TO THE HOUSE OF REPRESENTATIVES:

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

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 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.
(Draft No. 2.2 – H.661)

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(e) The Commissioner shall develop 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 44 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 44-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 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 40 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.

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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 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 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 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 substantiation at such hearing, and the sole issue before the Board shall be whether the Commissioner abused his or her discretion in 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 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 4916c 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.

(Committee vote: ___________)

_______________________
Representative __________

FOR THE COMMITTEE