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H.327

Introduced by Representatives Brumsted of Shelburne and Wood of
Waterbury

Referred to Committee on

Date:

Subject: Human services; DCF; registry review unit

Statement of purpose of bill as introduced: This bill proposes to revise the
child abuse and neglect substantiation procedures of the Commissioner for
Children and Families' Registry Review Unit. Specifically, this bill increases
the timeframes for conducting administrative review meetings and appeals,
permits substantiations to be accepted when the person requesting the review
does not respond or appear, and permits for virtual reviews during a state of
emergency. The bill also mandates that individuals who were placed on the
Child Protection Registry between the ages of 10 and 18 years old must follow
the procedures applied to those who were 18 years old or older at the time of
placement.

An act relating to revising child abuse and neglect substantiation procedures

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

2 Sec. 1. 33 V.S.A. § 4916(e) is amended to read:

3 (e) The Commissioner shall ~~develop~~ adopt rules for the implementation of
4 a system of Child Protection Registry levels for substantiated cases. The rules
5 shall address:

6 (1) the length of time a person's name appears on the Registry;

7 (2) when and how names are expunged from the Registry;

8 (3) whether the person is a juvenile or an adult;

9 (4) whether the person was charged with or convicted of a criminal
10 offense arising out of the incident of abuse or neglect; and

11 (5) whether a Family Division of the Superior Court has made any
12 findings against the person.

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

14 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

15 * * *

16 (c)(1) A person alleged to have abused or neglected a child may seek an
17 administrative review of the Department's intention to place the person's name
18 on the Registry by notifying the Department within ~~44~~ 30 days ~~of~~ after the date
19 the Department mailed notice of the right to review in accordance with
20 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 that 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~~ the person's right to review under this
10 section by notifying the Department in writing within 30 days after the related
11 court case, including any appeals, has been fully adjudicated. If the person
12 fails to notify the Department within 30 days, the Department's decision shall
13 become final and no further review under this subsection is required.

14 (d)(1) ~~The~~ Except as provided in this subsection, the Department shall hold
15 an administrative review conference within 35 days of receipt ~~of~~ after the
16 request for review. At least 10 days prior to the administrative review
17 conference, the Department shall provide to the person requesting review a
18 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) The Department shall not hold an administrative review conference
6 when a person who has requested a review does not respond to Department
7 requests to schedule the review meeting or does not appear for the scheduled
8 review meeting. In these circumstances, the Department's substantiation shall
9 be accepted. Upon the Department's substantiation being accepted, the
10 Department shall provide notice that advises the person of the right to appeal
11 the substantiation determination to the Human Services Board pursuant to
12 section 4916b of this title.

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

1 of emergency in Vermont restricting in-person conferences, the review shall be
2 held by virtual conference.

3 * * *

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

5 § 4916b. HUMAN SERVICES BOARD HEARING

6 (a) Within 30 days after the date on which the administrative reviewer
7 ~~mailed~~ provided notice of placement of a report on the Registry, the person
8 who is the subject of the substantiation may apply in writing to the Human
9 Services Board for relief. The Board shall hold a fair hearing pursuant to 3
10 V.S.A. § 3091. When the Department receives notice of the appeal, it shall
11 make note in the Registry record that the substantiation has been appealed to
12 the Board.

13 * * *

14 Sec. 4. 33 V.S.A. § 4916c is amended to read:

15 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

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

1 ~~listed on the Registry for at least seven years may file a written request with~~
2 ~~the Commissioner seeking a review for the purpose of expunging an individual~~
3 ~~Registry record.~~ The Commissioner shall grant a review upon request.

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

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

11 * * *

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

18 * * *

19 (e) Within 30 days ~~of~~ after the date on which the Commissioner mailed
20 notice of the decision pursuant to this section, a person may appeal the
21 decision to the Human Services Board. The person shall be prohibited from

1 challenging ~~his or her~~ the person's substantiation at such hearing, and the sole
2 issue before the Board shall be whether the Commissioner abused ~~his or her~~
3 the Commissioner's discretion in denial of the petition for expungement. The
4 hearing shall be on the record below, and determinations of credibility of
5 witnesses made by the Commissioner shall be given deference by the Board.

6 * * *

7 Sec. 5. 33 V.S.A. § 4916d is amended to read:

8 § 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

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

17 Sec. 6. EFFECTIVE DATE

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