

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, 23 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 ~~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
20 if 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. 4-23 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
20 have abused or neglected a child shall be by a combination of first-class mail
21 sent to the person's last known physical address and any other preferred means

1 ~~of contact collected during the Department's investigation pursuant to~~
2 subdivision 4915b(b)(4) of this title. The Department shall maintain a record
3 of the notification, including who sends the notification, the date it is sent, and
4 the 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 ~~10~~ 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
17 case 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
5 ~~his 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 ~~(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
- 6 this 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.~~

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

(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~~ a person's conduct that is 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 accurate and reliable evidence, and adhere to due process requirements.

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

§ 4912. DEFINITIONS

As used in this subchapter:

** * **

(16) "Substantiated report" means that the Commissioner or the Commissioner's designee has determined after investigation that a report is based upon accurate and reliable information ~~that would lead a reasonable person to believe~~ where there is a preponderance of the evidence necessary to support the allegation that the child has been abused or neglected.

** * **

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

§ 4915b. PROCEDURES FOR INVESTIGATION

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

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

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

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

(4) Determination of the identity of the person alleged to be responsible for such abuse or neglect. The investigator shall use best efforts to obtain the person's mailing and e-mail address as soon as practicable once the person's identity is determined. The person shall be notified of the outcome of the investigation and any notices sent by the Department using the mailing address, or if requested by the person, to the person's e-mail address collected pursuant to this subdivision.

(5)(A) The identity, by name, of any other children living in the same home environment as the subject child. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse

or neglect, in accordance with the provisions of subdivision (2) of this subsection (a).

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

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

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

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

(b) For cases investigated and substantiated by the Department, the Commissioner shall, to the extent that it is reasonable, provide assistance to the child and the child's family. For cases investigated but not substantiated by the Department, the Commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family. Nothing contained in

this section or section 4915a of this title shall be deemed to create a private right of action.

* * *

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

§ 4916. CHILD PROTECTION REGISTRY

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

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

(A) reviewing the investigation file; and

(B) making written findings in consideration of:

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

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

(3) A person alleged to have abused or neglected a child and whose name has been placed on the Registry in accordance with subdivision (2) of this subsection shall be notified of the Registry entry, provided with the

Commissioner's findings, and advised of the right to seek an administrative review in accordance with section 4916a of this title.

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

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

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

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

- (1) the nature of the conduct and the extent of the child's injury, if any;*
- (2) the person's prior history of child abuse or neglect as either a victim or perpetrator;*
- (3) the person's response to the investigation and willingness to engage in recommended services; and*
- (4) the person's age and developmental maturity.*
- (e) The Commissioner shall ~~develop~~ adopt rules for the implementation of a system of Child Protection Registry levels for substantiated cases pursuant to 3 V.S.A. chapter 25. The rules shall address:*
 - (1) when and how names are placed on the Registry;*
 - (2) standards for determining a child protection level designation;*
 - (3) the length of time a person's name appears on the Registry prior to seeking expungement;*
 - ~~(2)~~(4) when and how names are expunged from the Registry;*
 - ~~(3)~~(5) whether the person is a juvenile or an adult;*
 - ~~(4)~~(6) whether the person was charged with or convicted of a criminal offense arising out of the incident of abuse or neglect; and*
 - ~~(5)~~(7) whether a Family Division of the Superior Court has made any findings against the person.*
- (f) [Repealed.]*

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

*§ 4916a. CHALLENGING SUBSTANTIATION OR PLACEMENT ON THE
REGISTRY*

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

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

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

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

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

(5) the right to request a review of the substantiation determination or the child protection level designation, or both, by an administrative reviewer, the time in which the request for review shall be made, and the consequences of not seeking a review; and

~~(5)(6)~~ the right to receive a copy of the Commissioner's written findings made in accordance with subdivision 4916(a)(2) of this title if applicable; and
(7) ways to contact the Department for any further information.

(b) Under this section, notice by the Department to a person alleged to have abused or neglected a child shall be by first-class mail sent to the person's last known mailing address, or if requested by the person, to the person's e-mail address collected during the Department's investigation pursuant to subdivision 4915b(a)(4) of this title. The Department shall maintain a record of the notification, including who sent the notification, the date it is sent, and the address to which it is sent.

~~(c)(1) A person alleged to have abused or neglected a child~~ whose conduct is the subject of a substantiation determination may seek an administrative review of the Department's intention to place the person's name on the Registry by notifying the Department within 14 30 days of after the date the Department mailed sent notice of the right to review in accordance with subsections (a) and (b) of this section. The Commissioner may grant an extension past the 14-day 30-day period for good cause, not to exceed 28 60 days after the Department has mailed sent notice of the right to review.

(2) The administrative review may be stayed upon request of the person alleged to have committed abuse or neglect whose conduct is the subject of a substantiation determination if there is a related case pending in the Criminal

or Family Division of the Superior Court that arose out of the same incident of abuse or neglect for which the ~~person~~ person's conduct was substantiated. During the period the review is stayed, the person's name shall be placed on the Registry. Upon resolution of the Superior Court criminal or family case, the person may exercise ~~his or her~~ the person's right to review under this section by notifying the Department in writing within 30 days after the related court case, including any appeals, has been fully adjudicated. If the person fails to notify the Department within 30 days, the Department's decision shall become final and no further review under this subsection is required.

(d)(1) ~~The~~ Except as provided in this subsection, the Department shall hold an administrative review conference within ~~35~~ 60 days of after receipt of the request for review. At least ~~10~~ 20 days prior to the administrative review conference, the Department shall provide to the person requesting review a copy of the redacted investigation file, which shall contain sufficient unredacted information to describe the allegations and the evidence relied upon as the basis of the substantiation, notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing information. There shall be no subpoena power to compel witnesses to attend a Registry review conference. The Department shall also provide to the person those redacted investigation files that relate to prior investigations that the Department has relied upon to

make its substantiation determination in the case in which a review has been requested. If the Department fails to hold an administrative review conference within 60 days after receipt of the request to review, due to good cause shown, an extension may be authorized by the Commissioner or designee in which the basis of the failure is explained.

(2) The Department may elect to not hold an administrative review conference when a person who has requested a review does not respond to Department requests to schedule the review meeting or does not appear for the scheduled review meeting. In these circumstances, unless good cause is shown, the Department's substantiation shall be accepted and the person's name shall be placed on the Registry. Upon the Department's substantiation being accepted, the Department shall provide notice that advises the person of the right to appeal the substantiation determination or child protection designation level, or both, to the Human Services Board pursuant to section 4916b of this title.

(e) At the administrative review conference, the person who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports his—~~or her~~ the person's position and provides information to the reviewer in making the most accurate decision regarding the allegation. The Department shall have the burden of proving that it has accurately and reliably concluded that a reasonable person would

believe by a preponderance of the evidence that the child has been abused or neglected by that person. Upon the person's request or during a declared state of emergency in Vermont, the conference may be held by teleconference through a live, interactive, audio-video connection or by telephone.

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

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

(1) reject the Department's substantiation determination;

(2) accept the Department's substantiation; or

(3) place the substantiation determination on hold and direct the Department to further investigate the case based upon recommendations of the reviewer.

(h) If the administrative reviewer accepts the Department's substantiation determination, a Registry record shall be made immediately. If the reviewer

rejects the Department's substantiation determination, no Registry record shall be made.

(i) Within seven days of after the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of ~~his or her~~ the reviewer's decision to the person's requested address pursuant to subdivision 4915b(a)(4) of this title. If the administrative reviewer accepts the Department's substantiation, the notice shall advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title.

* * *

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

§ 4916b. HUMAN SERVICES BOARD HEARING

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

* * *

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

§ 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

~~(a)(1) Except as provided in this subdivision Pursuant to rules adopted in accordance with subsection 4916(e) of this title, a person whose name has been placed on the Registry prior to July 1, 2009 and has been listed on the Registry for at least three years may file a written request with the Commissioner, seeking a review for the purpose of expunging an individual Registry record or for the purpose of challenging the child protection level designation, or both. A person whose name has been placed on the Registry on or after July 1, 2009 and has been listed on the Registry for at least seven years may file a written request with the Commissioner seeking a review for the purpose of expunging an individual Registry record. The Commissioner shall grant a review upon request.~~

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

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

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

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

(B) the number of substantiations;

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

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

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

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

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

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

(c) At the review, the person who requested the review shall be provided with the opportunity to present any evidence or other information, including witnesses, that supports ~~his or her~~ the person's request for expungement. Upon the person's request or during a declared state of emergency in Vermont, the conference may be held ~~by teleconference~~ through a live, interactive, audio-video connection or by telephone.

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

(e) Within 30 days of after the date on which the Commissioner ~~mailed~~ sent notice of the decision pursuant to this section, a person may appeal the decision to the Human Services Board. The notice shall contain specific instructions concerning the information necessary for the person to prepare any future expungement request. The person shall be prohibited from challenging ~~his or her~~ the substantiation at such hearing, and the sole issue ~~issues~~ before the Board shall be whether the Commissioner abused ~~his or her~~ the Commissioner's discretion in ~~denial~~ of denying the petition for expungement or the petition challenging the child protection level designation. The hearing shall be on the record below, and determinations of credibility of witnesses made by the Commissioner shall be given deference by the Board.

* * *

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

§ 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

Registry entries concerning a person ~~who~~ whose conduct was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches ~~the age of~~ 18 years of age, provided that the person has had no additional substantiated Registry entries. ~~A person substantiated for behavior occurring before the person reached 18 years of age and whose name has been listed on the Registry for at least three years may file a written request with the Commissioner seeking a review for the purpose~~

~~of expunging an individual Registry record in accordance with section 4916e of this title.~~

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

§ 4922. RULEMAKING

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

- (1) rules setting forth criteria for determining whether to conduct an assessment or an investigation;*
- (2) rules setting out procedures for assessment and service delivery;*
- (3) rules outlining procedures for investigations;*
- (4) rules for conducting the administrative review conference;*
- (5) rules regarding access to and maintenance of Department records of investigations, assessments, reviews, and responses; ~~and~~*
- (6) rules regarding the tiered Registry as required by section 4916 of this title;*
- (7) rules establishing substantiation categories that require entry onto the Registry and alternatives to substantiation that do not require entry onto the Registry;*

(8) rules requiring notice and appeal procedures for alternatives to substantiation;

(9) rules creating procedures for how substantiation recommendations are made by the Department district offices and how substantiation determinations are made by the Department central office; and

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

* * *

Sec. 11. CHILD ABUSE AND NEGLECT; INTERVIEWS; CAPABILITIES;

REPORT

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

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

Sec. 12. EFFECTIVE DATE

This act shall take effect on September 1, 2024.