To: Members of the House Human Services Committee

Re: H. 680

From: Bob Sheil, Juvenile Defender

Date: February 5, 2014

The Juvenile Defender's Office appreciates the opportunity to comment on proposed legislation and thanks you for your efforts with regard to this important matter. Our comments are rather brief and we appreciate sharing them with you.

The Juvenile Defender's Office has two main concerns with H. 680 as drafted:

1) The amendment to 33 V.S.A. § 4916c (a) (2) found in Section 3 of the bill deprives minors whose names are placed on the Sex Offender Registry when they turn 18 years of age of the opportunity, granted to them only a few years ago, to apply for expungement from the Child Protection Registry after their name has been on that registry for three years; and
2) The amendment to 33 V.S.A. § 4916c ((b) in section 3 of the bill would allow for denial of an application for expungement from the Child Protection Registry to be based solely on either the nature or number of substantiations alone and totally disregard the other factors that must be considered under the present law.

First of all one needs to remember that in all but a handful cases the only basis for placing a minor's name on the Child Protection Registry is a substantiation for sexual abuse of another child. One can only be substantiated for "abuse or neglect" other than sexual abuse if one is the abused child's "parent or other person responsible for the child's welfare." A minor's name could only be placed on the Child Protection Registry for "abuse or neglect" in the rare instance where the minor is also the abused child's parent or other person responsible for the child's welfare."

Secondly, minors who are adjudicated delinquent on the basis of inappropriate sexual behavior with another child through the Family Division of the Superior Court are not subject to registry on the Sex Offender Registry.

For minors who are convicted in the Criminal Division of Superior Court of a crime which requires them to register on the Sex Offender Registry their name does not go on the registry until they have attained the age of 18.

Under the proposed language of the bill, the following scenario could evolve:

Two Vermont siblings are placed in DCF custody as the result of the older child who is 14 inappropriately sexually touching the younger sibling who is almost 12 years old at the time. The older child is adjudicated delinquent based on the event. Subsequently, at the age of 16 the older sibling is placed in a residential program in MA.

Because MA requires that any individual that moves into the state and has previously been adjudicated a delinquent juvenile on or after August 1, 1981 for conduct such as that that was engaged in by the older sibling is required to register on its Sex Offender Registry the older youth's name is placed on the Massachusetts Sex Offender Registry .

The older youth remains in the program in MA until just before reaching their 18th birthday and returns to Vermont. Under present Vermont law the youth, when they have their 18th birthday, would be required to register on the Vermont Sex Offender Registry. 13 V.S.A.§ 5401 (10) (D).

"(D) A person 18 years of age or older who resides in this State, other than in a correctional facility, and who is currently or, prior to taking up residence within this State, was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old."

So, under the proposed legislation the recently returned 18 year old would not be able to apply for expungement from the child protection registry even though present law, 33 V.S.A.§4916d would allow them seek expungement. (See below). They could not apply for expungement for as long as they were required to have their name be on the Vermont Sex Offender Registry.

33 V.S.A. § 4916d. Automatic expungement of Registry records

Registry entries concerning a person who was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has had no additional substantiated Registry entries**. A person substantiated for behavior occurring before the person reached 18 years of age and whose name 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 in accordance with section 4916c of this title. (Added 2007, No. 77, § 1, eff. June 7, 2007; amended 2007, No. 168 (Adj. Sess.), § 12.)** (Emphasis added).

Prior to 2007 there was no statute which afforded anyone whose name was placed on what was then called the Child Abuse-Neglect Registry and is now the Child Protection Registry the right to apply for expungement. At that time there was lengthy discussion in the Legislature about Vermont law not having any mechanism for expungement and how that violated basic due process. At that time the Legislature carefully crafted the present statutory criteria for expungement petitions, and purposefully added the specific statute above which takes into consideration the potential harm to youth of inclusion on the registry and the principles of adolescent development.

The proposed legislation would deprive a young person as described above of due process and undo the important legislative changes that were made less than seven years ago.

Secondly, the addition of language to §4916c found in Section 3 of the bill that would allow "the nature or number of substantiation alone (to) be sufficient evidence to deny the petition appears unconstitutional on the grounds that it would be "void for vagueness." There is no criteria which would allow the fact-finder to determine what number of substantiations alone would be sufficient to deny a petition. Likewise, the "nature" of the substantiations is open to wide interpretation and undefined. The language offers no insight to either the petitioner nor the fact-finder as to what is required. It is one thing for the nature or number to be one of many factors that are considered in granting or denying a petition for expungement but singling these two undefined terms as sufficient grounds to deny a petition is unreasonable and void for vagueness.