

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 661 entitled “An act relating to child abuse and neglect investigation and
4 substantiation standards and procedures” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

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

8 § 4911. PURPOSE

9 The purpose of this subchapter is to:

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

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

14 (3) provide a temporary or permanent nurturing and safe environment
15 for children when necessary; and for these purposes require the reporting of
16 suspected child abuse and neglect, an assessment or investigation of such
17 reports and provision of services, when needed, to such child and family;

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

1 (5) establish a tiered child protection registry that balances the need to
2 protect children and the potential employment consequences of a registry
3 record for persons who are substantiated for child abuse and neglect; and

4 (6) ensure that in the Department for Children and Families’ efforts to
5 protect children from abuse and neglect, the Department also ensures that
6 investigations are thorough, unbiased, based on verified evidence, and adhere
7 to due process requirements.

8 Sec. 2. 33 V.S.A. § 4912 is amended to read:

9 § 4912. DEFINITIONS

10 As used in this subchapter:

11 * * *

12 (16) “Substantiated report” means that the Commissioner or the
13 Commissioner’s designee has determined after investigation that ~~a report is~~
14 ~~based upon accurate and reliable information that would lead a reasonable~~
15 ~~person to believe~~ there is a preponderance of the evidence necessary to support
16 the allegation that the child has been abused or neglected and to identify the
17 alleged perpetrator of the abuse or neglect.

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

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

3 * * *

4 Sec. 3. 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. Any
17 interview conducted shall be recorded in its entirety. The Department shall
18 maintain the recording in an audibly intelligible and visually clear manner.

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

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

7 (4) Determination of the identity of the person alleged to be responsible
8 for such abuse or neglect. The investigator shall use best efforts to obtain the
9 person’s address, mailing address, and any alternative contact information
10 provided by the person as soon as practicable once the person’s identity is
11 determined. The person shall be notified of the outcome of the investigation
12 using the mailing address collected pursuant to this subdivision.

13 (5)(A) The identity, by name, of any other children living in the same
14 home environment as the subject child. The investigator shall consider the
15 physical and emotional condition of those children and may interview them,
16 unless the child is the person who is alleged to be responsible for such abuse
17 or neglect, in accordance with the provisions of subdivision (2) of this
18 subsection (a). Any interview conducted shall be recorded in its entirety. The
19 Department shall maintain the recording in an audibly intelligible and visually
20 clear manner.

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

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

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

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

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

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Sec. 4. 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 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.

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

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

9 (c) The Commissioner shall adopt rules to permit use of the Registry
10 records as authorized by this subchapter while preserving confidentiality of the
11 Registry and other Department records related to abuse and neglect.

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

19 (1) the nature of the conduct and the extent of the child's injury, if any;

20 (2) the person's prior history of child abuse or neglect as either a victim
21 or perpetrator;

1 (3) the person’s response to the investigation and willingness to engage
2 in recommended services; and

3 (4) the person’s age and developmental maturity.

4 (e) The Commissioner shall ~~develop~~ adopt rules for the implementation of
5 a system of Child Protection Registry levels for substantiated cases pursuant to
6 3 V.S.A. chapter 25. The rules shall address:

7 (1) when and how names are placed on the Registry;

8 (2) the length of time a person’s name appears on the Registry;

9 ~~(2)~~(3) when and how names are expunged from the Registry;

10 ~~(3)~~(4) whether the person is a juvenile or an adult;

11 ~~(4)~~(5) whether the person was charged with or convicted of a criminal
12 offense arising out of the incident of abuse or neglect; and

13 ~~(5)~~(6) whether a Family Division of the Superior Court has made any
14 findings against the person.

15 (f) [Repealed.]

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

17 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

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

- 1 (1) the nature of the substantiation decision, and that the Department
2 intends to enter the record of the substantiation into the Registry;
- 3 (2) who has access to Registry information and under what
4 circumstances;
- 5 (3) the implications of having one’s name placed on the Registry as it
6 applies to employment, licensure, and registration;
- 7 (4) the right to request a review of the substantiation determination by
8 an administrative reviewer, the specific basis for the substantiation, the time in
9 which the request for review shall be made, and the consequences of not
10 seeking a review; and
- 11 (5) the right to receive a copy of the Commissioner’s written findings
12 made in accordance with subdivision 4916(a)(2) of this title if applicable.
- 13 (b) Under this section, notice by the Department to a person alleged to have
14 abused or neglected a child shall be by a combination of first-class mail sent to
15 the person’s last known physical address and any other preferred means of
16 contact collected during the Department’s investigation pursuant to subdivision
17 4915b(b)(4) of this title. The Department shall maintain a record of the
18 notification, including who sends the notification, the date it is sent, and the
19 addresses and mobile number to which it is sent.

1 (b) Under this section, notice by the Department to a person alleged to have
2 abused or neglected a child shall be by first-class mail sent to the person's last
3 known mailing address.

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

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

20 (2) The administrative review may be stayed upon request of the person
21 ~~alleged to have committed abuse or neglect~~ who is the subject of a

1 substantiation determination if there is a related case pending in the Criminal
2 or Family Division of the Superior Court that arose out of the same incident of
3 abuse or neglect for which the person was substantiated. During the period the
4 review is stayed, the person's name shall not be placed on the Registry. Upon
5 resolution of the Superior Court criminal or family case, the person may
6 exercise ~~his or her~~ the person's right to review under this section by notifying
7 the Department in writing within 30 days after the related court case, including
8 any appeals, has been fully adjudicated. If the person fails to notify the
9 Department within 30 days, the Department's decision shall become final and
10 no further review under this subsection is required.

11 (d) The Department shall hold an administrative review conference within
12 ~~35~~ 90 days ~~of~~ after receipt of the request for review. At least ~~10~~ 45 days prior
13 to the administrative review conference, the Department shall provide to the
14 person requesting review a copy of the ~~redacted~~ unredacted investigation file
15 that only removes personally identifying information for the individual making
16 the report or for individuals for whom domestic violence is a factor, notice of
17 time and place of the conference, and conference procedures, including
18 information that may be submitted and mechanisms for providing information.
19 There shall be no subpoena power to compel witnesses to attend a Registry
20 review conference. The Department shall also provide to the person those
21 redacted investigation files that relate to prior investigations that the

1 Department has relied upon to make its substantiation determination in the case
2 in which a review has been requested. If the Department fails to hold an
3 administrative review conference within 90 days after receipt of the request to
4 review, then the substantiation determination shall be rejected and the case
5 closed with prejudice. If the failure to hold a conference is due to good cause,
6 a 15-day extension may be authorized by the Commissioner in which the basis
7 of the failure is explained.

8 (d)(1) Except as provided in this subsection, The the Department shall hold
9 an administrative review conference within 35 days ~~of~~ after receipt of the
10 request for review. At least ~~40~~ 20 days prior to the administrative review
11 conference, the Department shall provide to the person requesting review a
12 copy of the redacted investigation file, notice of time and place of the
13 conference, and conference procedures, including information that may be
14 submitted and mechanisms for providing information. There shall be no
15 subpoena power to compel witnesses to attend a Registry review conference.
16 The Department shall also provide to the person those redacted investigation
17 files that relate to prior investigations that the Department has relied upon to
18 make its substantiation determination in the case in which a review has been
19 requested.

20 (2) The Department shall may not hold an administrative review
21 conference when a person who has requested a review does not respond to

1 Department requests to schedule the review meeting or does not appear for the
2 scheduled review meeting. In these circumstances, unless good cause is
3 shown, the Department’s substantiation shall be accepted and the person’s
4 name shall be placed on the registry. Upon the Department’s substantiation
5 being accepted, the Department shall provide notice that advises the person of
6 the right to appeal the substantiation determination to the Human Services
7 Board pursuant to section 4916b of this title.

8 (e) At the administrative review conference, the person who requested the
9 review shall be provided with the opportunity to present documentary evidence
10 or other information that supports ~~his or her~~ the person’s position and provides
11 information to the reviewer in making the most accurate decision regarding the
12 allegation. The Department shall have the burden of proving ~~that it has~~
13 ~~accurately and reliably concluded that a reasonable person would believe~~ by a
14 preponderance of the evidence that the child has been abused or neglected by
15 that person. Upon the person’s request, the conference may be held by
16 teleconference. During a declared state of emergency in Vermont restricting
17 in-person conferences, the Department may require that the review shall be
18 held through a virtual conference live, interactive, audio-video connection or
19 by telephone.

20 (f) The Department shall establish an administrative case review unit
21 within the Department and contract for the services of administrative

1 reviewers. An administrative reviewer shall be a neutral and independent
2 arbiter who has no prior involvement in the original investigation of the
3 allegation and has had no access to any information other than that provided to
4 the person seeking the review. Department information pertaining to the
5 investigation that is obtained by the reviewer outside of the review meeting
6 shall be disclosed to the person seeking the review.

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

- 9 (1) reject the Department's substantiation determination;
10 (2) accept the Department's substantiation; or
11 (3) place the substantiation determination on hold and direct the
12 Department to further investigate the case based upon recommendations of the
13 reviewer.

14 (h) If the administrative reviewer accepts the Department's substantiation
15 determination, a Registry record shall be made immediately. If the reviewer
16 rejects the Department's substantiation determination, no Registry record shall
17 be made.

18 (i) Within seven days ~~of~~ after the decision to reject or accept or to place the
19 substantiation on hold in accordance with subsection (g) of this section, the
20 administrative reviewer shall provide notice to the person of ~~his or her~~ the
21 reviewer's decision by a combination of first class mail, e-mail, and text

1 message sent to the person’s last known physical address and contact
2 information collected during the Department’s investigation pursuant to
3 subdivision 4915b(b)(4) of this title. If the administrative reviewer accepts the
4 Department’s substantiation, the notice shall advise the person of the right to
5 appeal the administrative reviewer’s decision to the human services board in
6 accordance with section 4916b of this title.

7 (i) Within seven days of after the decision to reject or accept or to place the
8 substantiation on hold in accordance with subsection (g) of this section, the
9 administrative reviewer shall provide notice to the person of his or her the
10 reviewer’s decision by first-class mail to the person’s last known mailing
11 address. If the administrative reviewer accepts the Department’s
12 substantiation, the notice shall advise the person of the right to appeal the
13 administrative reviewer’s decision to the human services board in accordance
14 with section 4916b of this title.

15 * * *

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

17 § 4916b. HUMAN SERVICES BOARD HEARING

18 (a) Within 30 days after the date on which the administrative reviewer
19 mailed provided notice of placement of a report on the Registry, the person
20 who is the subject of the substantiation may apply in writing to the Human
21 Services Board for relief. The Board shall hold a fair hearing pursuant to 3

1 V.S.A. § 3091. When the Department receives notice of the appeal, it shall
2 make note in the Registry record that the substantiation has been appealed to
3 the Board.

4 * * *

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

6 § 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

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

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

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 (c) At the review, the person who requested the review shall be provided
10 with the opportunity to present any evidence or other information, including
11 witnesses, that supports ~~his or her~~ the person’s request for expungement. Upon
12 the person’s request, the review may be held by teleconference. During a
13 declared state of emergency in Vermont restricting in-person conferences, the
14 Department may require that the review shall be held through a virtual
15 conference live, interactive, audio-video connection or by telephone.

16 (d) A person may seek a review under this section no more than once every
17 36 months.

18 (e) Within 30 days ~~of~~ after the date on which the Commissioner mailed
19 notice of the decision pursuant to this section, a person may appeal the
20 decision to the Human Services Board. The person shall be prohibited from
21 challenging ~~his or her~~ the person’s substantiation at such hearing, and the sole

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

5 * * *

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

7 § 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

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

16 Sec. 9. 33 V.S.A. § 4922 is amended to read:

17 § 4922. RULEMAKING

18 (a) On or before September 1, 2025, the Commissioner shall file proposed
19 rules pursuant to 3 V.S.A. chapter 25 implementing the provisions of this
20 subchapter to become effective on January 1, 2026. The Commissioner shall
21 ~~develop~~ adopt rules to ~~implement~~ carry out the provisions of this subchapter as

1 emergency rules and concurrently propose them as permanent rules. The
2 emergency rules shall be deemed to meet the standard for the adoption of
3 emergency rules pursuant to 3 V.S.A. § 844(a). These shall include:

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

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

7 (3) rules outlining procedures for investigations;

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

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

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

13 (7) rules establishing substantiation categories that require, and do not
14 require, entry onto the Registry;

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

18 ~~(9) rules governing the automatic expungement of substantiations that~~
19 ~~would not be entered into the Registry under current law, policies, and~~
20 ~~procedures.~~

21 Sec. 10. EFFECTIVE DATE

1 This act shall take effect on passage July 1, 2024.

2

3 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE