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H.399

Introduced by Representative Pugh of South Burlington

Referred to Committee on

Date:

Subject: Human Services; DCF; Registry Review Unit

Statement of purpose of bill as introduced: This bill proposes to make procedural changes to the Department for Children and Families' Registry Review Unit.

An act relating to the Department for Children and Families' Registry Review Unit

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

~~Sec. 1. 33 V.S.A. § 4916a is amended to read.~~

~~§ 4916a. CHALLENGING PLACEMENT ON THE REGISTRY~~

~~* * *~~

~~(c)(1) A person alleged to have abused or neglected a child may seek an administrative review of the Department's intention to place the person's name on the Registry by notifying the Department within 14 days of the date the Department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The Commissioner may grant an extension past the~~

1 ~~14 day period for good cause, not to exceed 28 days after the Department has~~
2 mailed notice of the right to review.

3 (2) The administrative review may be stayed upon request of the person
4 alleged to have committed abuse or neglect if there is a related case pending in
5 the Criminal or Family Division of the Superior Court which arose out of the
6 same incident of abuse or neglect for which the person was substantiated.

7 During the period the review is stayed, the person's name shall be placed on
8 the Registry. Upon resolution of the Superior Court criminal or family case,
9 the person may exercise his or her right to review under this section by
10 notifying the Department within 30 days of the resolution of the court case. If
11 the person fails to notify the Department within 30 days, the Department's
12 decision shall become final and no further review under this subsection is
13 required.

14 (d) The Department shall hold an administrative review conference within
15 35 days of receipt of the request for review. At least 10 days prior to the
16 administrative review conference, the Department shall provide to the person
17 requesting review a copy of the redacted investigation file, notice of time and
18 place of the conference, and conference procedures, including information that
19 may be submitted and mechanisms for providing testimony information. There
20 shall be no subpoena power to compel witnesses to attend a Registry review
21 conference. The Department shall also provide to the person those redacted

1 ~~investigation files that relate to prior investigations that the Department has~~
2 relied upon to make its substantiation determination in the case in which a
3 review has been requested.

4 * * *

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

6 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

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

16 ~~(2) A person who is required to register as a sex offender on the State's~~
17 ~~Sex Offender Registry shall not be eligible to petition for expungement of his~~
18 ~~or her Registry record until the person is no longer subject to Sex Offender~~
19 ~~Registry requirements.~~

20 (b)(1) The person shall have the burden of proving that a reasonable person
21 would believe that he or she no longer presents a risk to the safety or

1 ~~well being of children. Factors to be considered by the Commissioner shall~~

2 ~~include:~~

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

5 ~~(1)(A) the nature of the substantiation that resulted in the person's~~
6 ~~name being placed on the Registry;~~

7 ~~(2)(B) the number of substantiations, if more than one;~~

8 ~~(3)(C) the amount of time that has elapsed since the substantiation;~~

9 ~~(4)(D) the circumstances of the substantiation that would indicate~~
10 ~~whether a similar incident would be likely to occur;~~

11 ~~(5)(E) any activities that would reflect upon the person's changed~~
12 ~~behavior or circumstances, such as therapy, employment, or education; and~~

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

14 ~~(3) The Commissioner may deny a petition for expungement based~~
15 ~~solely on subdivision (2)(A) or (2)(B) of this subsection.~~

16 * * *

17 Sec. 3. EFFECTIVE DATE

18 ~~This act shall take effect on passage.~~

Sec. 1. 33 V.S.A. § 4916a is amended to read:

§ 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

* * *

(c)(1) A person alleged to have abused or neglected a child may seek an administrative review of the Department's intention to place the person's name on the Registry by notifying the Department within 14 days of the date the Department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The Commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the Department has mailed notice of the right to review.

(2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect if there is a related case pending in the Criminal or Family Division of the Superior Court which arose out of the same incident of abuse or neglect for which the person was substantiated. During the period the review is stayed, the person's name shall be placed on the Registry. Upon resolution of the Superior Court criminal or family case, the person may exercise his or her right to review under this section by notifying the Department within 30 days of the resolution of the court case, in writing within 30 days after the related court case, including any appeals, has been fully adjudicated. If the person fails to notify the Department within 30 days, the Department's decision shall become final and no further review under this subsection is required.

(d) The Department shall hold an administrative review conference within 35 days of receipt of the request for review. At least 10 days prior to the

administrative review conference, the Department shall provide to the person requesting review a copy of the redacted investigation file, notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing ~~testimony~~ information. There shall be no subpoena power to compel witnesses to attend a Registry review conference. The Department shall also provide to the person those redacted investigation files that relate to prior investigations that the Department has relied upon to make its substantiation determination in the case in which a review has been requested.

* * *

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

§ 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

(a)(1) A Except as provided in this subdivision, 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. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record. The Commissioner shall grant a review upon request.

(2) A person who is required to register as a sex offender on the State's Sex Offender Registry shall not be eligible to petition for expungement of his or her Registry record until the person is no longer subject to Sex Offender Registry requirements.

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

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

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

~~(2)(B)~~ (B) the number of substantiations, ~~if more than one;~~

~~(3)(C)~~ (C) the amount of time that has elapsed since the substantiation;

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

~~(5)(E)~~ (E) any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment, or education; ~~and~~

~~(6)(F)~~ (F) references that attest to the person's good moral character; and

(G) any other information that the Commissioner deems relevant.

(3) The Commissioner may deny a petition for expungement based solely on subdivision (2)(A) or (2)(B) of this subsection.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.