

Central Registry Reform Model Legislation

WHEREAS the 5th and 14th Amendments of the U.S. Constitution prohibit governments from depriving individuals of their liberty or property interests without due process of the law; and

WHEREAS this State has established procedures for collecting and maintaining child abuse and neglect investigation records in a Central Registry that includes the identities of individuals alleged to have abused or neglected a child; and

WHEREAS the names maintained in this State's Central Registry may be disclosed to certain third parties in the course of background checks related to an individual's employment, licensure, and/or volunteer activities; and

WHEREAS such disclosures may have a significant negative impact on an individual's liberty and property interests, including the loss or denial of employment and/or reputation in the community; and

WHEREAS such disclosures can cause long-term harm to an individual's ability to earn a living and may disproportionately impact individuals struggling with conditions of poverty; and

WHEREAS this Legislature wishes to ensure that this State's procedures for listing individuals on the Central Registry comport with Constitutional due process requirements; now, therefore,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

SECTION 1.

- (a) Information about an alleged perpetrator of child abuse or neglect shall not be included in this state's central registry absent notice and a hearing.
- (b) The minimum standard for listing an alleged perpetrator in the state's central registry shall be a preponderance of the evidence.
- (c) Before the [DEPARTMENT] may add an alleged perpetrator to the state's central registry, the department shall provide the alleged perpetrator with written notice of the department's intent to list the alleged perpetrator's name in the state's central registry within 14 days of making a finding substantiating the allegations. Notice shall include:
 1. A clear statement of the specific allegations that will be added to the registry, including the name of the alleged victim, the injuries or harm alleged to have resulted from abuse or neglect, and the date on which the report was made;
 2. The consequences of listing in the central registry, including possible negative impacts on the individual's employment, licensure, and ability to have future contact with children, including volunteer and/or school activities;

3. The maximum amount of time the individual's name may be included in the central registry;
 4. A complete copy of the record that will be added to the registry; and
 5. Confirmation that the department has requested a hearing before the [OFFICE OF ADMINISTRATIVE HEARINGS] to review its findings and the contact information for the [OFFICE OF ADMINISTRATIVE HEARINGS].
- (d) The department shall also submit a request for a hearing before the [OFFICE OF ADMINISTRATIVE HEARINGS] within 14 days of making a finding substantiating allegations of abuse or neglect against an alleged perpetrator.
- (e) The department shall not add an alleged perpetrator to the central registry or release information to any third parties until all appeals are either exhausted or waived.
- (f) A hearing under this Section is not required if a court has rendered an order in a civil, criminal, administrative, or juvenile proceeding in which the allegations of abuse or neglect are at issue.

SECTION 2.

- (a) Upon receipt of a request for a hearing from the department regarding its intention to list an alleged perpetrator in the state's central registry, the [OFFICE OF ADMINISTRATIVE HEARINGS] shall contact the parties to schedule a date for the hearing, which shall be held no later than 60 days from the date the department issued its findings.
- (b) A hearing under this Section shall be considered a contested hearing and eligible for appeal.
- (c) Prior to the hearing, the department shall provide the alleged perpetrator with the full investigative file and any exculpatory evidence within its possession or control.
- (d) Discovery prior to the hearing shall be conducted in accordance with [INSERT STATE'S BEST LEVEL OF DISCOVERY].
- (e) At the hearing, the alleged perpetrator shall have the right to:
1. Be represented by counsel. If the alleged perpetrator is indigent, the [OFFICE OF ADMINISTRATIVE HEARINGS] shall appoint counsel to represent the alleged perpetrator prior to the hearing.
 2. Present sworn evidence, law, or rules related to the allegations; and
 3. Subpoena witnesses, cross-examine the department's witnesses, introduce evidence and object to evidence introduced by the opposing party, and make a closing argument.

- (f) Within 30 days after the conclusion of a hearing held under this Section, the presiding administrative judge shall enter an order containing its findings of fact and law based upon, at minimum, a preponderance of the evidence.
- (g) If the presiding administrative judge finds that there is sufficient evidence supporting the department's allegations, the substantiated allegations against the alleged perpetrator shall be entered into the state's central registry for a period of time proportionate to the severity of the finding, not to exceed [10 years].
- (h) If the presiding administrative judge finds that there is insufficient evidence to support the allegations, the judge shall order the department to amend their finding accordingly and the allegation shall not be entered into the central registry.
- (i) An alleged perpetrator has the right to appeal an adverse decision to the [RELEVANT COURT].

SECTION 3.

- (a) With the exception of substantiated allegations of abuse or neglect, the department receiving a report of abuse or neglect shall maintain each report until the second anniversary of the date the department received the report.
- (b) Notwithstanding subsection (g), an individual listed in the state's central registry prior to the effective date of this statute may request to have their name expunged from the registry by submitting a written request to the [OFFICE OF ADMINISTRATIVE HEARINGS].
- (c) An individual listed in the state's central registry may request to have their name expunged from the registry by submitting a written request to the [OFFICE OF ADMINISTRATIVE HEARINGS] accompanied by an affidavit sworn to by a person with personal knowledge stating facts sufficient to show that there is good cause for a hearing. Good cause shall include but may not be limited to:
 - (1) Newly discovered evidence that a substantiated report of child abuse or neglect is inaccurate; or
 - (2) Evidence that the alleged perpetrator in a substantiated report no longer poses a risk and that no significant public purpose would be served by continued listing of the person as a perpetrator in the state's central registry.
- (d) A written request for expungement submitted under this Section need not be in a specific form or format with the exception of the affidavit required by Section 3(c).
- (e) Prior to a hearing requested under this Section, the department may administratively expunge the requestor's name from the central registry.

- (f) Hearings requested under this Section shall be conducted in accordance with the procedures outlined in Section 2 of this Chapter.
- (g) An alleged perpetrator who is listed on the central registry must wait 2 years from the date of the original adjudication before requesting expungement.
- (h) If an alleged perpetrator's request for expungement under this Section is denied, the alleged perpetrator must wait 2 years before submitting another request for expungement.