

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No. 680
3 entitled “An act relating to records and appeals of child abuse and neglect
4 decisions made by the Department for Children and Families” respectfully
5 reports that it has considered the same and recommends that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

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

9 § 4915. ASSESSMENT AND INVESTIGATION

10 (a) Upon receipt of a report of abuse or neglect, the Department shall
11 promptly determine whether it constitutes an allegation of child abuse or
12 neglect as defined in section 4912 of this title. The Department shall respond
13 to reports of alleged neglect or abuse that occurred in Vermont and to
14 out-of-state conduct when the child is a resident of or is present in Vermont.

15 (b) If the report is accepted as a valid allegation of abuse or neglect, the
16 Department shall determine whether to conduct an assessment as provided for
17 in section 4915a of this title or to conduct an investigation as provided for in
18 section 4915b of this title. The Department shall begin either an assessment or
19 an investigation within 72 hours after the receipt of a report made pursuant to
20 section 4914 of this title, provided that it has sufficient information to proceed.
21 The Commissioner may waive the 72-hour requirement only when necessary

1 to locate the child who is the subject of the allegation or to ensure the safety of
2 the child or social worker.

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

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

6 (2) the accused person’s prior history of child abuse or neglect, or lack
7 thereof; and

8 (3) the accused person’s willingness or lack thereof to accept
9 responsibility for the conduct and cooperate in remediation.

10 (d) The Department shall conduct an investigation when an accepted report
11 involves allegations indicating substantial child endangerment. ~~For purposes~~
12 ~~of~~ As used in this section, “substantial child endangerment” includes conduct
13 by an adult involving or resulting in sexual abuse, and conduct by a person
14 responsible for a child’s welfare involving or resulting in abandonment, child
15 fatality, malicious punishment, or abuse or neglect that causes serious physical
16 injury. The Department may conduct an investigation of any report.

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

19 (f) The Department may collaborate with child protection, law
20 enforcement, and other departments and agencies in Vermont and other
21 jurisdictions to evaluate risk to a child and to determine the service needs of

1 the child and family. The Department may enter into reciprocal agreements
2 with other jurisdictions to further the purposes of this subchapter.

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

4 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

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

14 (2) A person who is required to register as a sex offender pursuant to
15 13 V.S.A. chapter 167, subchapter 3 for an offense shall not be eligible to
16 petition for expungement of his or her Registry record during the period in
17 which the person is subject to sex offender Registry requirements.

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

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

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

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

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

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

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

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

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

14 (c) At the review, the person who requested the review shall be provided
15 with the opportunity to present any evidence or other information, including
16 witnesses, that supports his or her request for expungement. Upon the person's
17 request, the review may be held by teleconference.

18 (d) A person may seek a review under this section no more than once every
19 36 months.

20 (e) Within 30 days of the date on which the Commissioner mailed notice of
21 the decision pursuant to this section, a person may appeal the decision to the

1 Human Services Board. The person shall be prohibited from challenging his or
2 her substantiation at such hearing, and the sole issue before the ~~board~~ Board
3 shall be whether the Commissioner abused his or her discretion in denial of the
4 petition for expungement. The hearing shall be on the record below, and
5 determinations of credibility of witnesses made by the Commissioner shall be
6 given deference by the Board.

7 (f) The Department shall take steps to provide reasonable notice to persons
8 on the Registry of their right to seek an expungement under this section.

9 Actual notice is not required. Reasonable steps may include activities such as
10 the production of an informative fact sheet about the expungement process,
11 posting of such information on the Department website, and other approaches
12 typically taken by the Department to inform the public about the Department's
13 activities and policies. The Department shall send notice of the expungement
14 process to any person listed on the Registry for whom a Registry check has
15 been requested.

16 Sec. 3. 33 V.S.A. § 6911 is amended to read:

17 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

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

1 (1) The investigative report shall be disclosed only to: the
2 Commissioner or person designated to receive such records; persons assigned
3 by the Commissioner to investigate reports; the person reported to have
4 abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his
5 or her representative; the Office of Professional Regulation when deemed
6 appropriate by the Commissioner; the Secretary of Education when deemed
7 appropriate by the Commissioner; the Commissioner for Children and
8 Families, or the Commissioner’s designee, for purposes of review of
9 expungement petitions filed pursuant to section 4916c of this title; a law
10 enforcement agency; ~~the state’s attorney~~ State’s Attorney, or the Office of the
11 Attorney General, when the Department believes there may be grounds for
12 criminal prosecution or civil enforcement action, or in the course of a criminal
13 or a civil investigation. When disclosing information pursuant to this
14 subdivision, reasonable efforts shall be made to limit the information to the
15 minimum necessary to accomplish the intended purpose of the disclosure, and
16 no other information, including the identity of the reporter, shall be released
17 absent a court order.

18 (2) Relevant information may be disclosed to the Secretary of Human
19 Services, or the Secretary’s designee, for the purpose of remediating or
20 preventing abuse, neglect, or exploitation, to assist the Agency in its
21 monitoring and oversight responsibilities, and in the course of a relief from

1 abuse proceeding, guardianship proceeding, or any other court proceeding
2 when the Commissioner deems it necessary to protect the victim, and the
3 victim or his or her representative consents to the disclosure. When disclosing
4 information pursuant to this subdivision, reasonable efforts shall be made to
5 limit the information to the minimum necessary to accomplish the intended
6 purpose of the disclosure, and no other information, including the identity of
7 the reporter, shall be released absent a court order.

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

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

- 17 (1) the ~~state's attorney~~ State's Attorney or the Attorney General;
- 18 (2) the public as required by the Nursing Home Reform Act of 1986 and
19 regulations thereunder;
- 20 (3) an employer if such information is used to determine whether to hire
21 or retain a specific individual providing care, custody, treatment,

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

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

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

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

5 (B) child protection pursuant to sections 4901–4923 of this title;

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

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

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

14 (9) the Secretary of Education or the Secretary's designee, for purposes
15 related to the licensing of professional educators pursuant to 16 V.S.A.

16 chapter 5, subchapter 4 and chapter 51.

17 (d) An employer providing transportation services to children or
18 vulnerable adults may disclose Registry records obtained pursuant to
19 subdivision (c)(3) of this section to the Agency of Human Services or its
20 designee for the sole purpose of auditing the records to ensure compliance with
21 this chapter. An employer shall provide such records at the request of the

1 ~~agency~~ Agency or its designee. Only Registry records regarding individuals
2 who provide direct transportation services or otherwise have direct contact
3 with children or vulnerable adults may be disclosed.

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

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

10 (g) Any person who violates this section shall be fined not more than
11 \$500.00.

12 (h) Volunteers shall be considered employees for purposes of this section.

13 Sec. 4. EFFECTIVE DATE

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

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2 (Committee vote: _____)

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Representative [surname]

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FOR THE COMMITTEE