

Memorandum

To: Representative Ann Pugh, Chair, House Committee on Human Services
From: Ken Schatz, Commissioner
Date: January 5, 2016
Re: H.399

Thank you for the opportunity to speak with you about H.399. The Department for Children and Families supports this bill and I appreciate the time that you are devoting to issues involving the Department. This bill is one of three House bills pending from last legislative session that affect DCF's child protection work. The other two pending bills are H.398, which has been referred to this Committee and H.400, which has been read and referred to House Judiciary. H.399 is a bill that proposes some procedural changes to the work of the Commissioner's Registry Review Unit (CRRU).

Background Information about CRRU

It may be helpful to you in reviewing the language proposed by H.399 to understand the role of CRRU in DCF, which is two-part, and the procedures that guide its work. CRRU is housed within the Commissioner's office separate and distinct from the Family Services Division.

CRRU Role 1 - Administrative Reviews of Substantiations of Alleged Child Abuse or Neglect

CRRU is the first avenue of review, or appeal, of a substantiation of alleged child abuse or neglect by the Family Services Division (FSD). Once a person has been substantiated, before his or her name is placed on the confidential Child Protection Registry, the person has an opportunity to request a review of the substantiation from CRRU¹. The Child Protection Registry is a confidential database of substantiated persons going back as far as 1992. This 1992 cut off was chosen because it is the year in which DCF (then SRS) first provided written notification of substantiations to individuals. With written permission by the individual, employers may access the Child Protection Registry to determine whether or not to hire a person or allow a person to volunteer in a setting with children or vulnerable adults.

Persons seeking review of a substantiation have 14 days (or up to 28 days for good cause shown) to notify the Department of the request for review. If no administrative review is requested, the Department's decision to substantiate is final and not subject to further appeal unless the person seeks an expungement, as explained below.

The registry review is conducted by an independent reviewer with whom the Department contracts. The reviewer holds a case review conference, usually an in person meeting, with the person requesting review, the grievant. Prior to the conference meeting, the Department provides the grievant with a redacted copy of the investigation file, which includes the intake report, the investigation activities summary and the case determination report that are all redacted to remove identifying information of any person mentioned in the report, including mandated reporters. The Department also provides to the grievant information about conference procedures, including how the grievant may submit documents and other information to the reviewer. At the administrative review conference, the grievant is provided the opportunity to present documents or other information that supports his or her position. The Department has the burden of proving that a reasonable person would believe that the child has been abused or neglected by the grievant. Following the conference, the independent reviewer issues a decision, which can include rejection of the Department's substantiation, acceptance of the Department's substantiation or

¹ In cases involving sexual abuse or serious physical injury, the Commissioner, in his or her sole discretion, may list a substantiated person on the Child Protection Registry pending review.





placement of the substantiation on hold with direction to the Department for further investigation based upon recommendations of the reviewer.

If the reviewer accepts the Department's substantiation, a Child Protection Registry record is made immediately and notice is provided to the grievant of the right to appeal to the Human Services Board. If the reviewer rejects the Department's substantiation, no Child Protection Registry record is made. Per statute, in exceptional circumstances, the Commissioner of DCF may, in his or her sole discretion, reconsider any decision made by a reviewer, though please note that this happens very rarely. A Commissioner's decision that creates a Child Protection Registry record may also be appealed to the Human Services Board.

CRRU Role 2 – Administrative Reviews of Petitions for Expungement from the Child Protection Registry

After a person's name has been placed on the Child Protection Registry, there are opportunities to have his or her name removed from the Registry, or expunged. The timelines for when petitions for expungement may be considered, generally three or seven years after placement on the Registry, depend on the length of time the person's name has been on the Registry as well as the Child Protection Registry risk level assigned by the Department. Requests for expungement are made directly to the Commissioner of DCF.

Similar to the procedure for a substantiation review, the petitioner is provided a conference with an independent reviewer with opportunity to present information and documents supporting the request for expungement. The petitioner has the burden of proving that a reasonable person would believe that he or she is no longer presents a risk to the safety and well-being of children. The independent reviewer issues a recommendation to the Commissioner of DCF based on factors outlined in statute including the nature of the substantiation and any activities that reflect the petitioner's changed behavior or circumstances. The Commissioner of DCF issues the decision on the expungement petition. Decisions denying expungement may be appealed to the Human Services Board and the sole issue before the Board is whether the Commissioner abused his or her discretion in denying the petition for expungement.

Comments on H.399

Proposed Changes to the Procedure of Registry Review Conferences

Section 1 of H.399 provides a procedural mechanism for the Department to "close" a pending substantiation review in certain situations. There are times when a person has a registry review appeal pending and also has a pending court case in the criminal or family division of superior court that arose out of the same incident of alleged abuse or neglect relating to the child abuse substantiation. In those cases, the grievant may request that the registry review case is put on hold, or stayed, until the resolution of the related criminal or family case. The proposed added language to 33 V.S.A. §4916a(c)(2) will allow the Department's substantiation decision to become final and not subject to further appeal in cases when a grievant fails to notify the Department within 30 days of the resolution of the pending related court case.

The amendments proposed by H.399 to 33 V.S.A. §4916a(d) also make clear that there is no right to subpoena witnesses for the registry review conference. Registry review conferences are not evidentiary hearings where witnesses testify. The grievant has the right, as discussed above, to present information and documents to the independent reviewer in support of his or her case. This proposed language makes clear, however, that the grievant does not have the right to compel testimony of the child victim or any other witness at the registry review conference.





Proposed Amendments to the Expungement Process

Section 2 of H.399 provides for amendments to 33 V.S.A. §4916c, which relates to petitions for expungement from the Child Protection Registry. The first proposed amendment in (a)(2) of §4916c provides that a person who is listed on the State's Sex Offender Registry is not eligible to petition for expungement from the Child Protection Registry². The Department supports this proposal, but also recommends that the language be amended to include registration on any state's sex offender registry, not just Vermont's. The premise behind this proposal is that a person listed on a sex offender registry poses a significant risk to the safety or well-being of children. Consideration of petitions for expungement are in-depth and time consuming and it is the Department's position that it should not be expending resources considering petitions for expungement for anyone listed on a sex offender registry who potentially poses a risk to the safety or well-being of children. Once a person is no longer required to be listed on a state sex offender registry and other statutory timeframes have been met, he or she will be eligible to apply for expungement from the Child Protection Registry.

Finally, the proposed amendments to 33 V.S.A. §4916c(b) allow the Commissioner of DCF to deny a petition for expungement based solely on the nature and number of child abuse or neglect substantiations. This language will strengthen the ability of the Department to protect children by ensuring that persons with especially egregious offenses, like the murder of a child, or a large number of past substantiations that document a pervasive chronicity of child maltreatment will not be taken off of the Child Protection Registry. Please note that persons who are denied expungement may apply again in three years at which time the Commissioner may consider other relevant factors, including any changed circumstances and rehabilitation of the petitioner.

Thank you for the opportunity to provide comments and background information in support of this bill.

² Vermont's Sex Offender Registry is a publicly available registry published by the Vermont Crime Information Center.

