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 14	An act relating to child abuse and neglect investigation and substantiation 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	(2) strengthen the family and make the home safe for children whenever
2	possible by enhancing the parental capacity for good child care;
3	(3) provide a temporary or permanent nurturing and safe environment
4	for children when necessary; and for these purposes require the reporting of
5	suspected child abuse and neglect, an assessment or investigation of such
6	reports and provision of services, when needed, to such child and family;
7	(4) establish a range of responses to child abuse and neglect that take
8	into account different degrees of child abuse or neglect and that recognize that
9	child offenders should be treated differently from adults; and
10	(5) establish a tiered child protection registry that balances the need to
11	protect children and the potential employment consequences of a registry
12	record for persons who are substantiated for child abuse and neglect; and
13	(6) ensure that in the Department for Children and Families' efforts to
14	protect children from abuse and neglect, the Department also ensures that
15	investigations are thorough, unbiased, based on verified evidence, and adhere
16	to due process requirements.
17	Sec. 2. 33 V.S.A. § 4912 is amended to read:
18	§ 4912. DEFINITIONS
19	As used in this subchapter:
20	* * *

1	(16) "Substantiated report" means that the Commissioner or the
2	Commissioner's designee has determined after investigation that a report is
3	based upon accurate and reliable information that would lead a reasonable
4	person to believe there is a preponderance of the evidence necessary to support
5	the allegation that the child has been abused or neglected and to identify the
6	alleged perpetrator of the abuse or neglect.
7	* * *
8	Sec. 3. 33 V.S.A. § 4915b is amended to read:
9	§ 4915b. PROCEDURES FOR INVESTIGATION
10	(a) An investigation, to the extent that it is reasonable under the facts and
11	circumstances presented by the particular allegation of child abuse, shall
12	include all of the following:
13	(1) A visit to the child's place of residence or place of custody and to the
14	location of the alleged abuse or neglect.
15	(2) An interview with or observation of the child reportedly having been
16	abused or neglected. If the investigator elects to interview the child, that
17	interview may take place without the approval of the child's parents, guardian,
18	or custodian, provided that it takes place in the presence of a disinterested adult
19	who may be, but shall not be limited to being, a teacher, a member of the
20	clergy, a child care provider regulated by the Department, or a nurse. Any

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 subdivison.
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	<u>clear manner.</u>
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 <u>a combination of</u> 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 $14 \underline{30}$ days of <u>after</u> 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 <u>not</u> 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	$35 \underline{90}$ days <u>after</u> receipt of the request for review. At least $10 \underline{45}$ 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 $\underline{21}$ days of <u>after</u> the conference, the administrative
19	reviewer shall:
20	(1) reject the Department's substantiation determination;
21	(2) accept the Department's substantiation; or

1	(3) place the substantiation determination on hold and direct the
2	Department to further investigate the case based upon recommendations of the
3	reviewer.
4	(h) If the administrative reviewer accepts the Department's substantiation
5	determination, a Registry record shall be made immediately. If the reviewer
6	rejects the Department's substantiation determination, no Registry record shall
7	be made.
8	(i) Within seven days $\frac{1}{2}$ after the decision to reject or accept or to place the
9	substantiation on hold in accordance with subsection (g) of this section, the
10	administrative reviewer shall provide notice to the person of his or her the
11	reviewer's decision by a combination of first class mail, e-mail, and text
12	message sent to the person's last known physical address and contact
13	information collected during the Department's investigation pursuant to
14	subdivision 4915b(b)(4) of this title. If the administrative reviewer accepts the
15	Department's substantiation, the notice shall advise the person of the right to
16	appeal the administrative reviewer's decision to the human services board in
17	accordance with section 4916b of this title.
18	* * *
19	Sec. 5. 33 V.S.A. § 4916c is amended to read:
20	§ 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY
21	* * *

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 <u>a</u> 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	<u>on:</u>
20	(A) a person's failure to divulge information during an expungement
21	review;

1	(B) a person's failure to present information previously on record
2	with the Department at the time of substantiation for which expungement is
3	sought;
4	(C) conduct committed by a person prior to substantiation and
5	known, or capable of being known, to the Department at the time of
6	substantiation; or
7	(D) the misapplication of any information relating to a person's
8	substantiation.
9	* * *
10	Sec. 6. 33 V.S.A. § 4922 is amended to read:
11	§ 4922. RULEMAKING
12	(a) On or before September 1, 2025, the Commissioner shall file proposed
13	rules pursuant to 3 V.S.A. chapter 25 implementing the provisions of this
14	subchapter to become effective on January 1, 2026. The Commissioner shall
15	develop adopt rules to implement carry out the provisions of this subchapter as
16	emergency rules and concurrently propose them as permanent rules. The
17	emergency rules shall be deemed to meet the standard for the adoption of
18	emergency rules pursuant to 3 V.S.A. § 844(a). These shall include:
19	(1) rules setting forth criteria for determining whether to conduct an
20	assessment or an investigation;
21	(2) rules setting out procedures for assessment and service delivery;

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 <u>;</u>
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.