

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.399 **Name of Bill:** An act relating to the Department for Children and Families' Registry Review Unit

Agency/ Dept: DCF **Author of Bill Review:** Leslie Wisdom, General Counsel

Date of Bill Review: March 29, 2016 **Related Bills and Key Players:** S.9 (Act 60). This bill was proposed by DCF and sponsored by Representative Pugh.

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. This bill proposes improvements to the procedures of the Commissioner's Registry Review Unit.

2. Is there a need for this bill? Yes; this bill makes the following changes to the registry review process:

- In cases where a registry review has been stayed because of a pending related criminal or family division case, this bill requires that the petitioner notify the Commissioner's Registry Review Unit (CRRU) within 30 days after the pending related matter is resolved so that the stayed review can be reactivated. Failure to do so forecloses further review (§4916a(c)(2)). CRRU would not have knowledge of the conclusion of the pending related case since CRRU is not a party to the case. If the petitioner does not notify the CRRU, the review could be pending for months and years. This proposal places the burden on the petitioner, who requested the review, to notify the CRRU so that the review may be completed.
- This bill clarifies that there is no subpoena power to registry review conferences and registry reviews are not evidentiary hearings where witnesses testify (§4916a(d)). The Registry Review hearing is not a contested case under the Vermont Administrative Procedures Act and, therefore, the rules of evidence do not apply. This proposed language makes clear that the grievant does not have the right to compel testimony of the child victim or any other witness at the registry review conference.
- This bill proposes language stating that there is no right of expungement from the child abuse registry for a person who is listed on Vermont's sex offender registry (§4916c(a)). Expungement is appropriate when a person no longer presents a risk to the safety or well-being of children. The Vermont legislature has stated as a matter of public policy that persons listed on the sex offender registry are a danger to the public. Therefore, DCF should not grant expungement for persons substantiated for child abuse or neglect if the person is currently listed on the State's sex offender registry.
- Finally, this bill proposes that DCF may deny a petition for expungement based solely on the nature or number of substantiations (§4916c(b)). In cases where there has been severe physical abuse or sexual abuse or a person has been substantiated for multiple incidents of abuse, the potential for serious harm is too great a risk to permit the

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removal of the person's name from the Child Protection Registry. Language in this section also includes a catch-all provision for the Commissioner to consider any other relevant information related to the request.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

DCF anticipates positive fiscal and programmatic implications as a result of this bill. The proposal to make final the Department's substantiation decision when a grievant fails to notify the Department within 30 days of the resolution of the related criminal or family case will mean that the Department can effectively close these cases when presented with a subsequent request from a grievant who has let time elapse (more than 30 days from the conclusion of the related case) and subsequently contacts the Department to "restart" the registry review proceedings. The Department will save time and resources in these cases because it can effectively issue a closed case letter in response.

Similarly, the Department will also save time and resources if the proposal regarding petitions for expungement from the Child Protection Registry for registered sex offenders is passed. Currently, DCF spends a great deal of time on requests for expungement for people whom the Department consider an ongoing risk to children because of their status as a registered sex offender. This proposal would eliminate these requests.

As a policy matter, the proposal that clarifies that there is no subpoena power to compel testimony at registry review conferences promotes child protection as it ensures that children will not be forced to participate in the registry review conference and confront their alleged abuser (Please note that this can still happen at the next stage of appeal at the Human Services Board, which is why the Department has proposed the hearsay exception in Human Services Board appeals of alleged child abuse/neglect that is part of H.398, which did not make crossover. DCF is still trying to pursue this hearsay exception proposal through addition to other bills.)

Finally, the proposal that clarifies that the Commissioner of DCF can deny a petition for expungement from the Child Protection Registry based solely on the nature or number of prior substantiations also promotes child safety as it ensures that persons with especially egregious offenses, like the murder of a child, or a large number of past substantiations that document a pervasive chronicity of child maltreatment will not be taken off of the Child Protection Registry and therefore, will not be allowed to work or volunteer in a setting caring for children or vulnerable adults (Please note that persons who are denied expungement may apply again in three years at which time the Commissioner may consider other relevant factors, including any changed circumstances and rehabilitation of the petitioner.).

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The Human Services Board will benefit from a reduction in the number of CRRU decision appeals related to the first two proposals discussed in 3 above.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

The Defender General's Office expressed concern about the proposal in a prior version of this language that was included last year in the Child Protection Bill (S.9) that prohibited requests for expungement from a person listed on *any state's* sex offender registry due to the fact that each state has different laws and criteria for being listed on a sex offender registry. Their concern was that a person may be on another state's sex offender registry for a crime that would not be "registerable" in Vermont. In response to this concern, the House Committee on Human Services clarified this language to refer only to Vermont's sex offender registry. While DCF would prefer language prohibiting requests for expungement if a person is listed on any state's sex offender registry, we can support the language referring only to the Vermont sex

offender registry as we still have the ability under the law to deny any request for expungement when a person presents a risk to children.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

6.2 Who else is likely to oppose the proposal and why?

7. Rationale for recommendation: Please see above.

8. Specific modifications that would be needed to recommend support of this bill: Not applicable. The Department supports the bill as passed the House.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No.

Secretary/Commissioner has reviewed this document: _____ **Date:** _____