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H.661

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

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

Sec. 1. 33 V.S.A. § 4903 is amended to read:

§ 4903. RESPONSIBILITY OF DEPARTMENT

The Department may expend, within amounts available for the purposes, what is necessary to protect and promote the welfare of children and adults in this State, including the strengthening of their homes whenever possible, by:

(1) Investigating complaints of neglect, abuse, or abandonment of children, including when, whether, and how names are placed on the Child Protection Registry.

* * *

Sec. 2. 33 V.S.A. § 4911 is amended to read:

§ 4911. PURPOSE

The purpose of this subchapter is to:

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

(2) strengthen the family and make the home safe for children whenever possible by enhancing the parental capacity for good child care;

(3) provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes require the reporting of

1 suspected child abuse and neglect, an assessment or investigation of such
2 reports and provision of services, when needed, to such child and family;

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

6 (5) establish a tiered child protection registry that balances the need to
7 protect children and the potential employment consequences of a registry
8 record for ~~persons who are~~ a person's conduct that is substantiated for child
9 abuse and neglect; and

10 (6) ensure that in the Department for Children and Families' efforts to
11 protect children from abuse and neglect, the Department also ensures that
12 investigations are thorough, unbiased, based on accurate and reliable
13 information weighed against other supporting or conflicting information, and
14 adhere to due process requirements.

15 Sec. 3. 33 V.S.A. § 4912 is amended to read:

16 § 4912. DEFINITIONS

17 As used in this subchapter:

18 * * *

19 (16) "Substantiated report" means that the Commissioner or the
20 Commissioner's designee has determined after investigation that a report is
21 based upon accurate and reliable information ~~that would lead a reasonable~~

1 ~~person to believe~~ where there is a preponderance of the evidence necessary to
2 support the allegation that the child has been abused or neglected.

3 * * *

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

5 § 4915b. PROCEDURES FOR INVESTIGATION

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

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

11 (2) An interview with or observation of the child reportedly having been
12 abused or neglected. If the investigator elects to interview the child, that
13 interview may take place without the approval of the child's parents, guardian,
14 or custodian, provided that it takes place in the presence of a disinterested adult
15 who may be, but shall not be limited to being, a teacher, a member of the
16 clergy, a child care provider regulated by the Department, or a nurse.

17 (3) Determination of the nature, extent, and cause of any abuse or
18 neglect.

19 (4) Determination of the identity of the person alleged to be responsible
20 for such abuse or neglect. The investigator shall use best efforts to obtain the
21 person's mailing and e-mail address as soon as practicable once the person's

1 identity is determined. The person shall be notified of the outcome of the
2 investigation and any notices sent by the Department using the mailing
3 address, or if requested by the person, to the person's e-mail address collected
4 pursuant to this subdivision.

5 (5)(A) The identity, by name, of any other children living in the same
6 home environment as the subject child. The investigator shall consider the
7 physical and emotional condition of those children and may interview them,
8 unless the child is the person who is alleged to be responsible for such abuse
9 or neglect, in accordance with the provisions of subdivision (2) of this
10 subsection (a).

11 (B) The identity, by name, of any other children who may be at risk if
12 the abuse was alleged to have been committed by someone who is not a
13 member of the subject child's household. The investigator shall consider the
14 physical and emotional condition of those children and may interview them,
15 unless the child is the person who is alleged to be responsible for such abuse
16 or neglect, in accordance with the provisions of subdivision (2) of this
17 subsection (a).

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

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

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

6 (b) For cases investigated and substantiated by the Department, the
7 Commissioner shall, to the extent that it is reasonable, provide assistance to the
8 child and the child's family. For cases investigated but not substantiated by
9 the Department, the Commissioner may, to the extent that it is reasonable,
10 provide assistance to the child and the child's family. Nothing contained in
11 this section or section 4915a of this title shall be deemed to create a private
12 right of action.

13 * * *

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

15 § 4916. CHILD PROTECTION REGISTRY

16 (a)(1) The Commissioner shall maintain a Child Protection Registry that
17 shall contain a record of all investigations that have resulted in a substantiated
18 report on or after January 1, 1992. Except as provided in subdivision (2) of
19 this subsection, prior to placement of a substantiated report on the Registry, the
20 Commissioner shall comply with the procedures set forth in section 4916a of
21 this title.

1 (2) In cases involving sexual abuse or serious physical abuse of a child,
2 the Commissioner in ~~his or her~~ the Commissioner's sole judgment may list a
3 substantiated report on the Registry pending any administrative review after:

4 (A) reviewing the investigation file; and

5 (B) making written findings in consideration of:

6 (i) the nature and seriousness of the alleged behavior; and

7 (ii) the person's continuing access to children.

8 (3) A person alleged to have abused or neglected a child and whose
9 name has been placed on the Registry in accordance with subdivision (2) of
10 this subsection shall be notified of the Registry entry, provided with the
11 Commissioner's findings, and advised of the right to seek an administrative
12 review in accordance with section 4916a of this title.

13 (4) If the name of a person has been placed on the Registry in
14 accordance with subdivision (2) of this subsection, it shall be removed from
15 the Registry if the substantiation is rejected after an administrative review.

16 (b) A Registry record means an entry in the Child Protection Registry that
17 consists of the name of an individual whose conduct is substantiated for child
18 abuse or neglect, the date of the finding, the nature of the finding, and at least
19 one other personal identifier, other than a name, listed in order to avoid the
20 possibility of misidentification.

1 (c) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
2 permit use of the Registry records as authorized by this subchapter while
3 preserving confidentiality of the Registry and other Department records related
4 to abuse and neglect.

5 (d) For all substantiated reports of child abuse or neglect made on or after
6 the date the final rules are adopted, the Commissioner shall create a Registry
7 record that reflects a designated child protection level related to the risk of
8 future harm to children. This system of child protection levels shall be based
9 upon an evaluation of the risk the person responsible for the abuse or neglect
10 poses to the safety of children. The risk evaluation shall include consideration
11 of the following factors:

- 12 (1) the nature of the conduct and the extent of the child's injury, if any;
- 13 (2) the person's prior history of child abuse or neglect as either a victim
14 or perpetrator;
- 15 (3) the person's response to the investigation and willingness to engage
16 in recommended services; and
- 17 (4) the person's age and developmental maturity.

18 (e) The Commissioner shall ~~develop~~ adopt rules for the implementation of
19 a system of Child Protection Registry levels for substantiated cases pursuant to
20 3 V.S.A. chapter 25. The rules shall address:

- 21 (1) when, whether, and how names are placed on the Registry;

1 (2) standards for determining a child protection level designation;

2 (3) the length of time a person's name appears on the Registry prior to
3 seeking expungement;

4 (2)(4) when and how names are expunged from the Registry;

5 (3)(5) whether the person is a juvenile or an adult;

6 (4)(6) whether the person was charged with or convicted of a criminal
7 offense arising out of the incident of abuse or neglect; and

8 (5)(7) whether a Family Division of the Superior Court has made any
9 findings against the person.

10 (f) [Repealed.]

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

12 § 4916a. ~~CHALLENGING PLACEMENT ON THE REGISTRY~~

13 SUBSTANTIATION

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

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

20 (2) who has access to Registry information and under what
21 circumstances;

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

3 (4) the Registry child protection level designation to be assigned to the
4 person and the date that the person is eligible to seek expungement based on
5 the designation level;

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

9 ~~(5)~~(6) the right to receive a copy of the Commissioner's written findings
10 made in accordance with subdivision 4916(a)(2) of this title if applicable; and

11 (7) ways to contact the Department for any further information.

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 sent to the person's last
14 known mailing address, or if requested by the person, to the person's e-mail
15 address collected during the Department's investigation pursuant to
16 subdivision 4915b(a)(4) of this title. The Department shall maintain a record
17 of the notification, including who sent the notification, the date it is sent, and
18 the address to which it is sent.

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

1 ~~Registry~~ determination by notifying the Department within ~~14~~ 30 days ~~of~~ after
2 the date the Department ~~mailed~~ sent notice of the right to review in accordance
3 with subsections (a) and (b) of this section. The Commissioner may grant an
4 extension past the ~~14-day~~ 30-day period for good cause, not to exceed ~~28~~ 60
5 days after the Department has ~~mailed~~ sent notice of the right to review.

6 (2) The administrative review may be stayed upon request of the person
7 ~~alleged to have committed abuse or neglect~~ whose conduct is the subject of a
8 substantiation determination if there is a related case pending in the Criminal
9 or Family Division of the Superior Court that arose out of the same incident of
10 abuse or neglect for which the ~~person~~ person's conduct was substantiated or
11 led to placement on the Registry. During the period the review is stayed, the
12 person's name shall be placed on the Registry. Upon resolution of the
13 Superior Court criminal or family case, the person may exercise ~~his or her~~ the
14 person's right to review under this section by notifying the Department in
15 writing within 30 days after the related court case, including any appeals, has
16 been fully adjudicated. If the person fails to notify the Department within 30
17 days, the Department's decision shall become final and no further review
18 under this subsection is required.

19 (d)(1) ~~The~~ Except as provided in this subsection, the Department shall ~~hold~~
20 schedule an administrative review conference within ~~35~~ 60 days ~~of~~ after receipt
21 of the request for review. At least ~~10~~ 20 days prior to the administrative

1 review conference, the Department shall provide to the person requesting
2 review a copy of the redacted investigation file, which shall contain sufficient
3 unredacted information to describe the allegations and the evidence relied upon
4 as the basis of the substantiation, notice of time and place of the conference,
5 and conference procedures, including information that may be submitted and
6 mechanisms for providing information. There shall be no subpoena power to
7 compel witnesses to attend a Registry review conference. The Department
8 shall also provide to the person those redacted investigation files that relate to
9 prior investigations that the Department has relied upon to make its
10 substantiation determination in the case in which a review has been requested.
11 If an administrative review conference is not held within 60 days after receipt
12 of the request to review, due to good cause shown, an extension may be
13 authorized by the Commissioner or designee in which the basis of the failure is
14 explained.

15 (2) The Department may elect to not hold an administrative review
16 conference when a person who has requested a review does not respond to
17 Department requests to schedule the review meeting or does not appear for the
18 scheduled review meeting. In these circumstances, unless good cause is
19 shown, the Department's substantiation shall be accepted and the person's
20 name shall be placed on the Registry, if applicable. Upon the Department's
21 substantiation being accepted, the Department shall provide notice that advises

1 the person of the right to appeal the substantiation determination to the Human
2 Services Board pursuant to section 4916b of this title.

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 or during a declared state of emergency
11 in Vermont, the conference may be held ~~by teleconference~~ through a live,
12 interactive, audio-video connection or by telephone.

13 (f) The Department shall establish an administrative case review unit
14 within the Department and contract for the services of administrative
15 reviewers. An administrative reviewer shall be a neutral and independent
16 arbiter who has no prior involvement in the original investigation of the
17 allegation. Department information pertaining to the investigation that is
18 obtained by the reviewer outside of the review meeting shall be disclosed to
19 the person seeking the review.

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

1 (1) reject the Department’s substantiation;
2 (2) accept the Department’s substantiation; or
3 (3) place the substantiation determination on hold and direct the
4 Department to further investigate the case based upon recommendations of the
5 reviewer.

6 (h) If the administrative reviewer accepts the Department’s substantiation,
7 a Registry record shall be made immediately. If the reviewer rejects the
8 Department’s substantiation, no Registry record shall be made.

9 (i) Within seven days ~~of~~ after the decision to reject ~~or~~ accept, or to place
10 the substantiation on hold in accordance with subsection (g) of this section, the
11 administrative reviewer shall provide notice to the person of ~~his or her~~ the
12 reviewer’s decision to the most recent address provided by the person. If the
13 administrative reviewer accepts the Department’s substantiation the notice
14 shall advise the person of the right to appeal the administrative reviewer’s
15 decision to the human services board in accordance with section 4916b of this
16 title.

17 * * *

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

19 § 4916b. HUMAN SERVICES BOARD HEARING

20 (a) Within 30 days after the date on which the administrative reviewer
21 ~~mailed~~ sent notice ~~of placement of a report on the Registry~~, the person who is

1 the subject of the substantiation may apply in writing to the Human Services
2 Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A.
3 § 3091. When the Department receives notice of the appeal, it shall make note
4 in the Registry record that the substantiation has been appealed to the Board.

5 * * *

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

7 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

8 (a)(1) ~~Except as provided in this subdivision~~ Pursuant to rules adopted in
9 accordance with subsection 4916(e) of this title, a person whose name has been
10 placed on the Registry ~~prior to July 1, 2009 and has been listed on the Registry~~
11 ~~for at least three years~~ may file a written request with the Commissioner,
12 seeking a review for the purpose of expunging an individual Registry record. ~~A~~
13 ~~person whose name has been placed on the Registry on or after July 1, 2009~~
14 ~~and has been listed on the Registry for at least seven years may file a written~~
15 ~~request with the Commissioner seeking a review for the purpose of expunging~~
16 ~~an individual Registry record.~~ The Commissioner shall grant a review upon an
17 eligible person's request.

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

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. The Commissioner's
18 decision to deny an expungement petition shall contain information about how
19 to prepare for future expungement requests.

20 (c) At the review, the person who requested the review shall be provided
21 with the opportunity to present any evidence or other information, including

1 witnesses, that supports ~~his or her~~ the person's request for expungement. Upon
2 the person's request or during a declared state of emergency in Vermont, the
3 conference may be held ~~by teleconference~~ through a live, interactive, audio-
4 video connection or by telephone.

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

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

16 * * *

17 Sec. 9. 33 V.S.A. § 4916d is amended to read:

18 § 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

19 Registry entries concerning a person ~~who~~ whose conduct was substantiated
20 for behavior occurring before the person reached 10 years of age shall be
21 expunged when the person reaches ~~the age of~~ 18 years of age, provided that the

1 person has had no additional substantiated Registry entries. ~~A person~~
2 ~~substantiated for behavior occurring before the person reached 18 years of age~~
3 ~~and whose name has been listed on the Registry for at least three years may file~~
4 ~~a written request with the Commissioner seeking a review for the purpose of~~
5 ~~expunging an individual Registry record in accordance with section 4916c of~~
6 ~~this title.~~

7 Sec. 10. 33 V.S.A. § 4922 is amended to read:

8 § 4922. RULEMAKING

9 (a) ~~The Commissioner shall develop rules to implement this subchapter. On~~
10 or before September 1, 2025, the Commissioner shall file proposed rules
11 pursuant to 3 V.S.A. chapter 25 implementing the provisions of this subchapter
12 to become effective on April 1, 2026. These shall include:

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

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

16 (3) rules outlining procedures for investigations;

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

18 (5) rules regarding access to and maintenance of Department records of
19 investigations, assessments, reviews, and responses; ~~and~~

20 (6) rules regarding the tiered Registry as required by section 4916 of this
21 title;

1 (7) rules requiring notice and appeal procedures for alternatives to
2 substantiation; and

3 (8) rules implementing subsections 4916(c) and (e) of this title.

4 * * *

5 Sec. 11. CHILD ABUSE AND NEGLECT; INTERVIEWS; CAPABILITIES;
6 REPORT

7 (a) On or before November 15, 2024, the Department for Children and
8 Families shall submit a written report to the Senate Committee on Health and
9 Welfare and the House Committee on Human Services examining the
10 Department's capabilities and resources necessary to safely, securely, and
11 confidentially store any interviews recorded during a child abuse and neglect
12 investigation.

13 (b) The report required pursuant to subsection (a) of this section shall
14 include the Department's proposed model policy detailing the types of
15 interviews that should be recorded and the storage, safety, and confidentiality
16 requirements of such interviews.

17 Sec. 12. CHILD ABUSE AND NEGLECT; SUBSTANTIATION
18 RECOMMENDATIONS AND CATEGORIES; RULEMAKING;
19 REPORT

20 (a) On or before October 1, 2025, the Department for Children and
21 Families, in consultation with the Secretary of Human Services, the Agency of

1 Education, the Department of Mental Health, the Vermont Parent
2 Representation Center, and Voices for Vermont's Children, shall submit a
3 written report to the Senate Committee on Health and Welfare and the House
4 Committee on Human Services on the progress towards:

5 (1) establishing a centralized internal substantiation determination
6 process;

7 (2) rules establishing substantiation categories that require entry onto the
8 Registry and alternatives to substantiation that do not require entry onto the
9 Registry; and

10 (3) rules creating procedures for how substantiation recommendations
11 are made by the Department district offices and how substantiation
12 determinations are made by the Department central office.

13 (b) The report required pursuant to subsection (a) of this section shall
14 include legislative recommendations, if any.

15 (c) On or after January 15, 2026, the Department of Children and Families
16 shall present the report required pursuant subsection (a) of this section to the
17 Senate Committee on Health and Welfare and the House Committee on Human
18 Services.

19 Sec. 13. EFFECTIVE DATE

20 This act shall take effect on September 1, 2024.