

1 H.340

2 Introduced by Representatives Pugh of South Burlington and Grad of

3 Moretown

4 Referred to Committee on

5 Date:

6 Subject: Department for Children and Families; child protection services;

7 Child Protection Registry

8 Statement of purpose of bill as introduced: This bill proposes to make
9 miscellaneous amendments to the Child Protection Registry statutes, including
10 clarifying procedures regarding the administrative conference, lengthening the
11 required time frames for seeking administrative review, and allowing
12 administrative reviews to occur via virtual conference during a state of
13 emergency.

14 An act relating to the Child Protection Registry

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

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

17 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

18 (a) If an investigation conducted in accordance with section 4915b of this
19 title results in a determination that a report of child abuse or neglect should be

1 substantiated, the Department shall notify the person alleged to have abused or
2 neglected a child of the following:

3 (1) the nature of the substantiation decision, and that the Department
4 intends to enter the record of the substantiation into the Registry;

5 (2) who has access to Registry information and under what
6 circumstances;

7 (3) the implications of having one's name placed on the Registry as it
8 applies to employment, licensure, and registration;

9 (4) the right to request a review of the substantiation determination by
10 an administrative reviewer, the time in which the request for review shall be
11 made, and the consequences of not seeking a review; and

12 (5) the right to receive a copy of the Commissioner's written findings
13 made in accordance with subdivision 4916(a)(2) of this title if applicable.

14 (b) Under this section, notice by the Department to a person alleged to have
15 abused or neglected a child shall be by ~~first-class~~ first-class mail sent to the
16 person's last known address.

17 (c)(1) A person alleged to have abused or neglected a child may seek an
18 administrative review of the Department's intention to place the person's name
19 on the Registry by notifying the Department within 44 30 days of the date the
20 Department mailed notice of the right to review in accordance with
21 subsections (a) and (b) of this section. The Commissioner may grant an

1 extension past the ~~14-day~~ 30-day period for good cause, not to exceed ~~28~~ 60
2 days after the Department has 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~~ that arose out of
6 the 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 in writing within 30 days after the related court case,
11 including any appeals, has been fully adjudicated. If the person fails to notify
12 the Department within 30 days, the Department's decision shall become final
13 and no further review under this subsection is required.

14 (d)(1) ~~The~~ Except as provided in subdivision (2) of this subsection, the
15 Department shall hold an administrative review conference within 35 days of
16 receipt of the request for review. At least 10 days prior to the administrative
17 review conference, the Department shall provide to the person requesting
18 review a copy of the redacted investigation file, notice of time and place of the
19 conference, and conference procedures, including information that may be
20 submitted and mechanisms for providing information. There shall be no
21 subpoena power to compel witnesses to attend a Registry review conference.

1 The Department shall also provide to the person those redacted investigation
2 files that relate to prior investigations that the Department has relied upon to
3 make its substantiation determination in the case in which a review has been
4 requested.

5 (2) If a person who has requested an administrative review does not
6 respond to Department requests to schedule the review meeting or does not
7 show up for the scheduled review meeting, the Department shall not hold an
8 administrative review conference and the Department's substantiation shall be
9 considered upheld. The Department shall notify the person of the right to
10 appeal the substantiation to the Human Services Board in accordance with
11 section 4916b of this title.

12 (e) At the administrative review conference, the person who requested the
13 review shall be provided with the opportunity to present documentary evidence
14 or other information that supports his or her position and provides information
15 to the reviewer in making the most accurate decision regarding the allegation.
16 The Department shall have the burden of proving that it has accurately and
17 reliably concluded that a reasonable person would believe that the child has
18 been abused or neglected by that person. Upon the person's request, the
19 conference may be held by ~~teleconference~~ virtual conference. During a
20 declared state of emergency in Vermont that suspends in-person conferences,
21 the review shall be held by virtual conference.

1 (f) The Department shall establish an administrative case review unit
2 within the Department and contract for the services of administrative
3 reviewers. An administrative reviewer shall be a neutral and independent
4 arbiter who has no prior involvement in the original investigation of the
5 allegation.

6 (g) Within seven days of the conference, the administrative reviewer shall:

7 (1) reject the Department's substantiation determination;

8 (2) accept the Department's substantiation; or

9 (3) place the substantiation determination on hold and direct the

10 Department to further investigate the case based upon recommendations of the
11 reviewer.

12 (h) If the administrative reviewer accepts the Department's substantiation
13 determination, a Registry record shall be made immediately. If the reviewer
14 rejects the Department's substantiation determination, no Registry record shall
15 be made.

16 (i) Within seven days of the decision to reject or accept or to place the
17 substantiation on hold in accordance with subsection (g) of this section, the
18 administrative reviewer shall provide notice to the person of his or her
19 decision. If the administrative reviewer accepts the Department's
20 substantiation, the notice shall advise the person of the right to appeal the

1 administrative reviewer's decision to the human services board in accordance
2 with section 4916b of this title.

3 (j) Persons whose names were placed on the Registry on or after January 1,
4 1992 but prior to September 1, 2007 shall be entitled to an opportunity to seek
5 an administrative review to challenge the substantiation.

6 (k) If no administrative review is requested, the Department's decision in
7 the case shall be final, and the person shall have no further right of review
8 under this section. The Commissioner may grant a waiver and permit such a
9 review upon good cause shown. Good cause may include an acquittal or
10 dismissal of a criminal charge arising from the incident of abuse or neglect.

11 (l) In exceptional circumstances, the Commissioner, in his or her sole and
12 nondelegable discretion, may reconsider any decision made by a reviewer. A
13 Commissioner's decision that creates a Registry record may be appealed to the
14 Human Services Board in accordance with section 4916b of this title.

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

16 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

17 (a)(1) ~~Except as provided in this subdivision, a~~ In accordance with rules
18 adopted pursuant to subsection 4916(e) of this title, a person whose name has
19 been placed on the Registry prior to July 1, 2009 and has been listed on the
20 Registry for at least three years may file a written request with the
21 Commissioner, seeking a review for the purpose of expunging an individual

1 Registry record. ~~A person whose name has been placed on the Registry on or~~
2 ~~after July 1, 2009 and has been listed on the Registry for at least seven years~~
3 ~~may file a written request with the Commissioner seeking a review for the~~
4 ~~purpose of expunging an individual Registry record.~~ The Commissioner shall
5 grant a review upon request.

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

10 (b)(1) The person shall have the burden of proving that a reasonable person
11 would believe that he or she no longer presents a risk to the safety or well-
12 being of children.

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

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

17 (B) the number of substantiations;

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

19 (D) the circumstances of the substantiation that would indicate

20 whether a similar incident would be likely to occur;

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

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

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

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

7 (c) At the review, the person who requested the review shall be provided
8 with the opportunity to present any evidence or other information, including
9 witnesses, that supports his or her request for expungement. Upon the person's
10 request, the review may be held by ~~teleconference~~ virtual conference. During
11 a declared state of emergency in Vermont that suspends in-person conferences,
12 the review shall be held by virtual conference.

13 (d) A person may seek a review under this section ~~no~~ not more than once
14 every 36 months.

15 (e) Within 30 days of the date on which the Commissioner mailed notice of
16 the decision pursuant to this section, a person may appeal the decision to the
17 Human Services Board. The person shall be prohibited from challenging his or
18 her substantiation at such hearing, and the sole issue before the Board shall be
19 whether the Commissioner abused his or her discretion in denial of the petition
20 for expungement. The hearing shall be on the record below, and

1 determinations of credibility of witnesses made by the Commissioner shall be
2 given deference by the Board.

3 (f) The Department shall take steps to provide reasonable notice to persons
4 on the Registry of their right to seek an expungement under this section.
5 Actual notice is not required. Reasonable steps may include activities such as
6 the production of an informative fact sheet about the expungement process,
7 posting of such information on the Department website, and other approaches
8 typically taken by the Department to inform the public about the Department's
9 activities and policies. The Department shall send notice of the expungement
10 process to any person listed on the Registry for whom a Registry check has
11 been requested.

12 Sec. 3. 33 V.S.A. § 4916d is amended to read:

13 § 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

14 Registry entries concerning a person who was substantiated for behavior
15 occurring before the person reached 10 years of age shall be expunged when
16 the person reaches ~~the age of 18 years of age~~, provided that the person has had
17 no additional substantiated Registry entries. ~~A person substantiated for~~
18 ~~behavior occurring before the person reached 18 years of age and whose name~~
19 ~~has been listed on the Registry for at least three years may file a written request~~
20 ~~with the Commissioner seeking a review for the purpose of expunging an~~
21 ~~individual Registry record in accordance with section 4916c of this title.~~

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on July 1, 2021.