

1 H.680

2 Introduced by Representative Pugh of South Burlington

3 Referred to Committee on

4 Date:

5 Subject: Human services; child welfare services; child abuse and neglect

6 Statement of purpose of bill as introduced: This bill proposes to permit the
7 Department for Children and Families (DCF) to consult the Vulnerable Adult
8 Protection Registry when considering an application for expungement; to
9 permit DCF to deny an application for expungement solely on the number or
10 severity of substantiations; and to foreclose the right to appeal DCF decisions
11 to the Human Services Board concerning whether an assessment or
12 investigation was undertaken and the child protection level assigned to a
13 substantiated case.

14 An act relating to records and appeals of child abuse and neglect decisions
15 made by the Department for Children and Families

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 33 V.S.A. § 4915 is amended to read:

18 § 4915. ASSESSMENT AND INVESTIGATION

19 (a) Upon receipt of a report of abuse or neglect, the Department shall
20 promptly determine whether it constitutes an allegation of child abuse or

1 neglect as defined in section 4912 of this title. The Department shall respond
2 to reports of alleged neglect or abuse that occurred in Vermont and to
3 out-of-state conduct when the child is a resident of or is present in Vermont.

4 (b) If the report is accepted as a valid allegation of abuse or neglect, the
5 Department shall determine whether to conduct an assessment as provided for
6 in section 4915a of this title or to conduct an investigation as provided for in
7 section 4915b of this title. The Department shall begin either an assessment or
8 an investigation within 72 hours after the receipt of a report made pursuant to
9 section 4914 of this title, provided that it has sufficient information to proceed.
10 The Commissioner may waive the 72-hour requirement only when necessary
11 to locate the child who is the subject of the allegation or to ensure the safety of
12 the child or social worker.

13 (c) The decision to conduct an assessment shall include consideration of
14 the following factors:

- 15 (1) the nature of the conduct and the extent of the child's injury, if any;
16 (2) the accused person's prior history of child abuse or neglect, or lack
17 thereof; and
18 (3) the accused person's willingness or lack thereof to accept
19 responsibility for the conduct and cooperate in remediation.

20 (d) The Department shall conduct an investigation when an accepted report
21 involves allegations indicating substantial child endangerment. ~~For purposes~~

1 of As used in this section, “substantial child endangerment” includes conduct
2 by an adult involving or resulting in sexual abuse, and conduct by a person
3 responsible for a child’s welfare involving or resulting in abandonment, child
4 fatality, malicious punishment, or abuse or neglect that causes serious physical
5 injury. The Department may conduct an investigation of any report.

6 (e) The Department shall begin an immediate investigation if, at any time
7 during an assessment, it appears that an investigation is appropriate.

8 (f) The Department may collaborate with child protection, law
9 enforcement, and other departments and agencies in Vermont and other
10 jurisdictions to evaluate risk to a child and to determine the service needs of
11 the child and family. The Department may enter into reciprocal agreements
12 with other jurisdictions to further the purposes of this subchapter.

13 Sec. 2. 33 V.S.A. § 4916 is amended to read:

14 § 4916. CHILD PROTECTION REGISTRY

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

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

4 (A) Reviewing the investigation file.

5 (B) Making written findings in consideration of:

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

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

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

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

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

1 (c) The Commissioner shall adopt rules to permit use of the Registry
2 records as authorized by this subchapter while preserving confidentiality of the
3 Registry and other Department records related to abuse and neglect.

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

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

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

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

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

17 (e) The Commissioner shall develop rules for the implementation of a
18 system of Child Protection Registry levels for substantiated cases. The rules
19 shall address:

20 (1) the length of time a person's name appears on the Registry;

21 (2) when and how names are expunged from the Registry;

1 (3) whether the person is a juvenile or an adult;

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

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

6 (f) [Repealed.]

7 Sec. 3. 33 V.S.A. § 4916c is amended to read:

8 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

9 (a)(1) ~~A~~ Except as provided in this subdivision, a person whose name has
10 been placed on the Registry prior to July 1, 2009 and has been listed on the
11 Registry for at least three years may file a written request with the
12 Commissioner, seeking a review for the purpose of expunging an individual
13 Registry record. A person whose name has been placed on the Registry on or
14 after July 1, 2009 and has been listed on the Registry for at least seven years
15 may file a written request with the Commissioner seeking a review for the
16 purpose of expunging an individual registry record. The Commissioner shall
17 grant a review upon request.

18 (2) A person who is required to register as a sex offender pursuant to
19 13 V.S.A. chapter 167, subchapter 3 for an offense involving a child or
20 vulnerable adult shall not be eligible to petition for expungement of his or her

1 Registry record during the period in which the person is subject to sex offender
2 Registry requirements.

3 (b)(1) The person shall have the burden of proving that a reasonable person
4 would believe that he or she no longer presents a risk to the safety or
5 well-being of children. ~~Factors to be considered by the~~

6 (2) The Commissioner shall ~~include~~ consider the following factors in
7 making his or her determination:

8 ~~(1)(A)~~ (A) The nature of the substantiation that resulted in the person's
9 name being placed on the Registry.

10 ~~(2)(B)~~ (B) The number of substantiations, if more than one.

11 ~~(3)(C)~~ (C) The amount of time that has elapsed since the substantiation.

12 ~~(4)(D)~~ (D) The circumstances of the substantiation that would indicate
13 whether a similar incident would be likely to occur.

14 ~~(5)(E)~~ (E) Any activities that would reflect upon the person's changed
15 behavior or circumstances, such as therapy, employment, or education.

16 ~~(6)(F)~~ (F) References that attest to the person's good moral character.

17 (3) The nature or number of substantiations alone may be sufficient
18 evidence to deny the petition.

19 (c) At the review, the person who requested the review shall be provided
20 with the opportunity to present any evidence or other information, including

1 witnesses, that supports his or her request for expungement. Upon the person's
2 request, the review may be held by teleconference.

3 (d) A person may seek a review under this section no more than once every
4 36 months.

5 (e) Within 30 days of the date on which the Commissioner mailed notice of
6 the decision pursuant to this section, a person may appeal the decision to the
7 Human Services Board. The person shall be prohibited from challenging his or
8 her substantiation at such hearing, and the sole issue before the ~~board~~ Board
9 shall be whether the Commissioner abused his or her discretion in denial of the
10 petition for expungement. The hearing shall be on the record below, and
11 determinations of credibility of witnesses made by the Commissioner shall be
12 given deference by the Board.

13 (f) The Department shall take steps to provide reasonable notice to persons
14 on the Registry of their right to seek an expungement under this section.
15 Actual notice is not required. Reasonable steps may include activities such as
16 the production of an informative fact sheet about the expungement process,
17 posting of such information on the Department website, and other approaches
18 typically taken by the Department to inform the public about the Department's
19 activities and policies. The Department shall send notice of the expungement
20 process to any person listed on the Registry for whom a Registry check has
21 been requested.

1 Sec. 4. 33 V.S.A. § 6911 is amended to read:

2 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

3 (a) Information obtained through reports and investigations, including the
4 identity of the reporter, shall remain confidential and shall not be released
5 absent a court order, except as follows:

6 (1) The investigative report shall be disclosed only to: the
7 Commissioner or person designated to receive such records; persons assigned
8 by the Commissioner to investigate reports; the person reported to have
9 abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his
10 or her representative; the Office of Professional Regulation when deemed
11 appropriate by the Commissioner; the Secretary of Education when deemed
12 appropriate by the Commissioner; a law enforcement agency; ~~the state's~~
13 ~~attorney~~ State's Attorney, or the Office of the Attorney General, when the
14 Department believes there may be grounds for criminal prosecution or civil
15 enforcement action, or in the course of a criminal or a civil investigation.
16 When disclosing information pursuant to this subdivision, reasonable efforts
17 shall be made to limit the information to the minimum necessary to accomplish
18 the intended purpose of the disclosure, and no other information, including the
19 identity of the reporter, shall be released absent a court order.

20 (2) Relevant information may be disclosed to the Secretary of Human
21 Services, or the Secretary's designee, for the purpose of remediating or

1 preventing abuse, neglect, or exploitation, to assist the Agency in its
2 monitoring and oversight responsibilities, and in the course of a relief from
3 abuse proceeding, guardianship proceeding, or any other court proceeding
4 when the Commissioner deems it necessary to protect the victim, and the
5 victim or his or her representative consents to the disclosure. When disclosing
6 information pursuant to this subdivision, reasonable efforts shall be made to
7 limit the information to the minimum necessary to accomplish the intended
8 purpose of the disclosure, and no other information, including the identity of
9 the reporter, shall be released absent a court order.

10 (b) The Commissioner shall maintain a Registry which shall contain the
11 following information: the names of all the individuals found on the basis of a
12 substantiated report to have abused, neglected or exploited a vulnerable adult;
13 the date of the finding; and the nature of the finding. In addition, the
14 Commissioner shall require that, aside from a person's name, at least one other
15 personal identifier is listed in the Registry to prevent the possibility of
16 misidentification.

17 (c) The Commissioner or the Commissioner's designee may disclose
18 ~~registry~~ Registry information only to:

- 19 (1) the ~~state's attorney~~ State's Attorney or the Attorney General;
- 20 (2) the public as required by the Nursing Home Reform Act of 1986 and
21 regulations thereunder;

1 (3) an employer if such information is used to determine whether to hire
2 or retain a specific individual providing care, custody, treatment,
3 transportation, or supervision of children or vulnerable adults. “Employer,” as
4 used in this section, means a person or organization who employs or contracts
5 with one or more individuals to care for or provide transportation services to
6 children or vulnerable adults, on either a paid or volunteer basis. The
7 employer may submit a request concerning a current employee, volunteer,
8 grantee, or contractor or an individual to whom the employer has given a
9 conditional offer of a contract, volunteer position, or employment. The request
10 shall be accompanied by a release signed by the current or prospective
11 employee, volunteer, grantee, or contractor. If that individual has a record of a
12 substantiated report, the Commissioner shall provide the Registry information
13 to the employer;

14 (4) a person or organization serving vulnerable adults by assisting with
15 employer functions, offering, providing, or arranging for home sharing, or
16 providing personal care services, developmental services, or mental health
17 services for vulnerable adults. The person or organization may submit a
18 request concerning an individual who has applied to provide such services or
19 an individual who is already so engaged. The request shall be in writing and
20 shall be accompanied by a release from the person applying for or already

1 providing such services. If the person has a record of a substantiated report,
2 the Commissioner shall provide the Registry information;

3 (5) the Commissioner for Children and Families, or the Commissioner's
4 designee, for purposes related to:

5 (A) the licensing or registration of facilities and individuals regulated
6 by the Department for Children and Families; and

7 (B) an administrative review conducted pursuant to sections
8 4901–4923 of this title;

9 (6) the Commissioner of Health, or the Commissioner's designee, for
10 purposes related to oversight and monitoring of persons who are served by or
11 compensated with funds provided by the Department of Health, including
12 persons to whom a conditional offer of employment has been made;

13 (7) upon request or when relevant to other states' adult protective
14 services offices;

15 (8) the Board of Medical Practice for the purpose of evaluating an
16 applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353; and

17 (9) the Secretary of Education or the Secretary's designee, for purposes
18 related to the licensing of professional educators pursuant to 16 V.S.A.
19 chapter 5, subchapter 4 and chapter 51.

1 (d) Any records created by the Department pursuant to this subchapter may
2 be disclosed to the Commissioner or his or her designee for purposes of child
3 protection.

4 (e) An employer providing transportation services to children or vulnerable
5 adults may disclose Registry records obtained pursuant to subdivision (c)(3) of
6 this section to the Agency of Human Services or its designee for the sole
7 purpose of auditing the records to ensure compliance with this chapter. An
8 employer shall provide such records at the request of the ~~agency~~ Agency or its
9 designee. Only Registry records regarding individuals who provide direct
10 transportation services or otherwise have direct contact with children or
11 vulnerable adults may be disclosed.

12 ~~(e)~~(f) A person may, at any time, apply to the Human Services Board for
13 relief if he or she has reasonable cause to believe that the contents of the
14 Registry or investigative records are being misused.

15 ~~(f)~~(g) A person may at any time apply to the Department for expungement
16 of his or her name from the Registry. The petitioner shall have the burden of
17 showing why his or her name should be expunged from the Registry.

18 ~~(g)~~(h) Any person who violates this section shall be fined not more than
19 \$500.00.

20 ~~(h)~~(i) Volunteers shall be considered employees for purposes of this
21 section.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2014.