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8000 Introduction

These rules have been established to provide guidance regarding the Child Protection Registry that reflects a designated child protection level related to the risk of future harm to children.

The commissioner will maintain a child protection registry, which will contain a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

These rules establish:

1. A tiered child protection registry.
2. Registry levels, based on risk.
3. Documentation and expungement.

The statutory authority for these regulations can be found at 33 V.S.A. §4911-4916

8001 Definitions

The following terms, defined in 33 V.S.A. Chapter 49 are used in this section of rules:

1. “Child Protection Registry” means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.
2. “Emotional Maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development.
3. Redacted Investigation File” means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of this title.

4. "Registry Record" means an entry in the child protection registry that consists of the name of an individual 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, used order to avoid the possibility of misidentification.
5. "Sexual Abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement or sadomasochistic abuse involving a child.
6. "Substantial Child Endangerment" means conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury.
7. "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 that the child has been abused or neglected.

The following terms are not defined in statute but are used in this section of rules:

8. "Administrative Review" means reconsideration by an Administrative Reviewer of the Department's decision to substantiate allegations of child abuse or neglect.
9. "Administrative Reviewer" means a neutral and independent person contracted by the Department to conduct an Administrative Review Conference.
10. "Administrative Review Conference" means a meeting between the grievant, an administrative reviewer and whenever possible a department employee for the purpose of reviewing the contents of the redacted investigation file, the positions of the grievant and the department in order to determine whether substantiation standards have been met under law and policy. An administrative review conference may also be held to assess whether the grievant has satisfied statutory expungement standards.

11. "Expungement" means the removal of a person's name from the Child Protection Registry, following a meeting to consider a person's petition to expunge or in compliance with a decision to expunge by the Human Services Board or other legal authority.
12. "Grievant" means
 - a. Any person who, after investigation by the Department, is determined to have abused or neglected a child and whose name has already been entered into the Child Protection Registry or who has been informed that the Department intends to place the grievant's name into the Child Protection Registry.
 - b. Any person who has petitioned for expungement from the Child Protection Registry.
 - c. Any person who has appealed to the Human Services Board for reconsideration of the department's decision to place or maintain the person's name on the Child Protection Registry.
13. "Overturn" means the decision to rescind a substantiation determination - by an Administrative Reviewer following an Administrative Review Conference or by the Commissioner or designee.
14. "Serious Physical Injury" means physical injury that is intentional or should have been foreseen based on mechanism of injury that requires hospital evaluation or admission. These injuries include but are not limited to :
 - Death
 - Shaken Baby Syndrome (also referred to as Sudden Impact Syndrome, Abuse Head Trauma, etc)
 - Multiple Fractures
 - Internal Injury
 - Poisoning resulting in any type of injury
 - Central Nervous System (CNS) injury
 - Retinal Hemorrhages
 - Head or Brain Injury with or without fracture (e.g. brain bleeding, brain bruising, subdural hematoma, etc)
 - Factitious Disorder by Proxy (previously referred to as -- Munchausen Syndrome by Proxy)
 - Designation as serious physical injury by pediatric consultant or pediatric intensive care specialist
15. "Uphold" means the decision by an Administrative Reviewer following an Administrative Review Conference to affirm a substantiation determination.

8002 Placement on the Child Protection Registry

The following persons' names are contained in the child protection registry:

1. All persons found to be the subject of a substantiated report of child abuse or neglect on or after January 1, 1992 and before September 1, 2007, unless that substantiation has since been overturned or expunged.
2. All persons found to be the subject of a substantiated report of child abuse or neglect after September 1, 2007 when no administrative review was requested or whose substantiation was upheld after an administrative review, unless that substantiation has since been overturned or expunged.
3. The commissioner may place the name of a person on the child protection registry pending an independent review, if the person is alleged to have sexually abused or serious physically abused a child. The commissioner may not delegate this authority. The commissioner must review the investigation file and make written findings regarding:
 - (i) The nature and seriousness of the alleged behavior; and
 - (ii) the person's continuing access to children.
4. Individuals with a substantiation not upheld by independent review when, in exceptional circumstances, the commissioner, in his or her sole and nondelegable discretion, reconsiders any decision made by a review and determines that the case meets the standard for substantiation. If the name of the person has been placed on the registry and the substantiation is subsequently rejected after Human Services Board hearing, the name shall be removed.

8003 Child Protection Registry Record

A child protection registry record consists of:

1. The name and age of an individual substantiated for abuse or neglect;
2. the date of the finding;
3. the nature of the finding; and
4. at least one other personal identified, other than a name, listed in order to avoid the possibility of misidentification.

And, for individuals placed on the Child Protection Registry after July 1, 2009:

5. A designated child protection level related to the risk of future harm to children.

8004 Overview of Child Protection Registry Levels

All individuals placed on Child Protection Registry after July 1, 2009 will have a designated child protection level related to the risk of future harm to children.

The assignment of levels shall be based on an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children and shall include, but are not limited to, consideration of the following factors:

1. The nature of the conduct and the extent of the child's injury, if any;
2. the persons prior history of child abuse or neglect as either a victim or perpetrator;
3. any adjudication in criminal court or family court findings as outlined in section entitled "Criteria for Level Assignment";
4. the person's response to the investigation, acceptance of responsibility for the conduct, ability and willingness to engage in recommended services; and,
5. any prior termination of parental rights

8005 Criteria for Level Assignment

The child protection registry assigns two levels that reflect on an identification of risk of future harm to children. The levels apply to substantiated perpetrators of all ages:

1. A substantiation of a person responsible for a child's welfare will be assigned to Level 1 if it:
 - a. involves substantial child endangerment;
 - b. there are court adjudications for related conduct; or
 - c. there is a high risk of future harm based on the assessment of risk.
2. All other substantiations will be assigned to Level 2.

8006 Assessment of Risk

Substantiations meeting the criteria for Level 1 will automatically be placed on that level. For other substantiations, risk will be assessed using the Family Risk Assessment or another validated risk assessment tool.

The following factors will also enter into the assessment of risk:

1. The person's response to the investigation, acceptance of responsibility for the conduct, ability and willingness to engage in recommended services;

2. the person's prior history of child abuse or neglect as either a victim or perpetrator;
3. the nature of the conduct and the extent of the child's injury, if any ; and,
4. the person's age (adult or juvenile) and developmental maturity, as those factors relate to the individual's ability to take responsibility for behavior and to govern his or her future behavior. In assessing these factors the department will, when requested by an individual who identifies themselves as having a disability, seek consultation from individuals with relevant expertise.

8007 Retention and Expungement of Registry Records

8007.01 Level 1

A level system is established as of July 1, 2009

A Level 1 designation shall be documented and remain on the Child Protection Registry permanently, unless expunged under the provisions of 33 VSA § 4916a, § 4916b, § 4916c, or § 4916d.

There is no automatic expungement for Level 1 substantiations. Individuals placed on Level 1 may apply for expungement on the basis of rehabilitation when the following conditions have been met:

1. Persons whose name was placed on the registry for behavior occurring on or after the person reached the age of 18:
 - a. A person whose name was placed on the Registry before July 1, 2009 may apply for expungement after 3 years.
 - b. A person whose name was placed on the Registry on or after July 1, 2009 may apply for expungement after 7 years.
2. Persons whose name was placed on the registry for behavior occurring before the person reached the age of 18 may apply for expungement after 3 years.

8007.02 Level 2

A Level 2 designation shall be documented and remain on the Child Protection Registry, unless expunged under the provisions of 33 VSA § 4916a, § 4916b, § 4916c, or § 4916d.

Individuals placed on Level 2 may apply for expungement on the basis of rehabilitation when three years has elapsed since the date of substantiation.

**8008 Applicability of Levels for Individuals Who Apply for
Expungement after July 1, 2009**

For individuals who are eligible to apply for expungement after July 1, 2009, the department may expunge the individual's name without holding a review hearing if the documentation contained in the record indicate that, the substantiation would not meet current criteria for investigation or substantiation.

Nothing in this subsection shall give an individual the right to automatic expungement under these circumstances.