

1 H.661

2 Introduced by Representatives Stebbins of Burlington, Bluemle of Burlington,
3 and Stone of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Human services; child and family welfare; investigations; Child
7 Protection Registry

8 Statement of purpose of bill as introduced: This bill proposes changes to child
9 abuse and neglect investigation and substantiation standards and a mandate to
10 create rules governing such changes. The bill also proposes changes to the
11 procedures and rules for an individual to be placed on the Child Protection
12 Registry and to expungement from the Registry.

13 An act relating to child abuse and neglect investigation and substantiation
14 standards and procedures

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

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

17 § 4911. PURPOSE

18 The purpose of this subchapter is to:

19 (1) protect children whose health and welfare may be adversely affected
20 through abuse or neglect;

1 interview conducted shall be recorded in its entirety. The Department shall
2 maintain the recording in an audibly intelligible and visually clear manner.

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

5 (4) Determination of the identity of the person alleged to be responsible
6 for such abuse or neglect supported by a preponderance of the evidence. The
7 person's physical address, e-mail address, and mobile telephone number shall
8 be collected as soon as practicable once the person's identity is determined.
9 The person shall be notified of the outcome of the investigation using the
10 contact information collected pursuant to this subdivision.

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
15 or neglect, in accordance with the provisions of subdivision (2) of this
16 subsection (a). Any interview conducted shall be recorded in its entirety. The
17 Department shall maintain the recording in an audibly intelligible and visually
18 clear 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
3 or neglect, in accordance with the provisions of subdivision (2) of this
4 subsection (a).

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

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

10 (8) All other data deemed pertinent, including any interviews of
11 witnesses made known to the Department.

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

19 * * *

1 Sec. 4. 33 V.S.A. § 4916a is amended to read:

2 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

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

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

9 (2) who has access to Registry information and under what
10 circumstances;

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

13 (4) the right to request a review of the substantiation determination by
14 an administrative reviewer, the specific basis for the substantiation, the time in
15 which the request for review shall be made, and the consequences of not
16 seeking a review; and

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

19 (b) Under this section, notice by the Department to a person alleged to have
20 abused or neglected a child shall be by a combination of first-class mail sent to
21 the person's last known physical address and any other preferred means of

1 contact collected during the Department's investigation pursuant to subdivision
2 4915b(b)(4) of this title. The Department shall maintain a record of the
3 notification, including who sends the notification, the date it is sent, and the
4 addresses and mobile number to which it is sent.

5 (c)(1) A person ~~alleged to have abused or neglected a child~~ who is the
6 subject of a substantiation determination may seek an administrative review of
7 the Department's intention to place the person's name on the Registry by
8 notifying the Department within ~~14~~ 30 days ~~of~~ after the date the Department
9 ~~mailed~~ sent the letter, e-mail, or text message notice, whichever is latest,
10 notice of the right to review in accordance with subsections (a) and (b) of this
11 section. The Commissioner may grant an extension ~~past the 14 day period~~ for
12 good cause, not to exceed 28 days after the ~~Department has mailed notice of~~
13 ~~the right to review~~ 30 days has expired.

14 (2) The administrative review may be stayed upon request of the person
15 ~~alleged to have committed abuse or neglect~~ who is the subject of a
16 substantiation determination if there is a related case pending in the Criminal
17 or Family Division of the Superior Court that arose out of the same incident of
18 abuse or neglect for which the person was substantiated. During the period the
19 review is stayed, the person's name shall not be placed on the Registry. Upon
20 resolution of the Superior Court criminal or family case, the person may
21 exercise ~~his or her~~ the person's right to review under this section by notifying

1 the Department in writing within 30 days after the related court case, including
2 any appeals, has been fully adjudicated. If the person fails to notify the
3 Department within 30 days, the Department's decision shall become final and
4 no further review under this subsection is required.

5 (d) The Department shall hold an administrative review conference within
6 35 90 days after receipt of the request for review. At least ~~40~~ 45 days prior to
7 the administrative review conference, the Department shall provide to the
8 person requesting review a copy of the ~~redacted~~ unredacted investigation file
9 that only removes personally identifying information for the individual making
10 the report or for individuals for whom domestic violence is a factor, notice of
11 time and place of the conference, and conference procedures, including
12 information that may be submitted and mechanisms for providing information.
13 There shall be no subpoena power to compel witnesses to attend a Registry
14 review conference. The Department shall also provide to the person those
15 redacted investigation files that relate to prior investigations that the
16 Department has relied upon to make its substantiation determination in the case
17 in which a review has been requested. If the Department fails to hold an
18 administrative review conference within 90 days after receipt of the request to
19 review, then the substantiation determination shall be rejected and the case
20 closed with prejudice. If the failure to hold a conference is due to good cause,

1 a 15-day extension may be authorized by the Commissioner in which the basis
2 of the failure is explained.

3 (e) At the administrative review conference, the person who requested the
4 review shall be provided with the opportunity to present documentary evidence
5 or other information that supports ~~his or her~~ the person's position and provides
6 information to the reviewer in making the most accurate decision regarding the
7 allegation. The Department shall have the burden of proving ~~that it has~~
8 ~~accurately and reliably concluded that a reasonable person would believe by a~~
9 preponderance of the evidence that the child has been abused or neglected by
10 that person. Upon the person's request, the conference may be held by
11 teleconference.

12 (f) The Department shall establish an administrative case review unit
13 within the Department and contract for the services of administrative
14 reviewers. An administrative reviewer shall be a neutral and independent
15 arbiter who has no prior involvement in the original investigation of the
16 allegation and has had no access to any information other than that provided to
17 the person seeking the review.

18 (g) Within ~~seven~~ 21 days ~~of~~ after the conference, the administrative
19 reviewer shall:

- 20 (1) reject the Department's substantiation determination;
21 (2) accept the Department's substantiation; or

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

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

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

8 (B) the number of substantiations;

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

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

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

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

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

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

18 (4) The Commissioner shall not deny a petition for expungement based
19 on:

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

- 1 (3) rules outlining procedures for investigations;
- 2 (4) rules for conducting the administrative review conference;
- 3 (5) rules regarding access to and maintenance of Department records of
- 4 investigations, assessments, reviews, and responses; ~~and~~
- 5 (6) rules regarding the tiered Registry as required by section 4916 of this
- 6 title;
- 7 (7) rules establishing substantiation categories that require, and do not
- 8 require, entry into the Registry;
- 9 (8) rules creating procedures for how substantiation recommendations
- 10 are made by the Department district offices and how substantiation
- 11 determinations are made by the Department central office; and
- 12 (9) rules governing the automatic expungement of substantiations that
- 13 would not be entered into the Registry under current law, policies, and
- 14 procedures.

15 Sec. 7. EFFECTIVE DATE

16 This act shall take effect on passage.