24 (i) Serious physical injury or risk thereof to a child.

25 (j) Serious psychological injury or risk thereof of a child.

26 (k) An inquiry made by the governor's office, the department of health and human
27 service's commissioner's office, or the division child advocate's office regarding a child.

28 (l) Circumstances which result in a reasonable belief that the division failed in its duty
29 to protect a child and, as a result, the child was at imminent risk of, or suffered serious bodily or
30 emotional injury or death.

31 (m) A media report of a child.

32 (n) Any restraint or seclusion of a child.

Amendment to SB 295-FN
- Page 2 -

1 (o) Any other incident that may seriously affect the health and well-being of a child.

2 IV. "Child" or "youth" means a person under the age of 21 who is in the custody of or
3 receiving services from the division, or who was in the custody of or received services from the
4 division within the past 3 years, or whose siblings, parents, or other caretakers have been the
5 subject of a report to the division within the past 3 years, or who is receiving services from any
6 executive agency.

7 V. "Division" means the department of health and human services, division for children,
8 youth and families.

9 VI. "Executive agency" means a state agency within the executive branch that provides
10 services to children.

11 VII. "Office" means the office of the child advocate.

12 VIII. "Oversight" means review, monitoring, and evaluation of any executive agency, and all
13 contracted programs, providers, services, and activities of those executive agencies as well as
14 executive agencies' policies, procedures, and practices and implementation and amendment of such
15 policies, procedures, and practices related to the care of, or services to, children.

16 IX. "Oversight commission" means the oversight commission on children's services
17 established under RSA 21-V:10.

18 X. "Record" means all records, documents, books, papers, files, photographs, microfilms,
19 sound recordings, magnetic storage media, drafts, computer data, court documents, reports,
20 electronic databases, emails and any other form of communication, and all other materials,
21 regardless of physical form or characteristics, created, generated, recorded, received, possessed, or
22 controlled by or on behalf of executive agencies.

23 21-V:2 Office of the Child Advocate Established. There shall be an office of the child advocate
24 which shall be an independent agency, attached to the department of administrative services
25 pursuant to RSA 21-G:10 for administrative purposes only. The office shall:

26 I. Notwithstanding any other provision of law, operate with full independence from any
27 state official, department, or agency in the performance of its duties.

28 II. Provide independent oversight of executive agencies to:

29 (a) Ensure that children involved with an agency, and in particular, children served by
30 the child welfare or juvenile justice systems, receive timely, safe, and effective services and that
31 their best interests are being protected.

32 (b) Strengthen the state by working in collaboration with agencies and other necessary
33 parties on cases under review.

34 (c) Ensure that children placed in the care of the state or receiving services under the
35 supervision of an agency in any public or private facility, receive humane and dignified treatment at
36 all times, with full respect for the child's personal dignity, right to privacy, and right to adequate and
37 appropriate healthcare and education in accordance with state and federal law.

Amendment to SB 295-FN
- Page 3 -

1 (d) Examine, on a system-wide basis, the care and services that agencies provide
2 children, and provide recommendations to improve the quality of those services in order to provide
3 each child the opportunity to live a full and productive life.

4 (e) Advise the public, governor, commissioners, speaker of the house of representatives,
5 senate president, and oversight commission about how the state may improve its services to and for
6 children and their families.

7 (f) Periodically review and investigate any aspect of an agency's policies, procedures, and
8 practices and work collaboratively with the agency to improve policies, procedures, practices, and
9 programs affecting children.

10 III. Upon its own initiative or upon receipt of a complaint, review and if deemed necessary:

11 (a) Investigate the actions of any agency and make appropriate referrals; provided that
12 department of health and human services specific complaints shall be handled by the ombudsman
13 pursuant to RSA 126-A:4, III.

14 (b) Investigate those complaints in which the child advocate determines that a child or
15 family may be in need of assistance from the office or a systemic issue in the state's provision of
16 services is raised by the complaint.

17 (c) Provide assistance to a child or family whom the child advocate determines is in need
18 of assistance, including seeking resolution of complaints, which may include, but not be limited to,
19 referring a complaint to the appropriate agency or entity, making a recommendation to such agency
20 or entity for action related to the complaint, and sharing information in any proceeding before any
21 court or agency in the state in which matters related to the division's child protection and juvenile
22 justice services are at issue.

23 IV. Regularly consult with executive agencies and the oversight commission.

24 V. Provide information and referral services to the public regarding all child-serving state
25 services, particularly child protection and juvenile justice services.

26 VI. Perform educational outreach and advocacy initiatives in furtherance of the mission and
27 responsibilities of the office.

28 VII. Periodically review the facilities and procedures of any and all institutions or
29 residences, public or private, where a child has been placed by an agency.

30 VIII. Apply for and accept grants, gifts, bequests of funds from other states, federal and
31 interstate agencies, independent authorities and private firms, individuals, and foundations, for the
32 purpose of carrying out the responsibilities, and consistent with the mission, of the office.

33 21-V:3 Child Advocate; Appointment; Term; Vacancy; Removal.

34 I. The office of the child advocate shall be under the supervision of the child advocate. The
35 child advocate shall be the administrative head of the office and shall be a full-time, unclassified
36 position, responsible for the duties of the office.

Amendment to SB 295-FN
- Page 4 -

1 II. The child advocate shall be appointed by the governor and executive council, upon the
2 recommendation of the oversight commission.

3 III. The child advocate shall serve a term of 4 years and until a successor is appointed and
4 qualified. Any vacancy in the position shall be filled in the same manner as the original
5 appointment for the remainder of the unexpired term.

6 IV. Upon any vacancy in the position of the child advocate, and until such time as a
7 candidate has been appointed by the governor and council, the associate child advocate shall serve as
8 the acting child advocate and be entitled to the compensation, privileges, and powers of the child
9 advocate.

10 V. Any person appointed to the position of child advocate shall be selected without regard to
11 political affiliation and on the basis of integrity and demonstrated ability, and shall possess a
12 professional graduate degree in law, social work, public health, or a related field and be qualified by
13 reason of education, experience, and expertise to perform the duties of the office.

14 VI. The child advocate may be removed from office for cause pursuant to RSA 4:1.

15 VII. The child advocate shall appoint an associate child advocate, and may, subject to
16 appropriation, appoint such other personnel as the child advocate deems necessary for the efficient
17 management of the office. The duties of these personnel shall be performed under and by the advice
18 and direction of the child advocate.

19 21-V:4 Access to Information and Facilities.

20 I. The office shall have access to the following information:

21 (a) All case records, all third party records, including the healthcare and education
22 records of any child receiving services from an executive agency, and all records submitted to the
23 courts.

24 (b) Executive agencies' policies and procedures, including draft policies and procedures.

25 (c) Executive agencies' records or reports, including draft records and reports.

26 (d) Autopsy reports from the chief medical examiner, which shall be provided in a timely
27 manner upon the request of the child advocate.

28 II. The office shall be entitled to prompt electronic access to division records within the scope
29 of its mission.

30 III. The office, in performance of its duties under this chapter, may communicate privately
31 with any child or person who has received, is receiving, or should have received services from the
32 state. Such communications shall be confidential and not be subject to disclosure except as provided
33 in RSA 21-V:5.

34 21-V:5 Confidentiality of Information.

35 I. The office shall maintain the confidentiality of all case records, third party records, and
36 court records pursuant to RSA 169-C:25 and RSA 170-G:8-a, and all other related confidentiality
37 laws.

Amendment to SB 295-FN
- Page 5 -

1 II. The office investigations and oversight activities, and the information gathered in such
2 investigations and oversight activities, including the identity of any complainant, shall be exempt
3 from the public disclosure provisions of RSA 91-A. Such investigations, oversight activities, and
4 information shall be privileged and exempt from use or disclosure in any criminal or civil matter or
5 administrative proceeding.

6 III. The child advocate of the office may disclose confidential information about a child to
7 any individual or entity responsible for, or providing services to, the child. Any disclosures of
8 confidential information shall be the minimum necessary to ensure proper care and treatment for
9 the child or to identify, prevent, or treat the abuse or neglect of a child.

10 IV. The child advocate shall have the same authority as the commissioner of the department
11 of health and human services to publicly release information pursuant to RSA 126-A:5, XII in
12 furtherance of the mission and responsibilities of the office.

13 V. Notwithstanding any provision of law to the contrary, if the child advocate determines
14 that the health, safety, and welfare of children are at risk, the child advocate may publicly disclose
15 the details of investigation findings, subject to the following limitations:

16 (a) Names, addresses, or other identifying information of individuals who are the subject
17 of any confidential proceeding or statutory confidential provision shall not be released to the public.

18 (b) Investigation findings shall not be released if there is a pending law enforcement
19 investigation or prosecution, except as provided in paragraph III.

20 21-V:6 Power of Subpoena. The office shall have the authority to subpoena witnesses, records,
21 documents, reports, reviews, recommendations, correspondence, data, and other evidence that the
22 office reasonably believes is relevant.

23 21-V:7 Incidents and Fatalities.

24 I. The division shall provide the office with a copy of all critical incident reports or other
25 reports related to actual physical injury to children or a significant risk of such harm, as well as
26 other incidents which may affect the safety and well-being of children in the custody or control of the
27 department of health and human services, including but not limited to reports related to the
28 restraint and seclusion of any child under the care and protection of the division, not later than 48
29 hours after the occurrence.

30 II. The division shall provide the office with notice of any child fatality or serious injury of a
31 child under its care or supervision or whose safety and the safety of the child's siblings has been or is
32 being assessed, immediately by telephone. The division shall further provide the office with written
33 report of such fatality or serious injury not later than 48 hours after the occurrence.

34 21-V:8 Annual Report. Beginning November 1, 2020, and each November 1 thereafter, the child
35 advocate shall submit an annual report of the activities and findings of the office, and present his or
36 her recommendations to the oversight commission. The report shall also be provided to the
37 commissioner of any executive agency that is the subject of a report prepared by the office, the

Amendment to SB 295-FN
- Page 6 -

1 governor, the speaker of the house of representatives, the senate president, and the state library.
2 The child advocate shall make the annual report available to the public on the office of the child
3 advocate's website.

4 21-V:9 Confidentiality and Admissibility. No person employed or contracted by or volunteering
5 for the office shall be compelled to testify or produce evidence in any judicial or administrative
6 proceeding with respect to any matter involving exercise of his or her official duties except as may be
7 necessary to enforce this chapter. All related memoranda, work product, notes, or case files of the
8 office are confidential and are not subject to discovery, subpoena, or other means of legal compulsion,
9 and are not admissible in evidence in a judicial or administrative proceeding. This limitation shall
10 not apply to information obtained by any employee, contractor, or volunteer of the office regarding a
11 crime or fraud, or a communication of imminent risk of serious harm, nor shall it apply to
12 communications regarding the general operation of the office and the processes employed.

13 21-V:10 Oversight Commission on Children's Services Established.

14 I. There shall be an oversight commission on children's services, which shall consist of the
15 following members:

16 (a) Two members of the senate, appointed by the senate president.

17 (b) Two members of the house of representatives, appointed by the speaker of the house
18 of representatives.

19 (c) Four members representing the executive branch, appointed by the governor.

20 (d) Two members representing the judicial branch, appointed by the chief justice of the
21 supreme court.

22 (e) Two representatives of the New Hampshire Association of Chiefs of Police, one of
23 whom serves as chief of police for a city and one of whom serves as chief of police for a town.

24 (f) Two members of child advocacy organizations, appointed by the senate president.

25 (g) Two members of child advocacy organizations, appointed by the speaker of the house
26 of representatives.

27 (h) An individual who was formerly a recipient of child protection, juvenile justice, or
28 voluntary services through the division, appointed by the governor.

29 (i) An individual who has served or is serving as a foster parent, appointed by the
30 governor.

31 II. Legislative members of the commission shall serve a term coterminous with their term in
32 office. Members appointed under subparagraphs (c)-(i) shall serve 3-year terms. Legislative
33 members of the commission shall receive mileage at the legislative rate when attending to the duties
34 of the commission.

35 III. The oversight commission shall:

Amendment to SB 295-FN
- Page 7 -

1 (a) Recommend at least 3 qualified candidates to the governor, in rank order, for
2 appointment to the position of child advocate; except that in the case of reappointment, a single
3 recommendation shall be sufficient.

4 (b) Provide oversight to the office in its effort to support an effective, comprehensive, and
5 coordinated system of services and programs for children, youth, and families.

6 (c) Review with the office the efficacy of selected programs and services of executive
7 agencies, including the characteristics of target populations, trends affecting program costs and
8 participation, and alternative approaches to programmatic and administrative concerns.

9 (d) Collaborate with the office to identify and implement best practices on behalf of
10 children and families.

11 (e) Monitor and review implementation of the memorandum of understanding entered
12 into by the department of health and human services and the department of justice regarding the
13 collaboration between the agencies in the investigation and prosecution of abuse and neglect cases.

14 IV. The oversight commission shall elect a chairperson from among the members. The first
15 meeting of the commission shall be called by the first-named senate member. The first meeting of
16 the commission shall be held within 45 days of the effective date of this section. Nine members of
17 the commission shall constitute a quorum.

18 2 Applicability; Oversight Commission on Children's Services. To the extent practicable,
19 members of the oversight commission on children's services established in RSA 170-G:19 on the
20 effective date of this act shall serve the remainder of their terms on the oversight commission
21 established in RSA 21-V:10.

Amendment to SB 295-FN
- Page 8 -

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AMENDED ANALYSIS

This bill recodifies the statutes governing the office of the child advocate, clarifies the authority and independence of the office, and expands the jurisdiction of the office to include a broader range of agencies that serve children. The bill also establishes an oversight commission on children's services.