

April 19, 2024

## Proposed changes to the unofficial version of H. 661 as passed by the House

### TECHNICAL CHANGES

1. P. 2: DCF investigators collect information, sift through it, and determine which they believe is reliable. The reliable information is what DCF relies upon as evidence. Workers are not versed in the legal lingo of evidence vs information, and DCF does not want its investigators prematurely to make a determination that a piece of information is not "evidence." DCF collects information that will be considered as evidence when the decision is made by the investigator, reviewed by the reviewer, and reviewed in any Human Services Board appeal. All evidence is information, but not all information is evidence. The investigation relies on all sorts of information, but the final decision should be based on evidence; namely, reliable information.

**Recommendation:** §4911(6) Strike the word "evidence" on line 19 and replace with "information."

2. P. 2: Along with the change above, we ask to include our current policy language making clear that the Department must weigh all the information available to it when making a substantiation determination.

**Recommendation:** Add the following language as the last sentence of § 4911(6): "All information shall be weighed with other supporting or conflicting data."

3. P. 7: Line 21: Page 1 indicates that the House wanted to determine "whether" a name should be placed on the registry, in addition to when and how. Currently, the department has no discretion *not* to place a name on the registry when the weight of the evidence shows that the event occurred and fits the definitions of abuse or neglect in the statute. There are cases, however, where it is clear that there is greater harm in placing someone on the registry than merely substantiating, in order to maintain the record should additional complaints arise, while also *not* placing on the registry.

**Recommendation:** Add to §4916(e)(1): "when, whether and how names are placed on the registry;"



4. P. 10: § 4916(d): We believe that the committee (and stakeholders) agreed that the language should require that the review meeting be *scheduled* within 60 days, not *held* and that this is merely a drafting oversight.

**Recommendation:** Change § 4916(d)(1) as follows:

page 10 line 19 "...the Department shall ~~hold~~ schedule an administrative review conference...." And page 11 line 11: "If the department fails to ~~hold~~ schedule an administrative review conference..."

5. P. 13: § 4916a(i): There was a lot of discussion in the House around how DCF should best notify a person both of the investigation and the outcome of the investigation, including ensuring notice of their rights to reviews and appeals. Because these events take place over time, sometimes a significant length of time (as when a registry case is stayed pending a related criminal case), the House agreed to the language of the stakeholders that DCF would attempt to reach individuals through first-class mail and also, when requested and appropriate, email. However, as currently drafted, the bill requires DCF to send notice to an address that we may have been informed is no longer a valid address, as DCF often gets updated addresses throughout the length of a proceeding. We ask that the language reflect the changing addresses that become available to DCF.

**Recommendation:**

(i) Within seven days of after the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of the reviewer's decision to the most recent address provided by the person's requested address pursuant to subdivision 4915b(a)(4) of this title.

6. P. 14 §4916c: This section concerns not a review of the initial, underlying allegation of abuse or neglect of a child, but rather the *expungement* of that record from the Child Protection Registry. Any issues regarding tier levels would have been addressed earlier in the proceeding, as the tier level applies at the point of placement on the registry. At the expungement proceeding, the only question is whether the person's name should be removed from the Registry. Nevertheless, as drafted, this section includes language around expungement that we believe should be deleted.

**Recommendation:**



Amend 4916c(a)(1) as follows: “(a)(1) Except as provided in this subdivision Pursuant to rules adopted in accordance with subsection 4916(e) of this title, a person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record ~~or for the purpose of challenging the child protection level designation, or both.~~”

7. P. 15: §4916c(a)(1) lines 1-2: A person can only seek an expungement when they are eligible to do so after their initial placement on the Registry. We would like this clarified in statute by adding language.

**Recommendation:** Add the following language: “The Commissioner shall grant a review, when eligible, upon request.”

8. P. 16 lines 13-15 §4916c(e): This language is intended to require the Commissioner to provide information to an expungement petitioner of what steps or actions the petitioner should take in order for the Commissioner to agree to remove their name from the Registry. DCF does already provide information to all petitioners that outlines criteria for removal of a name from the registry, which can be found at §4916c(b)(2)(A)-(H). Requiring the commissioner to provide “specific” information suggests the information should be unique to the requestor. This subsection 4916c(e), however, addresses not the decision of the Commissioner, but rather the process for seeking an appeal to the Human Services Board and consequently is not appropriate for this subsection.

**Recommendation:** Move this language related to expungement denials to the appropriate subsection by removing the sentence in § 4916c(e) and moving it § 4916c(b)(3) with the substituted language.

(3) The Commissioner may deny a petition for expungement based solely on subdivision (2)(A) or (2)(B) of this subsection. The Commissioner’s decision to deny an expungement petition shall contain ~~specific instructions concerning the information necessary for the person to prepare any future expungement request~~ information about how to prepare for future expungement requests.

9. P. 16 § 4916c(e): Again, this section is about what happens during an expungement process, not the initial substantiation process. At the point of expungement, a person’s name has already been on the Registry for the minimum period of time, so the only question now is whether the person’s name should be removed from the Registry. Consequently, references to the tier level designation are moot.





**Recommendation:**

The person shall be prohibited from challenging the substantiation at such hearing, and the sole issue issues before the Board shall be whether the Commissioner abused the Commissioner's discretion in denying the petition for expungement ~~or the petition challenging the child protection level designation.~~

10. P. 17: DCF needs a minimum of 6 months from the filing of the rules to the enactment. We agree that the rules will be filed by September 1, 2025 and consequently we ask that the effective date of the rules be extended from January 1 to March 1, 2026.

**Recommendation:** Amend as §4922(a) as follows:

- (a) The Commissioner shall develop rules to implement this subchapter. On or before September 1, 2025, the Commissioner shall file proposed rules pursuant to 3 V.S.A. chapter 25 implementing the provisions of this subchapter to become effective on ~~January 1, 2026~~ April 1, 2026.

**SUBSTANTIVE CHANGES**

11. P. 8-9: §4916a(5): The Commissioner's Registry Review Unit reviewers have no special training in determining the risk level of a person whose name is being placed on the registry. The only statutory qualification for a reviewer is that they "be a neutral and independent arbiter who has no prior involvement in the original investigation of the allegation." 33 VSA §4916a(f). Our Commissioner's independent reviewers are not skilled in determining how long a person should remain on the registry. Determining tier levels is within the expertise of the Family Services Division, where our staff, especially supervisors and district directors, have developed the skills to make these decisions.

**Recommendation:** Remove the following from § 4916a(5) "...or the child protection level designation, or both..."

12. P. 11-12, lines 20-2: §4916a(d)(2): Similar to page 8-9, the CRRU reviewers are not skilled in determining risk levels and consequently the department asks that the bill be amended:

**Recommendation:**



“Upon the Department’s substantiation being accepted, the Department shall provide notice that advises the person of the right to appeal the substantiation determination ~~or child protection designation level, or both,~~ to the Human Services Board pursuant to section 4916b of this title.”

13. P. 18: § 4922(a)(7): This subsection establishes substantiation categories that require entry onto the registry and alternatives to substantiation that do not require entry onto the registry; similar to below, developing a ‘secondary layer of consideration’ will take some time and will require vast stakeholder input, to include AOE, DMH, CDD, AHS, namely entities that rely on the child protection registry for background checks. It is unrealistic to try to accomplish this by Sept. 1 2025. Similar to below, DCF could provide an updated report in September. 2025 to inform the legislature of our process and progress.

**Recommendation:** Delete § 4922(a)(7) in its entirety

~~(7) rules establishing substantiation categories that require entry onto the Registry and alternatives to substantiation that do not require entry onto the Registry~~

14. P. 18 § 4922(a)(9): This subsection requires DCF to do rulemaking that creates and operationalizes a central review process to review cases before they go before a reviewer. The process for this proposed central review process is in its infancy and DCF needs to undertake stakeholder engagement to determine how best to run such a process. There are interest groups DCF has already engaged with who have stated an interest in being involved. DCF does not currently have the capacity to create the process and rules for such a program, or redirect staff from existing duties in the timeframes proposed by the this bill. Consequently, DCF proposes deleting subsection (9). DCF would be amenable to providing a report by October 1, 2025 to provide updates on DCF’s process and progress.

**Recommendation:** Delete § 4922(a)(9)

~~(9) rules creating procedures for how substantiation recommendations are made by the Department district offices and how substantiation determinations are made by the Department central office;~~

