

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 661 entitled “An act relating to child abuse and neglect investigation and
4 substantiation standards and procedures” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 33 V.S.A § 4911 is amended to read:

8 § 4911. PURPOSE

9 The purpose of this subchapter is to:

10 (1) protect children whose health and welfare may be adversely affected
11 through abuse or neglect;

12 (2) strengthen the family and make the home safe for children whenever
13 possible by enhancing the parental capacity for good child care;

14 (3) provide a temporary or permanent nurturing and safe environment
15 for children when necessary; and for these purposes require the reporting of
16 suspected child abuse and neglect, an assessment or investigation of such
17 reports and provision of services, when needed, to such child and family;

18 (4) establish a range of responses to child abuse and neglect that take
19 into account different degrees of child abuse or neglect and that recognize that
20 child offenders should be treated differently from adults; ~~and~~

1 (5) establish a tiered child protection registry that balances the need to
2 protect children and the potential employment consequences of a registry
3 record for persons who are substantiated for child abuse and neglect; and

4 (6) ensure that in the Department for Children and Families’ efforts to
5 protect children from abuse and neglect, the Department also ensures that
6 investigations are thorough, unbiased, based on verified evidence, and adhere
7 to due process requirements.

8 Sec. 2. 33 V.S.A. § 4912 is amended to read:

9 § 4912. DEFINITIONS

10 As used in this subchapter:

11 * * *

12 (16) Substantiated report” means that the Commissioner or the
13 Commissioner’s designee has determined after investigation that a report is
14 based upon accurate and reliable information ~~that would lead a reasonable~~
15 ~~person to believe~~ there is a preponderance of the evidence necessary to support
16 the allegation that the child has been abused or neglected.

17 * * *

18 Sec. 3. 33 V.S.A. § 4915b is amended to read:

19 § 4915b. PROCEDURES FOR INVESTIGATION

1 (a) An investigation, to the extent that it is reasonable under the facts and
2 circumstances presented by the particular allegation of child abuse, shall
3 include all of the following:

4 (1) A visit to the child’s place of residence or place of custody and to the
5 location of the alleged abuse or neglect.

6 (2) An interview with or observation of the child reportedly having been
7 abused or neglected. If the investigator elects to interview the child, that
8 interview may take place without the approval of the child’s parents, guardian,
9 or custodian, provided that it takes place in the presence of a disinterested adult
10 who may be, but shall not be limited to being, a teacher, a member of the
11 clergy, a child care provider regulated by the Department, or a nurse. Any
12 interview conducted shall be recorded in its entirety. The Department shall
13 maintain the recording in an audibly intelligible and visually clear manner.

14 (3) Determination of the nature, extent, and cause of any abuse or
15 neglect.

16 (4) Determination of the identity of the person alleged to be responsible
17 for such abuse or neglect. The investigator shall use best efforts to obtain the
18 person’s address, mailing address, and any preferred alternative contact
19 information provided by the person as soon as practicable once the person’s
20 identity is determined. The person shall be notified of the outcome of the

1 investigation using the mailing address and the person's preferred method of
2 contact, if feasible, collected pursuant to this subdivision.

3 (5)(A) The identity, by name, of any other children living in the same
4 home environment as the subject child. The investigator shall consider the
5 physical and emotional condition of those children and may interview them,
6 unless the child is the person who is alleged to be responsible for such abuse
7 or neglect, in accordance with the provisions of subdivision (2) of this
8 subsection (a).

9 (B) The identity, by name, of any other children who may be at risk if
10 the abuse was alleged to have been committed by someone who is not a
11 member of the subject child's household. The investigator shall consider the
12 physical and emotional condition of those children and may interview them,
13 unless the child is the person who is alleged to be responsible for such abuse
14 or neglect, in accordance with the provisions of subdivision (2) of this
15 subsection (a).

16 (6) A determination of the immediate and long-term risk to each child if
17 that child remains in the existing home or other environment.

18 (7) Consideration of the environment and the relationship of any
19 children therein to the person alleged to be responsible for the suspected abuse
20 or neglect.

1 (8) All other data deemed pertinent, including any interviews of
2 witnesses made known to the Department.

3 (b) For cases investigated and substantiated by the Department, the
4 Commissioner shall, to the extent that it is reasonable, provide assistance to the
5 child and the child’s family. For cases investigated but not substantiated by
6 the Department, the Commissioner may, to the extent that it is reasonable,
7 provide assistance to the child and the child’s family. Nothing contained in
8 this section or section 4915a of this title shall be deemed to create a private
9 right of action.

10 * * *

11 Sec. 4. 33 V.S.A. § 4916 is amended to read:

12 § 4916. CHILD PROTECTION REGISTRY

13 (a)(1) The Commissioner shall maintain a Child Protection Registry that
14 shall contain a record of all investigations that have resulted in a substantiated
15 report on or after January 1, 1992. Except as provided in subdivision (2) of
16 this subsection, prior to placement of a substantiated report on the Registry, the
17 Commissioner shall comply with the procedures set forth in section 4916a of
18 this title.

19 (2) In cases involving sexual abuse or serious physical abuse of a child,
20 the Commissioner in ~~his or her~~ the Commissioner’s sole judgment may list a
21 substantiated report on the Registry pending any administrative review after:

1 (A) reviewing the investigation file; and

2 (B) making written findings in consideration of:

3 (i) the nature and seriousness of the alleged behavior; and

4 (ii) the person's continuing access to children.

5 (3) A person alleged to have abused or neglected a child and whose
6 name has been placed on the Registry in accordance with subdivision (2) of
7 this subsection shall be notified of the Registry entry, provided with the
8 Commissioner's findings, and advised of the right to seek an administrative
9 review in accordance with section 4916a of this title.

10 (4) If the name of a person has been placed on the Registry in
11 accordance with subdivision (2) of this subsection, it shall be removed from
12 the Registry if the substantiation is rejected after an administrative review.

13 (b) A Registry record means an entry in the Child Protection Registry that
14 consists of the name of an individual substantiated for child abuse or neglect,
15 the date of the finding, the nature of the finding, and at least one other personal
16 identifier, other than a name, listed in order to avoid the possibility of
17 misidentification.

18 (c) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
19 permit use of the Registry records as authorized by this subchapter while
20 preserving confidentiality of the Registry and other Department records related
21 to abuse and neglect.

1 (d) For all substantiated reports of child abuse or neglect made on or after
2 the date the final rules are adopted, the Commissioner shall create a Registry
3 record that reflects a designated child protection level related to the risk of
4 future harm to children. This system of child protection levels shall be based
5 upon an evaluation of the risk the person responsible for the abuse or neglect
6 poses to the safety of children. The risk evaluation shall include consideration
7 of the following factors:

8 (1) the nature of the conduct and the extent of the child's injury, if any;

9 (2) the person's prior history of child abuse or neglect as either a victim
10 or perpetrator;

11 (3) the person's response to the investigation and willingness to engage
12 in recommended services; and

13 (4) the person's age and developmental maturity.

14 (e) The Commissioner shall ~~develop~~ adopt rules for the implementation of
15 a system of Child Protection Registry levels for substantiated cases pursuant to

16 3 V.S.A. chapter 25. The rules shall address:

17 (1) when and how names are placed on the Registry;

18 (2) the length of time a person's name appears on the Registry;

19 ~~(2)~~(3) when and how names are expunged from the Registry;

20 ~~(3)~~(4) whether the person is a juvenile or an adult;

1 ~~(4)~~(5) whether the person was charged with or convicted of a criminal
2 offense arising out of the incident of abuse or neglect; and

3 ~~(5)~~(6) whether a Family Division of the Superior Court has made any
4 findings against the person.

5 (f) [Repealed.]

6 Sec. 5. 33 V.S.A. § 4916a is amended to read:

7 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

8 (a) If an investigation conducted in accordance with section 4915b of this
9 title results in a determination that a report of child abuse or neglect should be
10 substantiated, the Department shall notify the person alleged to have abused or
11 neglected a child of the following:

12 (1) the nature of the substantiation decision, and that the Department
13 intends to enter the record of the substantiation into the Registry;

14 (2) who has access to Registry information and under what
15 circumstances;

16 (3) the implications of having one's name placed on the Registry as it
17 applies to employment, licensure, and registration;

18 (4) the Registry risk level to be assigned to the person and the date that
19 the person is eligible to seek expungement based on the risk level.

20 ~~(5)~~ the right to request a review of the substantiation determination by
21 an administrative reviewer, the specific basis for the substantiation, the time in

1 which the request for review shall be made, and the consequences of not
2 seeking a review; ~~and~~

3 ~~(5)(6)~~ the right to receive a copy of the Commissioner's written findings
4 made in accordance with subdivision 4916(a)(2) of this title if applicable; and
5 (7) ways to contact the Department for any further information.

6 (b) Under this section, notice by the Department to a person alleged to have
7 abused or neglected a child shall be by first-class mail sent to the person's last
8 known mailing address, or if requested by the person, to the person's email
9 address collected during the Department's investigation pursuant to
10 subdivision 4915b(b)(4). The Department shall maintain a record of the
11 notification, including who send the notification, the date it is sent, and the
12 addresses to which it is sent.

13 (c)(1) A person ~~alleged to have abused or neglected a child~~ who is the
14 subject of a substantiation determination may seek an administrative review of
15 the Department's intention to place the person's name on the Registry by
16 notifying the Department within ~~14~~ 30 days ~~of~~ after the date the Department
17 ~~mailed~~ sent notice of the right to review in accordance with subsections (a) and
18 (b) of this section. The Commissioner may grant an extension past the ~~14-day~~
19 30-day period for good cause, not to exceed ~~28~~ 60 days after the Department
20 has mailed notice of the right to review.

1 (2) The administrative review may be stayed upon request of the person
2 ~~alleged to have committed abuse or neglect~~ who is the subject of a
3 substantiation determination if there is a related case pending in the Criminal
4 or Family Division of the Superior Court that arose out of the same incident of
5 abuse or neglect for which the ~~person~~ the allegation was substantiated. During
6 the period the review is stayed, the person's name shall be placed on the
7 Registry. Upon resolution of the Superior Court criminal or family case, the
8 person may exercise ~~his or her~~ the person's right to review under this section
9 by notifying the Department in writing within 30 days after the related court
10 case, including any appeals, has been fully adjudicated. If the person fails to
11 notify the Department within 30 days, the Department's decision shall become
12 final and no further review under this subsection is required.

13 (d)(1) ~~Except as provided in this subsection, The~~ the Department shall hold
14 an administrative review conference within ~~35~~ 60 days ~~of~~ after receipt of the
15 request for review. At least ~~40~~ 20 days prior to the administrative review
16 conference, the Department shall provide to the person requesting review a
17 copy of the redacted investigation file, which shall contain sufficient
18 unredacted information to describe the allegations and the evidence relied upon
19 as the basis of the substantiation, notice of time and place of the conference,
20 and conference procedures, including information that may be submitted and
21 mechanisms for providing information. There shall be no subpoena power to

1 compel witnesses to attend a Registry review conference. The Department
2 shall also provide to the person those redacted investigation files that relate to
3 prior investigations that the Department has relied upon to make its
4 substantiation determination in the case in which a review has been requested.
5 If the Department fails to hold an administrative review conference within 60
6 days after receipt of the request to review, then the substantiation
7 determination shall be rejected and the case closed with prejudice. If the
8 failure to hold a conference is due to good cause shown, a 15-day extension
9 may be authorized by the Commissioner in which the basis of the failure is
10 explained.

11 (2) The Department may elect to not hold an administrative review
12 conference when a person who has requested a review does not respond to
13 Department requests to schedule the review meeting or does not appear for the
14 scheduled review meeting. In these circumstances, unless good cause is
15 shown, the Department's substantiation shall be accepted and the person's
16 name shall be placed on the registry. Upon the Department's substantiation
17 being accepted, the Department shall provide notice that advises the person of
18 the right to appeal the substantiation determination to the Human Services
19 Board pursuant to section 4916b of this title.

20 (e) At the administrative review conference, the person who requested the
21 review shall be provided with the opportunity to present documentary evidence

1 or other information that supports ~~his or her~~ the person's position and provides
2 information to the reviewer in making the most accurate decision regarding the
3 allegation. The Department shall have the burden of proving ~~that it has~~
4 ~~accurately and reliably concluded that a reasonable person would believe by a~~
5 preponderance of the evidence that the child has been abused or neglected by
6 that person. Upon the person's request, the conference may be held by
7 teleconference. During a declared state of emergency in Vermont restricting
8 in-person conferences, the Department may require that the review be held
9 through a live, interactive, audio-video connection or by telephone.

10 (f) The Department shall establish an administrative case review unit
11 within the Department and contract for the services of administrative
12 reviewers. An administrative reviewer shall be a neutral and independent
13 arbiter who has no prior involvement in the original investigation of the
14 allegation. Department information pertaining to the investigation that is
15 obtained by the reviewer outside of the review meeting shall be disclosed to
16 the person seeking the review.

17 (g) Within seven days ~~of~~ after the conference, the administrative reviewer
18 shall:

19 (1) reject the Department's substantiation determination;

20 (2) accept the Department's substantiation; or

1 (3) place the substantiation determination on hold and direct the
2 Department to further investigate the case based upon recommendations of the
3 reviewer.

4 (h) If the administrative reviewer accepts the Department’s substantiation
5 determination, a Registry record shall be made immediately. If the reviewer
6 rejects the Department’s substantiation determination, no Registry record shall
7 be made.

8 (i) Within seven days ~~of~~ after the decision to reject or accept or to place the
9 substantiation on hold in accordance with subsection (g) of this section, the
10 administrative reviewer shall provide notice to the person of ~~his or her~~ the
11 reviewer’s decision by a combination of first class mail, e-mail, and text
12 message sent to the person’s last known physical address and contact
13 information collected during the Department’s investigation pursuant to
14 subdivision 4915b(b)(4) of this title. If the administrative reviewer accepts the
15 Department’s substantiation, the notice shall advise the person of the right to
16 appeal the administrative reviewer’s decision to the human services board in
17 accordance with section 4916b of this title.

18 (i) Within seven days ~~of~~ after the decision to reject or accept or to place the
19 substantiation on hold in accordance with subsection (g) of this section, the
20 administrative reviewer shall provide notice to the person of ~~his or her~~ the
21 reviewer’s decision pursuant to the methods identified in section 4916a(b) of

1 this title. If the administrative reviewer accepts the Department's
2 substantiation, the notice shall advise the person of the right to appeal the
3 administrative reviewer's decision to the human services board in accordance
4 with section 4916b of this title.

5 * * *

6 Sec. 6. 33 V.S.A. § 4916b is amended to read:

7 § 4916b. HUMAN SERVICES BOARD HEARING

8 (a) Within 30 days after the date on which the administrative reviewer
9 ~~mailed~~ sent notice of placement of a report on the Registry, the person who is
10 the subject of the substantiation may apply in writing to the Human Services
11 Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. §
12 3091. When the Department receives notice of the appeal, it shall make note
13 in the Registry record that the substantiation has been appealed to the Board.

14 * * *

15 33 V.S.A. § 4916c is amended to read:

16 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

17 (a)(1) ~~Except as provided in this subdivision~~ Pursuant to rules adopted in
18 accordance with subsection 4916(e) of this title, a person whose name has been
19 placed on the Registry ~~prior to July 1, 2009 and has been listed on the Registry~~
20 ~~for at least three years~~ may file a written request with the Commissioner,
21 seeking a review for the purpose of expunging an individual Registry record or

1 for the purpose of challenging the risk level designation, or both. ~~A person~~
2 ~~whose name has been placed on the Registry on or after July 1, 2009 and has~~
3 ~~been listed on the Registry for at least seven years may file a written request~~
4 ~~with the Commissioner seeking a review for the purpose of expunging an~~
5 ~~individual Registry record.~~ The Commissioner shall grant a review upon
6 request.

7 (2) A person who is required to register as a sex offender on the State's
8 Sex Offender Registry shall not be eligible to petition for expungement of ~~his~~
9 ~~or her~~ the person's Registry record until the person is no longer subject to Sex
10 Offender Registry requirements.

11 (b)(1) The person shall have the burden of proving that a reasonable person
12 would believe that ~~he or she~~ the person no longer presents a risk to the safety
13 or well-being of children.

14 (2) The Commissioner shall consider the following factors in making ~~his~~
15 ~~or her~~ a determination:

16 (A) the nature of the substantiation that resulted in the person's name
17 being placed on the Registry;

18 (B) the number of substantiations;

19 (C) the amount of time that has elapsed since the substantiation;

20 (D) the circumstances of the substantiation that would indicate
21 whether a similar incident would be likely to occur;

1 (E) any activities that would reflect upon the person's changed
2 behavior or circumstances, such as therapy, employment, or education;

3 (F) references that attest to the person's good moral character; and

4 (G) any other information that the Commissioner deems relevant.

5 (3) The Commissioner may deny a petition for expungement based
6 solely on subdivision (2)(A) or (2)(B) of this subsection.

7 (c) At the review, the person who requested the review shall be provided
8 with the opportunity to present any evidence or other information, including
9 witnesses, that supports ~~his or her~~ the person's request for expungement. Upon
10 the person's request, the review may be held by teleconference. During a
11 declared state of emergency in Vermont restricting in-person conferences, the
12 Department may require that the review be held through a live, interactive,
13 audio-video connection or by telephone.

14 (d) A person may seek a review under this section no more than once every
15 36 months.

16 (e) Within 30 days ~~of~~ after the date on which the Commissioner ~~mailed~~
17 sent notice of the decision pursuant to this section, a person may appeal the
18 decision to the Human Services Board. The notice shall contain specific
19 information concerning the steps necessary for the person to prepare any future
20 expungement request. The person shall be prohibited from challenging ~~his or~~
21 ~~her~~ the substantiation at such hearing, and the sole ~~issue~~ issues before the

1 Board shall be whether the Commissioner abused ~~his or her~~ the
2 Commissioner's discretion in ~~denial of~~ denying the petition for expungement
3 or the petition challenging the risk level designation. The hearing shall be on
4 the record below, and determinations of credibility of witnesses made by the
5 Commissioner shall be given deference by the Board.

6 * * *

7 Sec. 8. 33 V.S.A. § 4916d is amended to read:

8 § 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

9 Registry entries concerning a person who was substantiated for behavior
10 occurring before the person reached 10 years of age shall be expunged when
11 the person reaches ~~the age of~~ 18 years of age, provided that the person has had
12 no additional substantiated Registry entries. ~~A person substantiated for~~
13 ~~behavior occurring before the person reached 18 years of age and whose name~~
14 ~~has been listed on the Registry for at least three years may file a written request~~
15 ~~with the Commissioner seeking a review for the purpose of expunging an~~
16 ~~individual Registry record in accordance with section 4916c of this title.~~

17 Sec. 9. 33 V.S.A. § 4922 is amended to read:

18 § 4922. RULEMAKING

19 (a) On or before September 1, 2025, the Commissioner shall file proposed
20 rules pursuant to 3 V.S.A. chapter 25 implementing the provisions of this

1 subchapter to become effective on January 1, 2026. The Commissioner shall
2 ~~develop rules to implement this subchapter.~~ These shall include:

3 (1) rules setting forth criteria for determining whether to conduct an
4 assessment or an investigation;

5 (2) rules setting out procedures for assessment and service delivery;

6 (3) rules outlining procedures for investigations;

7 (4) rules for conducting the administrative review conference;

8 (5) rules regarding access to and maintenance of Department records of
9 investigations, assessments, reviews, and responses; ~~and~~

10 (6) rules regarding the tiered Registry as required by section 4916 of this
11 title;

12 (7) rules establishing substantiation categories that require, and do not
13 require, entry onto the Registry;

14 (8) rules creating procedures for how substantiation recommendations
15 are made by the Department district offices and how substantiation

16 determinations are made by the Department central office; and

17 (9) rules implementing subsections 4916(c) and (e) of this title.

18 Sec. 10. CHILD ABUSE AND NEGLECT; INTERVIEWS; CAPABILITIES;

19 REPORT

20 (a) On or before November 15, 2024, the Department for Children and

21 Families shall submit a written report to the Senate Committee on Health and

1 Welfare and the House Committee on Human Services examining the
2 Department’s capabilities and resources necessary to safely, securely, and
3 confidentially store any interviews recorded during a child abuse and neglect
4 investigation.

5 (b) The report required pursuant to subsection (a) shall include the
6 Department’s proposed model policy detailing the types of interviews that
7 should be recorded and the storage, safety, and confidentiality requirements of
8 such interviews.

9 Sec. 11. EFFECTIVE DATE

10 This act shall take effect on July 1, 2024.

11

12 (Committee vote: _____)

13

14

Representative _____

15

FOR THE COMMITTEE