

1 H.169

2 Introduced by Representatives Bluemle of Burlington, Stebbins of Burlington,
3 Anthony of Barre City, Berbeco of Winooski, Christie of
4 Hartford, Garofano of Essex, Harrison of Chittenden, Hooper of
5 Burlington, LaMont of Morristown, Ode of Burlington, and
6 Stone of Burlington

7 Referred to Committee on

8 Date:

9 Subject: Human services; child and family welfare; investigations; Child
10 Protection Registry

11 Statement of purpose of bill as introduced: This bill proposes changes to child
12 abuse and neglect investigation and substantiation standards. The bill also
13 changes the procedures for an individual to be placed on the Child Protection
14 Registry and to petition for expungement from the registry.

15 An act relating to child abuse and neglect substantiations and the use of the
16 Child Protection Registry

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

18 Sec. 1. 33 V.S.A. § 4911 is amended to read:

19 § 4911. PURPOSE

20 The purpose of this subchapter is to:

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(4) establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and that recognize that child offenders should be treated differently from adults; ~~and~~

(5) establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect; and

(6) ensure that in the Department for Children and Families’ efforts to protect children from abuse and neglect, the Department also ensures that investigations are thorough, unbiased, based on verified evidence, and adhere to due process.

Sec. 2. 33 V.S.A. § 4912 is amended to read:

§ 4912. DEFINITIONS

As used in this subchapter:

* * *

(6) “Harm” can occur by:

(A) Physical injury or emotional maltreatment.

(B) Failure to supply the child with adequate food, clothing, ~~shelter,~~ or health care. ~~As used in~~ For the purpose of this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under State law. Notwithstanding that a child might be found to be

1 without proper parental care under chapters 51 and 53 of this title, a parent or
2 other person responsible for a child's care legitimately practicing ~~his or her~~ the
3 parent's or other person's religious beliefs who thereby does not provide
4 specified medical treatment for a child shall not be considered neglectful for
5 that reason alone.

6 (C) Abandonment of the child.

7 (7) "Investigation" means a response to a report of child abuse or
8 neglect that begins with the systematic gathering of ~~information~~ evidence to
9 determine whether ~~the~~ abuse or neglect has occurred and, if so, the appropriate
10 response. An investigation shall result in a formal determination as to whether
11 ~~the reported~~ a preponderance of the evidence supports a finding that abuse or
12 neglect has occurred.

13 * * *

14 (14) "Risk of harm" means ~~a significant danger~~ that a child will likely
15 suffer serious ~~harm~~ physical injury or sexual abuse by other than accidental
16 means, ~~which harm would be likely to cause physical injury, or sexual abuse,~~
17 ~~including~~ as the result of:

18 (A) ~~a single, egregious act that has caused the child to be at~~
19 ~~significant risk of serious physical injury;~~

20 ~~(B)~~ the production or preproduction of methamphetamines when a
21 child is actually present; or

1 ~~(C) failing to provide supervision or care appropriate for the child’s~~
2 ~~age or development and, as a result, the child is at significant risk of serious~~
3 ~~physical injury;~~

4 ~~(D) failing to provide supervision or care appropriate for the child’s~~
5 ~~age or development due to use of illegal substances or misuse of prescription~~
6 ~~drugs or alcohol;~~

7 ~~(E) failing to supervise appropriately a child in a situation in which~~
8 ~~drugs, alcohol, or drug paraphernalia are accessible to the child; and~~

9 ~~(F)~~(B) a registered sex offender or person substantiated for sexually
10 abusing a child who is knowingly residing with or knowingly spending
11 unsupervised time with a child.

12 (15) “Sexual abuse” consists of any act or acts by any person in a
13 position of power, authority, or supervision involving sexual molestation or
14 sexual exploitation of a child, including:

15 * * *

16 (16) “Substantiated report” means that the Commissioner or the
17 Commissioner’s designee has determined after investigation that ~~a report is~~
18 ~~based upon accurate and reliable information that would lead a reasonable~~
19 ~~person to believe~~ there is a preponderance of the evidence necessary to support
20 the allegation that the child has been abused or neglected and to identify the
21 alleged perpetrator of the abuse or neglect.

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Sec. 3. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL
ACTION

* * *

(f)(1) Any person other than a person suspected of child abuse, who in good faith makes a report to the Department shall be immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of making a report. Any person found by the Department to have made three or more reports lacking a good faith basis, as determined by Department investigation, shall not be immune from any civil or criminal liability incurred or imposed as a result of making the reports.

* * *

Sec. 4. 33 V.S.A. § 4915a is amended to read:

§ 4915a. PROCEDURES FOR ASSESSMENT

(a) An assessment, to the extent that is reasonable under the facts and circumstances presented by the particular valid allegation of child abuse or neglect, shall include the following:

(1) An interview with the child’s parent, guardian, foster parent, or any other adult residing in the child’s home who serves in a parental role. The interview shall focus on ensuring the immediate safety of the child and

1 mitigating the future risk of harm to the child in the home environment. Any
2 interview conducted shall be recorded in its entirety. The Department shall
3 maintain the recording in an audibly intelligible and visually clear manner.

4 (2) An evaluation of the safety of the subject child and any other
5 children living in the same home environment. The evaluation may include an
6 interview with or observation of the child or children. Such interviews shall
7 occur with the permission of the child's parent, guardian, or custodian. Any
8 interview conducted shall be recorded in its entirety. The Department shall
9 maintain the recording in an audibly intelligible and visually clear manner.

10 * * *

11 Sec. 5. 33 V.S.A. § 4915b is amended to read:

12 § 4915b. PROCEDURES FOR INVESTIGATION

13 (a) An investigation, to the extent that it is reasonable under the facts and
14 circumstances presented by the particular allegation of child abuse, shall
15 include all of the following:

16 (1) A visit to the child's place of residence or place of custody and to the
17 location of the alleged abuse or neglect.

18 (2) An interview with or observation of the child reportedly having been
19 abused or neglected. If the investigator elects to interview the child, that
20 interview may take place without the approval of the child's parents, guardian,
21 or custodian, provided that it takes place in the presence of a disinterested adult

1 who may be, but shall not be limited to being, a teacher, a member of the
2 clergy, a child care provider regulated by the Department, or a nurse. Any
3 interview conducted shall be recorded in its entirety. The Department shall
4 maintain the recording in an audibly intelligible and visually clear manner.

5 (3) Determination of the nature, extent, and cause of any abuse or
6 neglect by a preponderance of the evidence.

7 (4) Determination of the identity of the person alleged to be responsible
8 for such abuse or neglect by a preponderance of the evidence. The person's
9 physical address, e-mail address, and cellular telephone number shall be
10 collected as soon as practicable once the person's identity is determined.

11 (5)(A) The identity, by name, of any other children living in the same
12 home environment as the subject child. The investigator shall consider the
13 physical and emotional condition of those children and may interview them,
14 unless the child is the person who is alleged to be responsible for such abuse or
15 neglect, in accordance with the provisions of subdivision (2) of this subsection.
16 Any interview conducted shall be recorded in its entirety. The Department
17 shall maintain the recording in an audibly intelligible and visually clear
18 manner.

19 (B) The identity, by name, of any other children who may be at risk if
20 the abuse was alleged to have been committed by someone who is not a
21 member of the subject child's household. The investigator shall consider the

1 physical and emotional condition of those children and may interview them,
2 unless the child is the person who is alleged to be responsible for such abuse or
3 neglect, in accordance with the provisions of subdivision (2) of this subsection.

4 Any interview conducted shall be recorded in its entirety. The Department
5 shall maintain the recording in an audibly intelligible and visually clear
6 manner.

7 (6) A determination of the immediate and long-term risk to each child if
8 that child remains in the existing home or other environment.

9 (7) Consideration of the environment and the relationship of any
10 children therein to the person alleged to be responsible for the suspected abuse
11 or neglect.

12 (8) All other data deemed pertinent.

13 (b) For cases investigated and substantiated by the Department, the
14 Commissioner shall, to the extent that it is reasonable, provide assistance to the
15 child and the child's family. For cases investigated but not substantiated by
16 the Department, the Commissioner may, to the extent that it is reasonable,
17 provide assistance to the child and the child's family. Nothing contained in
18 this section or section 4915a of this title shall be deemed to create a private
19 right of action.

20 (c) The Commissioner, designee, or any person required to report under
21 section 4913 of this title or any other person performing an investigation ~~may~~

1 shall take or cause to be taken photographs of trauma visible on a child who is
2 the subject of a report. The Commissioner or designee may seek consultation
3 with a physician. If it is indicated appropriate by the physician, the
4 Commissioner or designee may cause the child who is subject of a report to
5 undergo a radiological examination without the consent of the child's parent or
6 guardian.

7 (d) Services may be provided to the child's immediate family whether or
8 not the child remains in the home.

9 (e) [Repealed.]

10 (f) The Department shall not substantiate cases in which neglect is caused
11 solely by the lack of financial resources or inadequate housing of the parent or
12 guardian. Cases in which neglect is caused solely by a parent or guardian's
13 lack of knowledge as to how specific harm occurred shall not be substantiated
14 by the Department.

15 Sec. 6. 33 V.S.A. § 4916a is amended to read:

16 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

17 (a) If an investigation conducted in accordance with section 4915b of this
18 title results in a determination that a report of child abuse or neglect should be
19 substantiated, the Department shall notify the person alleged to have abused or
20 neglected a child of the following:

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

3 (2) who has access to Registry information and under what
4 circumstances;

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

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

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

12 (b) Under this section, notice by the Department to a person alleged to have
13 abused or neglected a child shall be by first-class mail, e-mail, and text
14 message sent to the person's last known physical address and contact
15 information collected during the Department's investigation pursuant to
16 subdivision 4915b(b)(4) of this title. The Department shall maintain a record
17 of the notification, including who sends the notification, the date it is sent, and
18 the addresses and cellular number to which it is sent.

19 (c)(1) A person ~~alleged to have abused or neglected a child~~ who is the
20 subject of a substantiation determination may seek an administrative review of
21 the Department's intention to place the person's name on the Registry by

1 notifying the Department within ~~14~~ 60 days ~~of~~ after the date the Department
2 ~~mailed~~ sent the letter, e-mail, or text message notice, whichever is latest, of the
3 right to review in accordance with subsections (a) and (b) of this section. The
4 Commissioner may grant an extension ~~past the 14-day period~~ for good cause,
5 not to exceed 28 days after the Department has ~~mailed~~ sent notice of the right
6 to review.

7 (2) The administrative review may be stayed upon request of the person
8 ~~alleged to have committed abuse or neglect~~ who is the subject of a
9 substantiation determination if there is a related case pending in the Criminal
10 or Family Division of the Superior Court that arose out of the same incident of
11 abuse or neglect for which the person was substantiated. During the period the
12 review is stayed, the person's name shall not be placed on the Registry. Upon
13 resolution of the Superior Court criminal or family case, the person may
14 exercise ~~his or her~~ the person's right to review under this section by notifying
15 the Department in writing within 30 days after the related court case, including
16 any appeals, has been fully adjudicated. If the person fails to notify the
17 Department within 30 days, the Department's decision shall become final and
18 no further review under this subsection is required.

19 (d) The Department shall hold an administrative review conference within
20 ~~35~~ 90 days after receipt of the request for review. At least ~~10~~ 45 days prior to
21 the administrative review conference, the Department shall provide to the

1 person requesting review a copy of the redacted investigation file, notice of
2 time and place of the conference, and conference procedures, including
3 information that may be submitted and mechanisms for providing information.
4 There shall be no subpoena power to compel witnesses to attend a ~~Registry~~ an
5 administrative review conference. The Department shall also provide to the
6 person those redacted investigation files that relate to prior investigations that
7 the Department has relied upon to make its substantiation determination in the
8 case in which a review has been requested. If the Department fails to hold a
9 administrative review conference within 90 days after receipt of the request to
10 review, then the substantiation determination shall be rejected and the case
11 closed with prejudice.

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~~ the person's position and provides
15 information to the reviewer in making the most accurate decision regarding the
16 allegation. The Department shall have the burden of proving ~~that it has~~
17 ~~accurately and reliably concluded that a reasonable person would believe by a~~
18 preponderance of the evidence that the child has been abused or neglected by
19 that person. Upon the person's request, the conference may be held by
20 teleconference.

1 (f) The Department shall establish an administrative case review unit
2 within the ~~Department and contract for the services of administrative reviewers~~
3 Department's central office to determine whether a substantiation
4 determination is adopted by the Commissioner. The unit shall consist of
5 individuals who are trained and experienced in investigative techniques and
6 familiar with the applicable law, rules, and procedures. An administrative
7 reviewer Members of the unit shall be a neutral and independent arbiter who
8 has have no prior involvement in the original investigation of the allegation.

9 (g) Within seven days ~~of~~ after the conference, the administrative ~~reviewer~~
10 case review unit shall:

11 (1) reject the ~~Department's~~ substantiation determination;

12 (2) accept the ~~Department's~~ substantiation; or

13 (3) place the substantiation determination on hold and direct ~~the~~
14 ~~Department to further investigate~~ investigation into the case based upon
15 recommendations of the reviewer.

16 (h) If the administrative ~~reviewer~~ case review unit accepts the
17 ~~Department's~~ substantiation determination, a Registry record shall be made
18 immediately unless the person appeals to the Human Services Board pursuant
19 to section 4916b of this title. If the reviewer rejects the ~~Department's~~
20 substantiation determination, no Registry record shall be made.

1 (i) Within seven days of ~~of~~ after the decision to reject or accept or to place the
2 substantiation on hold in accordance with subsection (g) of this section, the
3 administrative ~~reviewer~~ case review unit shall provide notice to the person of
4 ~~his or her~~ its decision by first-class mail, e-mail, and text message sent to the
5 person's last known physical address and contact information collected during
6 the Department's investigation pursuant to subdivision 4915b(b)(4) of this
7 title. If the ~~administrative reviewer's~~ unit accepts the ~~Department's~~
8 substantiation, the notice shall advise the person of the right to appeal the
9 ~~administrative reviewer's~~ unit's decision to the human services board in
10 accordance with section 4916b of this title.

11 (j) Persons whose names were placed on the Registry on or after January 1,
12 1992 but prior to September 1, 2007 shall be entitled to an opportunity to seek
13 an administrative review to challenge the substantiation.

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

19 (l) In exceptional circumstances, the Commissioner, in ~~his or her~~ the
20 Commissioner's sole and nondelegable discretion, may reconsider any decision
21 made by a ~~reviewer~~ case review unit. A Commissioner's decision that creates

1 a Registry record may be appealed to the Human Services Board in accordance
2 with section 4916b of this title.

3 Sec. 7. 33 V.S.A. § 4916b is amended to read:

4 § 4916b. HUMAN SERVICES BOARD HEARING

5 (a) Within ~~30~~ 60 days after the date on which the administrative ~~reviewer~~
6 ~~mailed case review unit sent~~ notice of ~~placement of a report on the Registry the~~
7 substantiation determination, the person who is the subject of the substantiation
8 may apply in writing to the Human Services Board for relief. The Board shall
9 hold a fair hearing pursuant to 3 V.S.A. § 3091. ~~When the Department receives~~
10 ~~notice of the appeal, it shall make note in the Registry record that the~~
11 ~~substantiation has been appealed to the Board~~ Notwithstanding any provision
12 of law to the contrary, the burden of proving facts as the basis of the
13 substantiation determination shall be on the Department by a preponderance of
14 the evidence.

15 (b)(1) The Board shall hold a hearing within 60 days after the receipt of the
16 request for a hearing and shall issue a written decision within 30 days after the
17 hearing is concluded. The Board's decisions shall be limited to one or more of
18 the following:

19 (A) reversing the Department's substantiation determination;

20 (B) affirming the Department's substantiation determination;

21 (C) modifying the Department's substantiation determination;

1 (D) remanding the substantiation determination to the Department
2 and directing the Department to further review the case based upon the
3 recommendations of the Board; or

4 (E) ordering the Department to cease practices and policies contrary
5 to State or federal policy or rule.

6 (2) Priority shall be given to appeals in which there are immediate
7 employment consequences for the person appealing the decision.

8 (3)(A) Article VIII of the Vermont Rules of Evidence (Hearsay) shall
9 not apply to any hearing held pursuant to this subchapter with respect to
10 statements made by a child 12 years of age or under who is alleged to have
11 been abused or neglected and the child shall not be required to testify or give
12 evidence at any hearing held under this subchapter. Evidence shall be
13 admissible if the time, content, and circumstances of the statements provide
14 substantial indicia of trustworthiness.

15 (B) Article VIII of the Vermont Rules of Evidence (Hearsay) shall
16 not apply to any hearing held pursuant to this subchapter with respect to
17 statements made by a child who is at least 13 years of age and under 16 years
18 of age who is alleged to have been abused or neglected and the child shall not
19 be required to testify or give evidence at any hearing held under this
20 subchapter in either of the following circumstances:

1 (i) The hearing officer determines, based on a preponderance of
2 the evidence, that requiring the child to testify will present a substantial risk of
3 trauma to the child. Evidence of trauma need not be offered by an expert and
4 may be offered by any adult with an ongoing significant relationship with the
5 child. Evidence shall be admissible if the time, content, and circumstances of
6 the statements provide substantial indicia of trustworthiness.

7 (ii) The hearing officer determines that the child is physically
8 unavailable to testify or the Department has made diligent efforts to locate the
9 child and was unsuccessful. Evidence shall be admissible if the time, content,
10 and circumstances of the statements provide substantial indicia of
11 trustworthiness.

12 (4) Convictions and adjudications that arose out of the same incident of
13 abuse or neglect for which the person was substantiated, whether by verdict, by
14 judgment, or by a plea of any type, including a plea resulting in a deferred
15 sentence, shall be competent evidence in a hearing held under this subchapter.

16 (c) A hearing may be stayed upon request of the petitioner if there is a
17 related case pending in the Criminal or Family Division of the Superior Court
18 that arose out of the same incident of abuse or neglect for which the person
19 was substantiated.

20 (d) If no review by the Board is requested, the Department's decision in the
21 case shall be final, the person's name shall be placed on the Registry, and the

1 person shall have no further right for review under this section. The Board
2 may grant a waiver and permit such a review upon good cause shown.

3 (e) A Board decision to affirm the Department’s substantiation
4 determination shall result in the immediate placement of the person’s name on
5 the Registry.

6 (f) Any appeal to the Board that results in a person’s removal from the
7 Registry requires the Board to issue a written decision detailing the rationale
8 for removal. The Department’s records shall classify a removal subject to this
9 subsection as “reversed.”

10 (g) The disposition of every appeal to the Board shall be recorded,
11 including the nature of the disposition.

12 Sec. 8. 33 V.S.A. § 4916c is amended to read:

13 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

14 * * *

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

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

20 (A) the nature of the substantiation that resulted in the person’s name
21 being placed on the Registry;

1 (B) the number of substantiations;

2 (C) compliance with the amount of time ~~that has elapsed since~~
3 necessary to permit expungement as established in the substantiation or
4 designated child protection level, or both;

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

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

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

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

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

13 (4) The Commissioner shall not deny a petition for expungement based
14 on:

15 (A) a person's failure to divulge information during an expungement
16 review;

17 (B) a person's failure to present information previously on record
18 with the Department at the time of substantiation;

19 (C) conduct committed by a person prior to substantiation and
20 known, or capable of being known, to the Department at the time of
21 substantiation; or

1 (D) the misapplication of any information presented, or contained in
2 any record, relating to a person's substantiation maintained by the Department.

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

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

9 (e) Within 30 days ~~of~~ after the date on which the Commissioner mailed
10 notice of the decision pursuant to this section, a person may appeal the
11 decision to the Human Services Board. The person shall be prohibited from
12 challenging ~~his or her~~ the person's substantiation at such hearing, and the sole
13 issue before the Board shall be whether the Commissioner abused ~~his or her~~
14 the Commissioner's discretion in denial of the petition for expungement. The
15 hearing shall be on the record below, and determinations of credibility of
16 witnesses made by the Commissioner shall be given deference by the Board.

17 (f) The Department shall take steps to provide reasonable notice to persons
18 on the Registry of their right to seek an expungement under this section.
19 Actual notice is not required. Reasonable steps may include activities such as
20 the production of an informative fact sheet about the expungement process,
21 posting of such information on the Department website, and other approaches

1 typically taken by the Department to inform the public about the Department's
2 activities and policies. The Department shall send notice of the expungement
3 process to any person listed on the Registry for whom a Registry check has
4 been requested.

5 Sec. 9. 33 V.S.A. § 4922 is amended to read:

6 § 4922. RULEMAKING

7 (a) The Commissioner shall ~~develop~~ adopt rules pursuant to 3 V.S.A.
8 chapter 25 to implement this subchapter. These shall include:

9 (1) rules setting forth criteria for determining whether to conduct an
10 assessment or an investigation;

11 (2) rules setting out procedures for assessment and service delivery;

12 (3) rules outlining procedures for investigations;

13 (4) rules for conducting the administrative review conference;

14 (5) rules regarding access to and maintenance of Department records of
15 investigations, assessments, reviews, and responses; and

16 (6) rules regarding the tiered Registry as required by section 4916 of this
17 title.

18 (b) The rules shall strike an appropriate balance between protecting
19 children and respecting the rights of a parent or guardian, including a parent or
20 guardian with disabilities, and shall recognize that persons with a disability can

1 be successful parents. The rules shall include the possible use of adaptive
2 equipment and supports.

3 (c) These rules shall be adopted ~~no later than~~ on or before July 1, 2009
4 2024.

5 Sec. 10. EFFECTIVE DATE

6 This act shall take effect on July 1, 2023.