

Vermont's Child Protection Registry



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JANUARY 2014

Adam Walsh Child Protection and Safety Act

2006

- The act was named after a six year old boy who was kidnapped and murdered.
- U.S. Health and Human Services was directed to conduct a feasibility study about the creation of a national child abuse registry.
- The Act did not specify a purpose for a child abuse registry. The purpose was inferred: to protect children.
- Registry would be limited to the perpetrator's name and nature of maltreatment.
- Access to the Registry would be limited to agencies whose mission is to protect children.

Registry Overview



- 45 States have child abuse registries:
 - To inform child abuse investigations.
 - To conduct pre-employment background checks for people who work with vulnerable populations including foster and adoptive parents.
- Vermont Child Protection Registry established in statute in 2007.

Vermont Registries



- Child Protection Registry: non-public database of persons substantiated for child abuse or neglect dating back to 1992.
- Adult Protective Services Registry: non-public database of persons substantiated for abuse or neglect of vulnerable adults.
- Sex Offender Registry: public database of persons with convictions for sexual offenses.

Vermont Child Protection Registry Record

VSA Title 33 Chapter 49, Sec. 4916 (4b)



- Each registry record contains the substantiated person's name, date and nature of the finding, at least one personal identifier and a designated child protection level.

Child Protection Levels



- VSA Title 33 Chapter 49 Section 4911
 - Establish a tiered child protection registry that balances the need to protect children and potential employment consequences.
- Administrative Rule 8005
 - Child protection level 1:
 - substantial child endangerment
 - Sexual abuse, abandonment, child fatality, malicious punishment, or serious physical injury
 - Court adjudications for related conduct.
 - There is a high risk of future harm based on the assessment of risk
 - Child protection level 2
 - all other substantiations

Impact of a Registry Record

VSA Title 33 Chap. 49 sec.4919 (3)

- Background checks
- May affect a person's ability to become:
 - a foster or adoptive parent or a child care provider.
 - An employee of facilities that serve children, youth or vulnerable adults.
 - Volunteer, contractor, employee or grantee who provides care, treatment or transportation to children, youth or vulnerable adults.

Reasonable Person Standard

VSA Title 33 Chapter 49, section 4912 (10)

- Substantiation determinations:
 - A report is substantiated if, following an investigation, DCF determines that it is based on accurate and reliable information that would lead a reasonable person to believe the child was abused or neglected.
- Registry reviews of DCF substantiation decisions and expungement petitions are based on the Reasonable Person Standard.

Right to Challenge Substantiations

VSA Title 33 Chap. 49 sec. 4916a

- DCF notifies individual in writing of its intent to place his / her name in the registry and includes information about the Registry and how to appeal.
- Individual has 14 days to request an appeal
- An appeal (review) meeting is scheduled with an independent reviewer.
- The review procedures, ways to submit information, and copies of redacted investigative materials are sent to the individual.

Appeal Outcomes

VSA Title 33 Chap. 49 sec.4916a(g)

- Uphold DCF decision to substantiate
 - Person is notified in writing of the decision and his/her right to appeal to the Human Services Board.
- Overturn DCF decision to substantiate.
 - Person's name is not entered into the registry.
- Re-open and direct DCF to investigate any new information obtained or information not previously considered that could lead to an overturn decision.

Appeals to the Human Services Board

VSA Title 33 Chap. 49 sec. 4916b

- The independent reviewer's decision letter contains information about how to appeal their decision to the Human Services Board.
- Human Services Board Hearings
 - Based on the evidence presented, "de novo"
 - Burden is on DCF to prove the facts by a preponderance of evidence
 - Vt. Rules of Evidence apply

2012 Appeal Outcome Data



- Total number of cases: 267
- Uphold 83.1%
- Overturn 16.9%
- Re-open 9%

Petition for Expungement

VSA Title 33 Chap. 49 sec. 4916c

- All persons are eligible for expungement
- Eligibility date for expungement is based on child protection level.
 - Tier 1 in seven (7) years
 - Tier 2 in three (3) years
- Petitioner has the burden to show he/ she is no longer a risk to the safety or well-being of children.
- Focus is on what has occurred since the substantiation.

Six Statutory Factors weighed VSA Title 33 Chap. 49, sec. 4916c (b)

Factors weighed include, where applicable, those listed in statute:

1. The nature of the substantiation
2. The number of substantiations
3. The amount of time that has passed since a substantiation
4. The circumstances of the substantiation and whether a similar incident is likely to occur
5. Activities that reflect on changed behavior or circumstances
6. References that attest to moral character

Expungement Outcomes



- **Grant**
 - The person's name is removed from the Child Protection Registry
- **Deny**
 - DCF's written decision sent to grievant and appeal information provided
 - The person's name remains in the registry
 - The person is eligible to petition again in three (3) years

Appeals to the Human Services Board

VSA Title 33 Chap. 49 sec. 4916c(e)

- Standard of review by HSB is “abuse of discretion”
 - The underlying substantiation is presumed to be correct and valid.
 - Decision to deny expungement cannot be arbitrary or capricious.
 - Rationale provided as to how the decision was reached.

2012 Expungement Data



- Total number of cases: 120
- Grant 60%
- Deny 40%

Rationale for Changes to VSA Title 33

Chapters 49 and 69

- Persons listed on Sex Offender Registry for a related offense are not eligible for expungement.
 - CPR impact on employment is moot given status on Sex Offender Registry
 - Resources used
- Nature or number of substantiations alone may be sufficient to deny expungement.
 - Examples: child fatality and aggravated sexual assault with no related criminal conviction
 - HSB remanded cases where there were repeated sexual abuse substantiations
 - ✖ Successfully treated persons learn to avoid high risk situations and the registry acts as a societal support
- Chapter 69, section 6911 Records of Abuse, Neglect and Exploitation
 - Disclose registry information to DCF in expungement considerations
 - Disclose registry record to DCF for the purposes of child protection
 - ✖ The presence of an APS substantiation may indicate the petitioner for expungement is still a risk to the safety or well-being of children
 - ✖ To have more accurate or complete risk assessments, DCF should know if the person has exhibited similar behavior with vulnerable adults