

## Memorandum

**To: Members of the House Human Services Committee**  
**From: Ken Schatz, DCF Commissioner**  
**Date: January 15, 2016**  
**Regarding: H.399**

Thank you for the opportunity to speak with you about H.399 last week. This bill plays a crucial part in needed procedural changes to DCF's Registry Review Unit. After learning that the committee was considering language that had been added and later removed from S.9, I appreciate the opportunity to provide our analysis of both sets of language.

There are a number of elements that differ between the two versions. The chart below illustrates the differences between the two sets of language and DCF's recommendations.

<b>S. 9 (as passed the House 2015)</b>	<b>H. 399</b>	<b>DCF Comments and Recommendations</b>
No equivalent language	§4916a(c)(2) ...Upon resolution of the Superior court criminal or family case, the person may exercise his or her right to review under this section <u>by notifying the department within 30 days of the resolution of the court case. If the person fails to notify the Department t within 30 days, the Department's decision shall become final and no further review under this subsection is required.</u>	DCF recommends that the language proposed in H.399 be included in the bill.  As discussed in our memo last week, this added language will allow the Department's substantiation decision to become final in cases when a grievant fails to notify the Department of the resolution of the pending related court case.
No equivalent language	§4916a(d) ...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 <del>testimony</del> <u>information. There shall be no subpoena power to compel witnesses to attend a Registry review conference. ***</u>	DCF recommends that the language from H.399 be included in the bill.  Registry review conferences are not evidentiary hearings where witnesses testify. This language makes clear that the grievant does not have the right to compel testimony of the child victim or any other witness.

<b>S. 9 (as passed the House 2015)</b>	<b>H. 399</b>	<b>DCF Comments and Recommendations</b>
<p>§4916c(2)  <u>A person who is required to register as a sex offender on a state’s sex offender registry shall not be eligible to petition for expungement of his or her Registry record during the period in which the person is subject to sex offender registry requirements.</u></p>	<p>§4916c(a)(2)  <u>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.</u></p>	<p>The major difference between the S.9 language and the H.399 language is that is the H.399 language is limited to individuals listed just on Vermont’s sex offender registry. The S.9 language was considerably broader and included individuals listed on any state’s sex offender registry.</p> <p>DCF recommends a third alternative that addresses the concerns that juveniles on another state’s sex offender registry might be affected by this law (Vermont does not place juveniles on the State’s sex offender registry, though other states do).</p> <p>DCF recommended language:</p> <p><u>A person who is required to register as a sex offender on a state’s sex offender registry for an offense that would also require registration on Vermont’s sex offender registry shall not be eligible to petition for expungement of his or her Registry record during the period in which the person is subject to sex offender registry requirements.</u></p>

<b>S. 9 (as passed the House 2015)</b>	<b>H. 399</b>	<b>DCF Comments and Recommendations</b>
<p>§4916c(b)(2)  <del>Factors to be considered by the</del>  <u>The Commissioner shall include</u>  <u>consider the following factors in</u>  <u>making his or her determination:</u></p> <p><del>(1)(A)</del> the nature of the substantiation that resulted in the person’s name being placed on the registry;  <del>(2)(B)</del> the number of substantiations; <del>if more than one</del>  <del>(3)(C)</del> the amount of time that has elapsed since the substantiations;  <del>(4)(D)</del> the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;  <del>(5)(E)</del> any activities that would reflect upon the person’s change behavior or circumstance, such as therapy, employment, or education; <del>and</del>  <del>(6)(F)</del> references that attest to the person’s good moral character; <u>and</u>  <u>(G) any other information that the Commissioner deems relevant.</u></p>	<p>§4916c(b)(2)  <del>...Factors to be considered by the</del>  <del>Commissioner shall include:</del></p> <p><u>(2) The Commissioner shall consider the following factors in making his or her determination</u></p> <p><del>(1)(A)</del> the nature of the substantiation that resulted in the person’s name being placed on the registry;  <del>(2)(B)</del> the number of substantiations, if more than one  <del>(3)(C)</del> the amount of time that has elapsed since the substantiations;  <del>(4)(D)</del> the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;  <del>(5)(E)</del> any activities that would reflect upon the person’s change behavior or circumstance, such as therapy, employment, or education; and  <del>(6)(F)</del> references that attest to the person’s good moral character;</p> <p><u>(3) The Commissioner may deny a petition for expungement based solely on subdivision (2) (A) or (2) (B) of this subsection.</u></p>	<p>It is important to the protection of children to be clear that the Commissioner’s decision-making authority allows him or her to deny a petition for expungement based solely on the nature or number of substantiations in very serious child abuse cases and elevate the importance of these two considerations over the other factors.</p> <p>Therefore, DCF recommends combining the language in H.399 with two additions from the S.9 language:</p> <ul style="list-style-type: none"> <li>• striking “if more than one” in §4916c(b)(2)(B).</li> <li>• adding §4916c(b)(2)(G)</li> </ul> <p>The DCF proposed language is:</p> <p>§4916c(b)(2)  <del>...Factors to be considered by the</del>  <del>Commissioner shall include:</del></p> <p><u>(2) The Commissioner shall consider the following factors in making his or her determination</u></p> <p><del>(1)(A)</del> the nature of the substantiation that resulted in the person’s name being placed on the registry;  <del>(2)(B)</del> the number of substantiations, <del>if more than one</del>  <del>(3)(C)</del> the amount of time that has elapsed since the substantiations;  <del>(4)(D)</del> the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;  <del>(5)(E)</del> any activities that would reflect upon the person’s change behavior or circumstance, such as therapy, employment, or education; <del>and</del>  <del>(6)(F)</del> references that attest to the person’s good moral character; <u>and</u>  <u>(G) any other information that the Commissioner deems relevant.</u></p> <p><u>(3) The Commissioner may deny a petition for expungement based solely on subdivision (2) (A) or (2) (B) of this subsection.</u></p>