

1 H.294

2 Introduced by Representative Mrowicki of Putney

3 Referred to Committee on

4 Date:

5 Subject: Human services; child welfare services; reporting abuse of children;

6 Child Protection Registry

7 Statement of purpose of bill as introduced: This bill proposes to eliminate the
8 intermediate appeal to the Human Services Board in cases challenging the
9 Department for Children and Families decision to place a person's name on the
10 Child Protection Registry. The Department's decision could be appealed
11 directly to the Supreme Court.

12 An act relating to the right to appeal a child abuse or neglect determination
13 made by the Department for Children and Families

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

15 Sec. 1. 33 V.S.A. § 4913 is amended to read:

16 § 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL

17 ACTION

18 (a) Any physician, surgeon, osteopath, chiropractor, or physician assistant
19 licensed, certified, or registered under the provisions of Title 26, any resident
20 physician, intern, or any hospital administrator in any hospital in this State,

1 whether or not so registered, and any registered nurse, licensed practical nurse,
2 medical examiner, emergency medical personnel as defined in 24 V.S.A.
3 § 2651(6), dentist, psychologist, pharmacist, any other health care provider,
4 child care worker, school superintendent, headmaster of an approved or
5 recognized independent school as defined in 16 V.S.A. § 11, school teacher,
6 student teacher, school librarian, school principal, school guidance counselor,
7 and any other individual who is employed by a school district or an approved
8 or recognized independent school, or who is contracted and paid by a school
9 district or an approved or recognized independent school to provide student
10 services, mental health professional, social worker, probation officer, any
11 employee, contractor, and grantee of the Agency of Human Services who have
12 contact with clients, police officer, camp owner, camp administrator, camp
13 counselor, or member of the clergy who has reasonable cause to believe that
14 any child has been abused or neglected shall report or cause a report to be
15 made in accordance with the provisions of section 4914 of this title within
16 24 hours. As used in this subsection, “camp” includes any residential or
17 nonresidential recreational program.

18 (b) The Commissioner shall inform the person who made the report under
19 subsection (a) of this section:

20 (1) whether the report was accepted as a valid allegation of abuse or
21 neglect;

1 (2) whether an assessment was conducted and, if so, whether a need for
2 services was found; and

3 (3) whether an investigation was conducted and, if so, whether it
4 resulted in a substantiation.

5 (c) Any other concerned person not listed in subsection (a) of this section
6 who has reasonable cause to believe that any child has been abused or
7 neglected may report or cause a report to be made in accordance with the
8 provisions of section 4914 of this title.

9 (d)(1) Any person, other than a person suspected of child abuse, who in
10 good faith makes a report to the Department shall be immune from any civil or
11 criminal liability which might otherwise be incurred or imposed as a result of
12 making a report.

13 (2) An employer or supervisor shall not discharge; demote; transfer;
14 reduce pay, benefits, or work privileges; prepare a negative work performance
15 evaluation; or take any other action detrimental to any employee because that
16 employee filed a good faith report in accordance with the provisions of this
17 subchapter. Any person making a report under this subchapter shall have a
18 civil cause of action for appropriate compensatory and punitive damages
19 against any person who causes detrimental changes in the employment status
20 of the reporting party by reason of his or her making a report.

1 (e) The name of and any identifying information about either the person
2 making the report or any person mentioned in the report shall be confidential
3 unless:

4 (1) the person making the report specifically allows disclosure;

5 (2) ~~a Human Services Board proceeding or a judicial proceeding results~~
6 ~~therefrom;~~

7 ~~(3)~~ a court, after a hearing, finds probable cause to believe that the
8 report was not made in good faith and orders the Department to make the name
9 of the reporter available; or

10 ~~(4)~~(3) a review has been requested pursuant to section 4916a of this title,
11 and the Department has determined that identifying information can be
12 provided without compromising the safety of the reporter or the persons
13 mentioned in the report.

14 (f)(1) A person who violates subsection (a) of this section shall be fined not
15 more than \$500.00.

16 (2) A person who violates subsection (a) of this section with the intent to
17 conceal abuse or neglect of a child shall be imprisoned not more than six
18 months or fined not more than \$1,000.00, or both.

19 (3) This section shall not be construed to prohibit a prosecution under
20 any other provision of law.

1 (g) Except as provided in subsection (h) of this section, a person may not
2 refuse to make a report required by this section on the grounds that making the
3 report would violate a privilege or disclose a confidential communication.

4 (h) A member of the clergy shall not be required to make a report under
5 this section if the report would be based upon information received in a
6 communication which is:

7 (1) made to a member of the clergy acting in his or her capacity as
8 spiritual advisor;

9 (2) intended by the parties to be confidential at the time the
10 communication is made;

11 (3) intended by the communicant to be an act of contrition or a matter of
12 conscience; and

13 (4) required to be confidential by religious law, doctrine, or tenet.

14 (i) When a member of the clergy receives information about abuse or
15 neglect of a child in a manner other than as described in subsection (h) of this
16 section, he or she is required to report on the basis of that information even
17 though he or she may have also received a report of abuse or neglect about the
18 same person or incident in the manner described in subsection (h) of this
19 section.

1 Sec. 2. 33 V.S.A. § 4916a is amended to read:

2 § 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

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

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

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

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

13 (4) the right to request a review of the substantiation determination by
14 an administrative reviewer, the time in which the request for review shall be
15 made, and the consequences of not seeking a review; and

16 (5) the right to receive a copy of the Commissioner's written findings
17 made in accordance with subdivision 4916(a)(2) of this title if applicable.

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

1 (c)(1) A person alleged to have abused or neglected a child may seek an
2 administrative review of the Department's intention to place the person's name
3 on the Registry by notifying the Department within 14 days of the date the
4 Department mailed notice of the right to review in accordance with subsections
5 (a) and (b) of this section. The Commissioner may grant an extension past the
6 14-day period for good cause, not to exceed 28 days after the Department has
7 mailed notice of the right to review.

8 (2) The administrative review may be stayed upon request of the person
9 alleged to have committed abuse or neglect if there is a related case pending in
10 the Criminal or Family Division of the Superior Court which arose out of the
11 same incident of abuse or neglect for which the person was substantiated.
12 During the period the review is stayed, the person's name shall be placed on
13 the Registry. Upon resolution of the Superior Court criminal or family case,
14 the person may exercise his or her right to review under this section.

15 (d) The Department shall hold an administrative review conference within
16 35 days of receipt of the request for review. At least 10 days prior to the
17 administrative review conference, the Department shall provide to the person
18 requesting review a copy of the redacted investigation file, notice of time and
19 place of the conference, and conference procedures, including information that
20 may be submitted and mechanisms for providing testimony. The Department
21 shall also provide to the person those redacted investigation files that relate to

1 prior investigations that the Department has relied upon to make its
2 substantiation determination in the case in which a review has been requested.

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 position and provides information
6 to the reviewer in making the most accurate decision regarding the allegation.

7 The Department shall have the burden of proving that it has accurately and
8 reliably concluded that a reasonable person would believe that the child has
9 been abused or neglected by that person. Upon the person's request, the
10 conference may be held by teleconference.

11 (f) The Department shall establish an administrative case review unit
12 within the Department and contract for the services of administrative
13 reviewers. An administrative reviewer shall be a neutral and independent
14 arbiter who has no prior involvement in the original investigation of the
15 allegation.

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

17 (1) reject the Department's substantiation determination;

18 (2) accept the Department's substantiation; or

19 (3) place the substantiation determination on hold and direct the

20 Department to further investigate the case based upon recommendations of the
21 reviewer.

1 (h) If the administrative reviewer accepts the Department's substantiation
2 determination, a Registry record shall be made immediately. If the reviewer
3 rejects the Department's substantiation determination, no Registry record shall
4 be made.

5 (i) Within seven days of the decision to reject or accept or to place the
6 substantiation on hold in accordance with subsection (g) of this section, the
7 administrative reviewer shall provide notice to the person of his or her
8 decision. If the administrative reviewer accepts the Department's
9 substantiation, the notice shall advise the person of the right to appeal the
10 administrative reviewer's decision to the ~~human services board in accordance~~
11 ~~with section 4916b of this title~~ Supreme Court.

12 (j) Persons whose names were placed on the Registry on or after January 1,
13 1992 but prior to September 1, 2007 shall be entitled to an opportunity to seek
14 an administrative review to challenge the substantiation.

15 (k) If no administrative review is requested, the Department's decision in
16 the case shall be final, and the person shall have no further right of review
17 under this section. The Commissioner may grant a waiver and permit such a
18 review upon good cause shown. Good cause may include an acquittal or
19 dismissal of a criminal charge arising from the incident of abuse or neglect.

20 (l) In exceptional circumstances, the Commissioner, in his or her sole and
21 nondelegable discretion, may reconsider any decision made by a reviewer. A

1 Commissioner's decision that creates a Registry record may be appealed to the
2 ~~Human Services Board in accordance with section 4916b of this title~~ Supreme
3 Court.

4 Sec. 3. REPEAL

5 33 V.S.A. § 4916b (Human Services Board hearing) is repealed.

6 Sec. 4. EFFECTIVE DATE

7 This act shall take effect on July 1, 2015.