ARTICLES

# CHILD ABUSE REGISTRIES AND JUVENILES: AN OVERVIEW AND SUGGESTIONS FOR CHANGE IN LEGISLATIVE AND AGENCY DIRECTION

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## *I. Introduction*

In 1995, a mother sought legal representation for her eleven-year-old son, Billy,[1] who had a report of sexual abuse substantiated against him by the Vermont Department of Social and Rehabilitation Services (SRS).[2] Because the report was substantiated, Billy's name was placed in the state's Child Abuse Registry. In preparing for the first level of administrative appeal, known as the Level I Review, it came to light that the substantiation in Billy's case was based on nothing more than an interview with the victim and the victim's mother. After presenting Billy's case through informal

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[1] Not the child's actual name.

[2] Specifically, the mother obtained the services of the South Royalton Legal Clinic, which is a client clinical program of Vermont Law School.

testimony from his parents, the District Director of SRS, who was responsible for the Level I decision, remanded the case for a second investigation so that other involved persons could be interviewed. After two years, the initial substantiation was changed to an unsubstantiation.[3] Unfortunately, however, this did not lead to the immediate removal of Billy's name from the Child Abuse Registry.[4] Under Vermont law, an unsubstantiated report remains in the Registry for one year prior to expungement.[5]

More recently, John,[6] a nineteen-year-old learning impaired individual, came to Vermont's South Royalton Legal Clinic after he learned that a report of abuse was substantiated against him when he was fifteen-years-old. He discovered the substantiated allegation through friends of his in the community who were told by an SRS worker to keep their daughter away from him.[7] This substantiation was also for alleged sexual abuse. He is in the process of appealing this determination. In Vermont, there is no

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[3] The precise reason for the reversal of the earlier agency determination was never clearly articulated to Billy's attorney.

[4] Vermont's Child Abuse Registry is created by statute. *See* VT. STAT. ANN. tit. 33, § 4916(a) (1991). This statute states in pertinent part:

> The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 4915 of this title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless complained about requests within one year that it not be destroyed.

*Id.*

[5] *See id.* § 4916(b). This section provides that:

> If no court proceeding is brought pursuant to subsection 4913(d) of this title within one year of the date of the notice to the person complained about, the records relating to the unsubstantiated report shall be destroyed.

*Id.* The statute requires that the records of unsubstantiated reports be destroyed unless the person complained about requests within one year that they not be destroyed. *See id.* § 4916(a).

[6] Not the individual's real name.

[7] According to SRS Policy No. 1215 (July 1992) [hereinafter Policy No. 1215], the policy in effect at the time, a substantiation letter should have been sent to John's parents. These letters are seriously deficient in the amount of information provided to the accused. There is no notice of the accused's specific appeal rights or of the fact that the substantiation means that the name of the accused has been placed in the Child Abuse Registry.

time limit on when an administrative appeal can be initiated.[8]

Also, in 1995, the Vermont Supreme Court issued a decision in which an adult woman appealed a substantiated report that she had, years earlier, sexually abused a young boy while babysitting.[9] According to the reported decision, fifteen-year-old Tonya Selivonik was not notified of SRS's determination that the report was substantiated nor was she told that her name had been entered into the State Child Abuse Registry.[10] Rather, Tonya learned of the substantiation second hand after a parent told the director of the day care program where Tonya worked.[11] Among her several arguments to the Vermont Supreme Court, Tonya contended that maintaining her name in the registry was in direct conflict with the State's other juvenile statutes which seek to avoid placing a permanent stigma of criminality upon juvenile offenders.[12] In Tonya's case, a delinquency petition, based on the allegations that she had committed criminal sexual acts, had actually been brought by the State but was later dismissed by the juvenile court. Ironically, if the juvenile court had not dismissed the charges and had made a finding of delinquency based on the allegations of sexual abuse, Tonya would have benefited from the special protections afforded juveniles charged with such crimes. Specifically, her record would have been protected as confidential under Vermont's juvenile statute[13] and subject to later sealing.[14] However,

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[8] *See* Vermont Social Services Policy Manual No. 56 (Oct. 1997 Interim) [hereinafter Policy Manual No. 56] & Vermont Social Services Policy Manual No. 58 (Oct. 1997 Interim) [hereinafter Policy Manual No. 58].

[9] *See In re* Tonya Selivonik, 670 A.2d 831 (Vt. 1995).

[10] *See id.* at 833.

[11] *See id.*

[12] *See id.* at 834.

[13] *See* VT. STAT. ANN. tit. 33, § 5536 (1991). This statute states in pertinent part:

> Law enforcement reports and files concerning a person subject to the jurisdiction of the juvenile court shall be maintained separate from the records and files of arrests of other persons. Unless a charge of delinquency is transferred for criminal prosecution under this act or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of a commission of a delinquent act which would have been a felony if committed by an adult of the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

young Tonya Selivonik did not prevail in her appeal, thus, her name will remain listed forever in Vermont's Child Abuse Registry.[15]

These case scenarios raise several issues that are the subject of the following article. Part II of this article addresses how child abuse registries operate generally and, in particular, how juveniles are treated under these systems in various states.[16] In most states, juvenile and adult alleged perpetrators are treated without distinction. Part III discusses child abuse registry laws and also compares these laws with sex offender registration laws which, in many states, do not include juveniles under their purview or which treat juveniles more leniently than adults.[17] Further, this article discusses the seemingly inherent conflict between child abuse registry laws and juvenile statutes generally.[18] Finally, Part IV recommends changes to state registry laws that will hopefully, at a minimum, encourage review and debate of the critical issues that they raise.[19]

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*Id.*

[14] *See id.* § 5538. VT. STAT. ANN. tit. 33, § 5538(a) provides that:

> On application of a child who has been adjudicated delinquent or in need of care or supervision, or on the court's own motion, and after notice to all parties of records and hearing, the court shall order the sealing of all files and records of the court applicable to the proceeding if it finds;
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> (1) Two years have elapsed since the final discharge of the person,
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> (2) He has not been convicted of a felony or misdemeanor involving moral turpitude or adjudicated delinquent or in need of care or supervision after such initial adjudication and prior to the hearing and no proceeding is pending seeking such conviction or adjudication, and
>
> (3) His rehabilitation has been attained to the satisfaction of the court. The application or motion and the order may include the files and records specified in sections 5536 and 5537 of this title.

*Id.*

[15] *See In re* Selivonik, 670 A.2d at 836 (discussing VT. STAT. ANN. tit. 33, § 4916(g) (1991)). *But see* Policy Manual Policy No. 56, *supra* note 8 (providing that for alleged perpetrators under 10 years of age, although information pertaining to these cases is entered in the Registry, the information is expunged once the accused juvenile turns 18).

[16] *See infra* Part II.

[17] *See infra* Part III.

[18] *See infra* Part III.

[19] *See infra* Part IV.

## *II. Child Abuse Registries – An Overview*

The first child abuse registries were established citywide in large cities such as New York and Los Angeles in the mid-1960's.[20] These registries originated through administrative action by medical and social service groups.[21] Shortly thereafter, the first statewide registries were established by legislation in California, Illinois, Virginia and Maryland.[22] During this time period, there was no single unifying concept defining what a central registry should look like or what purposes it should serve. In fact, at this time there were two disparate conceptual frameworks.[23] One was based on a medical model, which would utilize a registry to assist in diagnosing suspicious injuries; and the other was based on a social services model, which viewed registries as a means to better understand child abuse through the gathering of statistical data.[24] It was not until 1974, when Congress passed the Child Abuse Prevention and Treatment Act (CAPTA),[25] that there was any concerted attempt to systematically identify and deal with issues pertaining to child abuse and neglect. Following the enactment of CAPTA, many states received federal funds to assist them in developing, strengthening, and carrying out their child protective programs which included, in some states, refinement of central

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[20] *See* Douglas J. Besharov, *Putting Central Registers to Work: Using Modern Management Information Systems to Improve Child Protective Services*, 54 CHI.-KENT L. REV. 687, 689 (1978).

[21] *See id.* at 689.

[22] *See id.* The first statewide registries were promulgated in 1965 and 1966. *See id.*

[23] *See id.* at 690.

[24] *See id.*

[25] *See* Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-5106h). The Child Abuse Prevention and Treatment Act has since been expanded by: The Child Abuse Prevention and Treatment Act of 1996, Pub. L. 104-235, 110 Stat. 3063; The Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, Pub. L. 102-295, 106 Stat. 187; The Child Abuse Prevention Challenge Grants Reauthorization Act of 1989, Pub. L. 101-126, 103 Stat. 764; The Child Abuse Prevention, Adoption and Family Services Act of 1988, Pub. L. 100-294, 102 Stat. 102; Child Abuse Amendments of 1984, Pub. L. 98-457, 98 Stat. 1749; and The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95-266, 92 Stat. 205.
Other important federal child protective legislation includes The Indian Child Protection and Family Violence Prevention Act of 1990, 25 U.S.C. § 3201 (establishing reporting procedures); and The Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 (retaining jurisdiction of Native American children to the tribes).

registries.[26]

Most states today have statutorily-created central registries in which investigation records of alleged incidents of child abuse and neglect are kept.[27] The registries vary widely in how they are structured and operated, particularly regarding access to the registries, the information maintained in the registries, and the appeal procedures for accused persons who seek expungement of their names from the registries. In many states, most of the operating details of the registries are contained not in state statutes, but rather in administrative rules and regulations.[28]

A. *Legal Standard*

In Vermont, pursuant to statute, a report of abuse or neglect

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[26] *See* Besharov, *supra* note 20, at 691.

[27] Currently, 43 states and the District of Columbia have established child abuse registries. *See,* ALA. CODE § 26-14-8(b) (Supp. 1997); ALASKA STAT. § 47.17.040(a) (Michie 1996); ARIZ. REV. STAT. ANN. § 8-546.03 (West Supp. 1997); ARK. CODE ANN. § 12-12-505 (Michie Supp. 1997); CAL. PENAL CODE § 11170(a)(1) (West Supp. 1998); COLO. REV. STAT. § 19-3-313 (1997); CONN. GEN. STAT. ANN. §§ 17a-101k (West Supp. 1997); DEL. CODE ANN. tit. 16, § 905(c) (1995); D.C. CODE ANN. § 6-2111(a) (1995); FLA. STAT. ANN. § 415.504(4)(a) (West Supp. 1998); GA. CODE ANN. § 49-5-181 (Supp. 1997); HAW. REV. STAT. § 350-2(c) (1993); IDAHO CODE § 16-1623(c) (Supp. 1997); 325 ILL. COMP. STAT. ANN. 5/7.7 (West Supp. 1997); IND. CODE ANN. § 31-33-17-1 (Michie 1997); IOWA CODE ANN. § 235A.14 (West 1994); KAN. STAT. ANN. § 38-1520 (1993); La. Children's Code Art. 616(A) (West Supp. 1997); MD. CODE ANN., FAM. LAW § 5-714(a) (1991); MASS. ANN. LAWS ch. 119, § 51F (Law. Co-op. 1994); MICH. STAT. ANN. § 25.248(7)(1) (Law. Co-op. Supp. 1997); MISS. CODE ANN. § 43-21-257(3) (Supp. 1997); MO. ANN. STAT. § 210.145(2) (West 1996); NEB. REV. STAT. § 28-718 (1995); NEV. REV. STAT. ANN. § 432.100(1) (Michie 1996); N.H. REV. STAT. ANN. § 169-C:35 (Supp. 1997); N.J. STAT. ANN. § 9:6-8.11 (West 1993); N.Y. SOC. SERV. LAW § 422(1) (McKinney 1992); N.C. GEN. STAT. § 7A-552 (Supp. 1997); N.D. CENT. CODE § 50-25.1-05.5 (Supp. 1997); OHIO REV. CODE ANN. § 2151.42.1(F)(1) (Anderson Supp. 1996); Okla. Stat. Ann. tit. 21, § 7111(A) (West Supp. 1998); OR. REV. STAT. § 419B.030(1) (1995); PA. STAT. ANN. tit. 23, § 6331(2) (West Supp. 1997); R.I. GEN. LAWS § 42-72-7(a) (1993); S.C. CODE ANN. § 20-7-680(B) (Law Co-op. Supp. 1997); S.D. CODIFIED LAWS § 26-8A-10 (Michie 1992); TENN. CODE ANN. § 37-1-408 (1996); TEX. FAM. CODE ANN. § 261.002 (West 1996); VT. STAT. ANN. tit. 33, § 4916(a) (1991); VA. CODE ANN. § 63.1-248.7(K) (Michie 1995); W. VA. CODE § 15-2C-2 (Supp. 1997); and WYO. STAT. ANN. § 14-3-213 (Michie 1997).

[28] *See, e.g.,* DEL. CODE ANN. tit. 16, § 905(c) (1995) (establishing county registries for reported abuse or neglect cases subject to the confidentiality rules of the Division of Child Protective Services); ARK. CODE ANN. § 12-12-505(c) (Michie 1995)(granting the central registry within the Department of Human Services the power to adopt rules and regulations); and HAW. REV. STAT. § 350-2(c) (1993)(establishing the authority to create a central registry).

is made to SRS, which is the responsible state agency.[29] SRS investigates the report and decides whether the report should be "substantiated" or "unsubstantiated." A "substantiated" report is one which, after an investigation, is found to contain accurate and reliable information that would lead a reasonable person to conclude that a child has been abused or neglected.[30] Substantiated reports are entered into the State's Child Abuse Registry and remain there forever unless expunged as a result of a fair hearing or reversed by a supreme court decision.[31] Unsubstantiated reports remain in SRS's general database for one year before being automatically expunged.[32]

Terms instead of "substantiated" and "unsubstantiated" are sometimes used in other states. For instance, "founded" or "indicated" are terms often substituted for "substantiated;" whereas, "unfounded" remains the most commonly used term for "unsubstantiated" reports.[33] In some states there is a middle tier standard. For example, in Oklahoma, a report may either be "ruled out," "confirmed" or labeled an "uncertain report."[34] South Carolina further classifies unfounded reports into three categories depending upon the outcome of the agency investigation.[35]

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[29] *See* VT. STAT. ANN. tit. 33, § 4914 (1991).

[30] *See id.* § 4912(10). This section provides that:

(10) "Substantiated report" means that the commissioner of 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.

*Id.*

[31] *See id.* Currently there are 16,100 names in Vermont's Child Abuse Registry. Telephone interview by Angela Clark with Phil Zunder, Director of Planning and Evaluation, SRS (Nov. 18, 1997) [hereinafter Zunder Interview].

[32] *See* Zunder Interview, *supra* note 31. Currently, there are 906 unsubstantiated reports in SRS' general database. *See id.*

[33] *See, e.g.*, ALA. CODE § 26-14-8(a) (Supp. 1997) (using "indicated" and "not indicated"); TENN. CODE ANN. § 37-1-406(h)(i) (1996) (using "indicated" and "unfounded").

[34] *See* OKLA. STAT. ANN. tit. 10, § 7102B.8 -.10 (West Supp. 1998). An "uncertain report" is defined as one "which is not ruled out . . . but which has inconclusive findings and for which there is insufficient evidence to determine whether child abuse or neglect has occurred." *Id.* § 7102B.10.

[35] *See* S.C. CODE ANN. § 20-7-650(G) (Law. Co-op. 1997). The categories created by this section are as follows:

(G) All reports that are not indicated must be classified as "unfounded". Unfounded reports must be further classified as either Category I, Cate-

The legal standard that a responsible state agency must meet in order to make a finding of abuse or neglect should be in accord with basic due process requirements. But, as illustrated by the following cases, the standards that states actually utilize in their investigations and subsequent determinations often fall short. For instance, in a leading Second Circuit case, *Valmonte v. Bane*,[36] the plaintiff argued that the placement of his name in New York's Child Abuse Registry under that state's procedures violated due process because his protected liberty interest of securing employment in the child care field was implicated. The court agreed and held that New York's "some credible evidence" standard of proof[37] used in the determination, and at the initial level of ad-

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gory II, or Category III.

> (1) Category I unfounded reports are those in which abuse and neglect were ruled out following the investigation. A report falls in this category if evidence of abuse or neglect as defined in this article was not found regardless of whether the family had other problems or was in need of services.
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> (2) Category II unfounded reports are those in which the evidence produced by the investigation was inconclusive as to whether abuse or neglect occurred. A report falls in this category if there is evidence of abuse or neglect as defined in this article but not enough evidence to constitute a preponderance of evidence. This category does not include cases in which the family had other problems that are not within the definition of abuse and neglect in Section 20-7-490.
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> (3) Category III unfounded reports are those in which an investigation could not be completed because the department was unable to locate the child or family or for some other compelling reason.

*Id.* Category I reports are those that have been ruled out; Category II reports are those where the evidence was inconclusive but less than the preponderance required in order to "indicate" a report; and Category III reports are those where the investigation could not be completed because the department was unable to locate the child or family or for some other compelling reason. Information pertaining to Category II and Category III reports may be retained in Department records even though all identifying information pertaining to these reports is expunged immediately from the central registry upon the "unfounded" determination. *See id.* § 20-7-680(D). This section provides that:

> (D) The name, address, birth date, identifying characteristics, and other information of a person named in a report must be removed from department records and the central registry immediately upon a determination by the department or the court that the report is unfounded, except as provided in Section 20-7-650(I).

*Id.*

[36] Valmonte v. Bane, 18 F.3d 992 (2nd Cir. 1994).

[37] *See id.* at 1004. In *Valmonte v. Bane*, the court defines "some credible evidence" as the "bare minimum of material credible evidence." *Id.* The court also notes that

ministrative appeal, violated the plaintiff's due process rights.[38] In sum, the *Valmonte* court found that the enormous risk of error under the "some credible evidence" standard rendered it constitutionally unacceptable.[39]

In partial agreement, New York's Court of Appeals found, in *Lee TT v. Dowling,* that prior to the release of the Register's records to child care providers and licensing agencies,[40] a substantiation had to be made by a "fair preponderance of the evidence" following a hearing.[41] However, the court also held that substantiations made pursuant to the "some credible evidence" standard could be released to health care and law enforcement agencies during the investigative process without violating the Constitution.

Additionally, following the Supreme Court's reasoning in *Paul v. Davis,*[42] the court applied a "stigma plus" test in determin-

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abuse and neglect determinations made under this standard are "inherently inflammatory" and "usually open to the subjective values of" the factfinder. *See id.* (quoting Santosky v. Kramer, 445 U.S. 745, 762 (1982)).

[38] *See id.* at 1004. The court utilized the three-factor balancing test articulated by the Supreme Court in *Mathews v. Eldridge.* In *Mathews,* the Court determined that disability benefits could be terminated despite the lack of an evidentiary hearing. *See* 424 U.S. 319, 349 (1976). In evaluating the constitutionality of administrative procedures, the Court balanced (1) the nature of private interest affected by the official action; (2) the risk of error using the procedures in place and the value of additional procedural safeguards; and (3) the governmental interests which include administrative and fiscal burdens. *See id.* at 334-35.

[39] *See Valmonte,* 18 F.3d at 1004. Plaintiffs presented evidence in *Valmonte* showing that nearly 75% of accused persons who later seek expungement of their names from the Register are successful once the Department is required to prove allegations under a fair preponderance standard. *See id.* Also noted in the record of the case was the statistic that at the time *Valmonte* was before the Second Circuit, approximately two million individuals were on the rolls of New York's Central Register. *See id.*

[40] Both child-care providers and licensing agencies utilize the Register as a screening device for future employment.

[41] *See* Lee TT. v. Dowling, 664 N.E.2d 1243 (N.Y. 1996).

[42] *See* Paul v. Davis, 424 U.S. 693 (1976). In *Paul,* plaintiff was arrested for shoplifting. *See id.* at 695. Although the charges were eventually dismissed, the police had already placed the plaintiff's name on an "active shoplifter" list, which was distributed to many local merchants. *See id.* at 697. The plaintiff sued the police for violating his constitutional rights. *See id.* at 696. However, the Court ruled that plaintiff's reputation, by itself, was not a "property" or "liberty" interest protected by the constitution. *See id.* at 712. This has come to be known as the "stigma plus" test. *See* Neu v. Corcoran, 869 F.2d 662, 666 (2nd Cir.), *cert. denied,* 493 U.S. 816 (1989). But see *Bohn v. County of Dakota,* 772 F.2d 1433, 1436 n.4 (8th Cir. 1985), where the Eighth Circuit distinguished *Paul v. Davis* and held that reputation alone is a protectable interest in cases such as *Bohn* where stigma of child abuser "eroded the fam-

ing if a constitutionally protected interest was at stake. Under this test, reputation alone is not a protected interest, but rather, to trigger due process protections there needs to be an additional, tangible injury as found in the loss of employment or the foreclosure of future employment opportunities. Specifically, in *Lee TT*, a psychologist's present and future employment opportunities were found by the court to be severely compromised by his listing in the New York Child Abuse Register. Similarly, the other plaintiffs, who were foster parents, were found by the court to be precluded from providing foster care under state contracts and also from adopting a young boy due to their inclusion in the Central Register. The court found that both these scenarios met the "plus" prong of the "stigma plus" test.[43] The court went on to hold that, prior to disclosing substantiated reports to providers and licensing agencies, accused persons are entitled to a pre-deprivation hearing to determine by a fair preponderance of the evidence whether the reports of abuse are relevant to future employment or licensure.[44]

An Illinois court went further in deeming the "credible evidence" standard constitutionally deficient. In *Cavarreta* v. *Dep't of Children and Family Services*,[45] the court held that both the United States Constitution and the Illinois Constitution require a finding of abuse by a preponderance standard even prior to listing a name in the Illinois Child Abuse Registry.[46] Similarly, under Colorado's registry statute, an accused person has an opportunity for a fair hearing prior to having his name entered into the registry in order to challenge the accuracy of the report and whether it is supported by a preponderance of the evidence.[47]

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ily's solidarity internally and impaired the family's ability to function in the community." *Id.*

[43] *See* Lee TT, 664 N.E.2d at 1249-50.

[44] *See id.* at 1252.

[45] *See* Cavarreta v. Dep't of Children and Family Services, 660 N.E.2d 250 (Ill. App. Ct. 1996).

[46] *See id.* at 258.

[47] *See* COLO. REV. STAT. § 19-3-313(5.5)(b)(I) (1997). This section provides that:

> (5.5)(b)(I) The subject of the report may request the director of the central registry to review the investigation made by the county department or local law enforcement agency. The request shall be in writing and shall be made within fourteen days after the date of the mailing of the notice sent to the subject in accordance with paragraph (a) of the subsection (5.5). Upon receipt of written notice of the decision of the director, the

Notably, West Virginia has a "hybrid" registry, which only includes names of people actually convicted of misdemeanor or felonious child abuse or neglect, or after a guilty or nolo contendere plea to such crimes.[48] Although not quite as restrictive, Indiana's registry statute only allows entry of an accused person's name in its registry if there has been criminal or civil court involvement in the particular matter.[49] Furthermore, in Virginia, regulations mandate use the highest civil standard of proof, clear and convincing evidence, in agency abuse and neglect determinations.[50] This is the same standard used in most states to terminate parental rights.[51]

B. *Access*

Although patterns are evident, the release of information

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subject shall have thirty days to request a fair hearing as provided under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., to determine whether the record of the report is accurate and there is a preponderance of evidence to support a finding of child abuse or neglect so that the subject's name should be placed on the registry. The burden of proof in such a hearing shall be on the department.

*Id.*

[48] *See* W. VA. CODE § 15-2C-1(a), (d) (Supp. 1997). These sections provide that:

(a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult.

(d) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or *nolo contendre.*

*Id.* It is a "hybrid" registry because it also includes names of persons convicted of abuse or neglect of incapacitated adults and individuals convicted of misappropriation of property of children and incapacitated adults. *See id.*

[49] *See* IND. CODE ANN. § 33-17-2. For example, among other enumerated preconditions, that an alleged perpetrator be arrested, charged criminally, or that a court find the alleged victim to be a child in need of services prior to entering an alleged perpetrator's name in the Registry. *See id.*

[50] *See* 22 VA. REGS. REG. 40-700-10. Virginia has three categories of abuse and neglect reports: "Founded," by clear and convincing evidence; "Reason to Suspect" where facts fail to show clear and convincing evidence of abuse or neglect but the situation gives the worker reason to believe abuse or neglect occurred; and "Unfounded" where review of the facts shows no reason to believe abuse or neglect occurred. *See id.*

[51] *See* Santosky v. Kramer, 45 U.S. 745 (1982) (establishing that the that termination of parental rights requires clear and convincing proof).

from child abuse registries also varies from state to state. Most states allow registry information to be released to law enforcement personnel and agency individuals responsible for handling abuse and neglect cases.[52] In Vermont, the law makes an interesting distinction between the "records" that can be released, versus the "information" that can be disseminated.

Vermont law provides that written records are only to be disclosed to the Commissioner of SRS;[53] the person who was reported; or a State's Attorney.[54] The law states that in no event are the records to be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the State's Attorney.[55] However, information, as opposed to records, can be disclosed to operators of Department-regulated facilities if the employment of a specific individual could result in the loss of a license or registration.[56] The statute also allows for the exchange of information or records among members of a multi-disciplinary team for purposes of providing services.[57]

Many other states also routinely provide for the disclosure of registry information to persons operating licensed or regulated facilities that provide care or services to children.[58] For example,

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[52] *See, e.g.*, ALASKA STAT. § 47.17.040(b) (Michie 1996) (permitting records to be released to government agencies serving child-protection functions regarding investigations or judicial proceedings involving child custody, abuse or neglect); CONN. AGENCIES REGS. § 17a-101-6(a)(1)(A)(B) (1997); FLA. STAT. ANN. § 415.51(2) (West Supp. 1998) (indicating that the classification of a report determines which individuals or entities may gain access).

[53] A designee who receives such records or who investigates such reports may also receive written records.

[54] *See* VT. STAT. ANN. tit. 33, § 4916(d) (Supp. 1997). This section provides that:

> Written records maintained in the registry shall only be disclosed to the commissioner or person designated by the commissioner to receive such records, persons assigned by the commissioner to investigate reports, the persons reported on, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection, except as provided in section 4919 of this title, shall be fined not more than $500.00.

*Id.*

[55] *See id.*

[56] *See id.* § 4919(a).

[57] See VT. STAT. ANN. tit. 33, §§ 4917-18 (discussing the empanelling and function of multi-disciplinary teams).

[58] *See, e.g.*, IND. CODE ANN. § 31-33-17-6(3) (Michie 1997); MICH. STAT. ANN. §

although Tennessee fails to maintain a general child abuse registry, it does have a statutorily created registry to be used specifically for the purpose of screening childcare providers.[59] In some states, a hearing may be required prior to the release of registry information, even to employers such as daycare providers. New York's statutory scheme mandates a finding after a fair hearing as to whether the indicated abuse or neglect is relevant and reasonably related to: (1) the employment of the alleged perpetrator by the provider agency; (2) the alleged perpetrator's ability to have regular and substantial contact with children; or (3) the approval or denial of an application submitted by the alleged perpetrator to a licensing agency.[60] If such determination is not made after a hearing, the Department is precluded from releasing information regarding the indicated report to a provider or licensing agency.[61] In Alabama, administrative regulations mandate that an adminis-

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25.248(7)(1)(k) (Law. Co-op. Supp. 1997).

[59] *See* TENN. CODE ANN. § 37-1-408 (1996). The Registry maintains the names of any person alleged or adjudicated to have committed child sexual abuse or severe child abuse. *See id.* § 37-1-408(a)(2)(A), (B). This section provides in pertinent part:

> (a)(2) The registry shall consist of:
> (A) Any person alleged or adjudicated to have committed "child sexual abuse" as defined in 37-1-602; and
> (B) Any person who has been alleged or who has been adjudicated to have committed an act against a child which would constitute severe child abuse.

*Id.*

[60] *See* N.Y. SOC. SERV. LAW § 422(8)(c)(ii) (McKinney Supp. 1997). The statute states in pertinent part:

> (ii) Upon a determination made at a fair hearing held on or after January first, nineteen hundred eighty-six scheduled pursuant to the provisions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by some credible evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the department pursuant to subdivision five of section four hundred twenty-four-a of this chapter, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

*Id.*

[61] *See id.*

trative hearing be held prior to release of registry information to any employer.[62]

The statutory lists of persons or entities that have access to registry information can be quite extensive. In *Cavaretta*, an appellate court noted that the Illinois list of persons who have access to the records in the State Register is considerable and includes a wide variety of persons and agencies.[63]

New York's statute grants access to information, including written reports and photographs, contained in its registry to an extensive list of persons or entities including state legislative committees responsible for child protective legislation[64] and law guardians.[65] Although, on its face, the statute appears to grant ex-

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[62] *See* Department of Human Resources v. Funk, 651 So. 2d 12, 15 (Ala. Civ. App. 1994).

[63] *See Cavaretta*, 660 N.E.2d at 254. The court stated that access is "considerable . . . [and] includes state police, physicians, grand juries, legal supervisors of children, law enforcement agencies, school superintendents, welfare agencies, and [a]ny person authorized by the Director for . . . research purposes." *Id.* (quoting 325 ILL. COMP. STAT. 5/11.1(10) (West 1994)); *see also* MICH. STAT. ANN. § 25.248(7)(1) (Law. Co-op. Supp. 1997) (listing 16 persons or entities granted access).

[64] *See* N.Y. SOC. SERV. LAW § 422(4)(A)(g) (McKinney Supp. 1997). This section states in pertinent part:

> 4(A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to . . . (g) any appropriate state legislative committee responsible for child protective legislation . . . .

*Id.*

[65] *See id.* § 422(4)(A)(t). Illustrating the broad access New York's statute grants is the fact that at any time during the appointment of a law guardian, he or she can have access to any report in which the respondent in the proceeding in which the law guardian has been appointed is the subject or another person named in the report. *See id.* This section states in pertinent part:

> 4(A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the department, local departments, or the commission on quality of care for the mentally disabled, shall be confidential and shall only be made available to . . . (t) a law guardian, appointed pursuant to the provisions of section ten hundred sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the law guardian has been appointed is a subject or another person named in the report, pursuant to sections ten hundred thirty-nine-a and ten hundred fifty-two-a of the family court act.

*Id.*

tremely broad access to Register information, in some situations New York courts have limited access to such information. For instance, when two families sought disclosure of an internal report of the New York City Human Resources Fatality Review panel, pursuant, in part, to the registry access statute,[66] a court denied the request finding that New York's common law public interest privilege prevented release of the panel's report.[67] The court distinguished between the information available to the families under the registry statute from an internal agency report using such information. New York courts also have limited access to the Register for research purposes.[68]

Massachusetts has protective confidentiality provisions in its registry regulations that may serve as a useful model for other states. Specifically, as a component of its Central Registry, the Massachusetts Department of Social Services[69] maintains a "Registry of Alleged Perpetrators"[70] to which access is very restricted. Only agency officials and the alleged perpetrator have ready access. Otherwise, access is available only by written approval of the Department's Commissioner or by a court order. Even in situations where the Department is seeking aggregate data from the Registry of Alleged Perpetrators for research purposes, the Department must make a written request to the Fair Hearing Unit and all identifying information pertaining to the alleged perpetra-

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[66] *See id.* § 422(4)(A)(d). This section of the New York Social Services Code provides for release of Register information to "any person who is the subject of the report or other persons named in the report." *Id.*

[67] *See generally* Martin A. v. Gross, 605 N.Y.S.2d 742, 744 (N.Y. App. Div. 1993) (citing Cirale v. 80 Pine St. Corp., 316 N.E.2d 301, 303-04 (N.Y. 1974)) (holding that the public interest privilege provides generally that official information in the hands of government agencies has been deemed, in certain contexts, privileged).

[68] See *In the Matter of the Application of Newsday v. State of New York Comm'n on Quality of Care for the Mentally Disabled*, 601 N.Y.S.2d 363, 365 (Sup. Ct. 1992). In this case, a New York Court had an opportunity to define the "bona fide research purpose" language in New York's registry access statute, and found "research purposes" to be limited to administrative or scientific research for the purpose of ascertaining causes of child abuse and methods of dealing with the problem.

[69] *See* MASS. ANN. LAWS ch. 119, § 51F (Law Co-op. 1994). The statute states in pertinent part: "The department shall maintain a central registry of information sufficient to identify children whose names are reported pursuant to section fifty-one A or fifty-one B." *Id.*

[70] *See* MASS. REGS. CODE tit. 110, §§ 4.36, 4.38 (creating and defining access to this Registry).

tor must be redacted before its release.[71]

C. *Expungement*

Although relatively easy for an accused person's name to be entered into a child abuse registry, it is extremely difficult, for his or her name to be removed. In some states, only founded reports are entered into abuse registries.[72] Whereas in others, even if a report is not founded, a person's name remains in the registry at least for some specified period of time.[73] One state court has found that unsubstantiated reports can be kept in a child abuse registry without violating the United States Constitution.[74]

In Vermont, unsubstantiated reports remain in the central registry for one year.[75] In South Carolina, expungement of unfounded reports depends upon which of three categories the unfounded report is assigned.[76] Specifically, identifying information in a Category I report is destroyed within one year, and during

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[71] *See id.* § 4.38(5).

[72] *See, e.g.*, OR. REV. STAT. § 419B.030(1) (1995); PA. STAT. ANN. tit. 23, § 6331(2) (West Supp. 1997). The Pennsylvania statute states that:

> There shall be established in the department:
> (1) A pending complaint file of child abuse reports under investigation.
> (2) A statewide central register of child abuse which shall consist of founded and indicated reports of child abuse.

PA. STAT. ANN. tit. 23, § 6331 (West Supp. 1997).

[73] *See, e.g.*, ALA. CODE § 26-14-8(e) (Supp. 1997) (providing that if a report is "not indicated," expungement can occur after five years if the accused individual requests expungement and there have been no further reports of abuse filed against him or her). *But see* HAW. REV. STAT. § 350-2(c)(1) (1993) (mandating immediate expungement if report is unsubstantiated).

[74] *See* Arkansas Dep't Human Services v. Heath, 848 S.W.2d 927, 928 (Ark. 1993).

[75] *See* VT. STAT. ANN. tit. 33, § 4916(a), (b) (1991). These sections state that:

> The commissioner of social and rehabilitation services shall maintain a registry which shall contain written records of all investigations initiated under section 4915 of this title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless the person complained about requests within one year that it not be destroyed.
> If no court proceeding is brought pursuant to subsection 4913(d) of this title within one year of the date of the notice to the person complained about, the records relating to the unsubstantiated report shall be destroyed.

*Id.*

[76] *See* text accompanying *supra* note 35.

that time, can only be used for auditing and statistical purposes.[77] However, Category II and III reports are allowed to be maintained in other records of the Department for one year for use by Department staff or law enforcement agencies in relation to abuse and neglect investigations regarding the same alleged perpetrator or the same child.[78] Other states maintain unfounded reports in a separate file until expungement occurs.[79]

In 1987, the petitioners in an Iowa appellate court raised an interesting issue regarding expungement of an "undetermined" report.[80] In *Montgomery v. Iowa Dep't of Human Services*, upon request of the petitioners and without holding a fair hearing, the Department of Human Services decided to change a "founded" report to an "undetermined" report.[81] The report was subsequently expunged after one year.[82] However, the petitioners maintained on appeal, that they were still entitled to a fair hearing to correct information in the Registry which served as the basis for the initial finding of abuse. The court found that the Iowa statute afforded the petitioners this opportunity, noting that a hearing would serve to ensure that all agencies and other entities which either are directly notified of a founded report or have access to

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[77] *See* S.C. CODE ANN. § 20-7-650(I) (Law. Co-op. Supp. 1997). Additionally, any Category I information which is not needed for auditing and statistical purposes is to be destroyed immediately. *See id.*

[78] *See id.*

[79] *See, e.g.*, PA. STAT. ANN. tit. 23, § 6331(3) (West Supp. 1997). This section states:

> There shall be established in the department:
> (1) A pending complaint file of child abuse reports under investigation and a file of reports under investigation pursuant to Subchapter C.1 (relating to students in public and private schools).
> (2) A Statewide central register of child abuse which shall consist of founded and indicated reports.
> A file of unfounded reports awaiting expunction.

PA. STAT. ANN. tit. 23, § 6331.

[80] *See* Montgomery v. Iowa Dep't of Human Services, 409 N.W.2d 703, 706 (Iowa Ct. App. 1987).

[81] *See* IOWA CODE ANN. § 235A.18(2) (West Supp. 1997). Undetermined reports are those reports which cannot be determined by a preponderance of the evidence to be either founded or unfounded. *See* Montgomery, 409 N.W.2d at 706.

[82] *See Montgomery*, 409 N.W.2d at 706. Although it was claimed that Iowa law requires expungement of undetermined reports, the Iowa statute actually calls for sealing after one year and expungement five years from the date of sealing. *See* IOWA CODE. ANN. § 235A.18.

these reports,[83] possess the correct information.[84]

In situations where a report of abuse or neglect is founded or substantiated, most states provide for an administrative appeal process for individuals who wish to challenge the finding of abuse or neglect.[85] In Vermont, the SRS administrative policies provide greater detail regarding the appeal process. Under the current relevant policies, there are three levels of review: a Level I review before the Director of the SRS office that made the substantiation decision; the next level of appeal is to the Commissioner of SRS or a designee; and third, there is the statutorily-created evidentiary fair hearing before the State's Human Services Board.[86] The hearing before the Human Services Board is *de novo*,[87] with the burden on the agency to prove by a preponderance standard that the alleged abuse occurred.[88] Because there is no outer time limit on when these appeals can be initiated, theoretically a person could apply to the Human Services Board for expungement of a substantiated report many years after the report was entered into the registry.

As noted previously, if not expunged after a fair hearing or as a result of an appeal to the Vermont Supreme Court, substantiated reports remain in the registry indefinitely.[89] In contrast, substantiated reports in Vermont remain in the registry system for a prescribed period of time.[90] This time period can often be of lengthy duration, as in Massachusetts, where a person listed in the Registry of Alleged Perpetrators remains in the registry for seventy-five years.[91]

In some states, even if a report remains in a child abuse registry as a substantiated report after an expungement hearing or

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[83] *See Montgomery*, 409 N.W.2d at 706. The *Montgomery* court noted eleven different agencies, organizations and individuals that might have had access to registry information, in addition to the juvenile court and county attorney. *See id.*

[84] *See id.*

[85] *See* VT. STAT. ANN. tit. 33, § 4916(h).

[86] *See* Policy Manual No. 58, *supra* note 8.

[87] *See In re* Tina Bushey-Combs, 628 A.2d 541, 542 (Vt. 1993).

[88] *See In re* Selivonik, 670 A.2d 831, 835 (citing 33 V.S.A. § 4916(h)).

[89] *See supra* note 15.

[90] *See, e.g.*, N.H. REV. STAT. ANN. § 169-C:35 (Supp. 1997) (retaining founded reports for seven years).

[91] *See* MASS. REGS. CODE tit. 110, § 4.37.

other appeal procedures, an individual may still work in the child care field. For instance, in South Carolina, administrative regulations provide for a waiver mechanism whereby a person whose name is in the Registry due to an indicted report of abuse or neglect can still be approved for or retain licensure as a child-placing agency.[92] The regulations require that the concerned individuals submit documentation regarding the type of rehabilitation program they have undergone and the effects of the rehabilitative efforts on their behavior and lives.[93] The individual's counselor or therapist must also submit an evaluation to the responsible state agency. Upon receiving this information, the Commissioner of the responsible state agency or a designee, reviews the data and determines whether a license can be issued.[94] If a license is denied or revoked, a person may pursue an administrative appeal to challenge the denial or revocation.[95]

Similarly, California law offers individuals who are listed in the child abuse registry and wish to work as child care providers, an opportunity to prove that they have been rehabilitated.[96] The California regulations list several factors which the Director of the responsible state agency may consider in determining whether a person has been rehabilitated.[97] These factors include how much time has elapsed since the crime or substantiated abuse, and the activities that the alleged perpetrator has engaged in since the incident that would indicate changed behavior, such as employment or therapy.[98] Also in California, a "certificate of rehabilitation" granted by a superior court may be considered evidence of a per-

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[92] *See* 27 S.C. CODE ANN. REGS. 114-4930(G)(1)(c) (1976).

[93] *See id.*

[94] *See id.* The statute states in pertinent part:
The individual must submit written documentation regarding the type of rehabilitation program they might have undergone and the effects of the rehabilitative efforts on their behavior/lives.

*Id.*

[95] *See id.* at 114-4930(H). The section states in pertinent part:
Any child placing agency whose application has been denied or whose license has been revoked may request a hearing pursuant to the same provisions applicable to private child day care centers found in 20-7-2760, Code of Laws of South Carolina. . .

*Id.*

[96] *See* CAL. CODE REGS. tit. 11, § 933.3 (1990).

[97] *See id.*

[98] *See id.*

petrator's rehabilitation.[99]

### *III. Juveniles and Child Abuse Registry Laws*

Absent from the Vermont registry statute is express language that differentiates between juvenile and adult alleged perpetrators. However, in reviewing SRS policies and the statutory definitions of "abuse," juveniles are in fact, a separate category of alleged perpetrators in certain contexts.

To illustrate, a perpetrator of sexual abuse can be "any person," as opposed to perpetrators of alleged physical abuse or neglect where the accused individual must meet the legal definition of "a person responsible for a child's welfare."[100] Therefore, juveniles are only legally capable of committing acts of sexual and physical abuse or neglect if they are minor parents or are otherwise in a caretaking position as defined by statute.

Although the Vermont statute provides a fairly comprehensive definition of "sexual abuse,"[101] SRS regulations offer further clarifying substantive guidance regarding potential child sex abuse perpetrators.[102]

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[99] *See id.* § 933.3(a)(7). Such certificates are granted when the "petitioner has demonstrated by his course of conduct his rehabilitation and his fitness to exercise all of the civil and political rights of citizenship." CAL. PENAL CODE § 4852.13 (West Supp. 1998). The California Penal Code lists the individuals who can apply for a certificate of rehabilitation. *See id.* § 4852.01.

[100] *See* VT. STAT. ANN. tit. 33, § 4912(5) (1991). This section defines a "person responsible for a child's welfare" as a "child's parent; guardian; foster parent; any other adult residing in the home who serves in a parental role; an employee of a public or private residential home, institution, or agency; or other person responsible for the child's welfare while in a residential, educational, or daycare setting, including any staff person." *Id.*

[101] *See id.* § 4912(8). This section states in pertinent part:

> (8) "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 licivious 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 a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

*Id.*

[102] *See* Policy Manual No. 56, *supra* note 8. The current policies provide as follows: *Sexual Abuse by adolescents or children* on children is substantiated when the perpetrator used:

Because, with limited exception, the only abuse for which Vermont juveniles can be held legally accountable is sexual abuse, most juveniles listed in Vermont's Central Registry are by label child sex abusers.[103] As in Tonya Selivonik's case, this label documented in the Registry can haunt a juvenile throughout childhood and into adulthood, resulting in damaged reputation and loss of job opportunities.[104] Furthermore, the possibility of adopting a child may forever be foreclosed to an individual whose name appears in the Registry.[105]

Burdening juveniles with a long-term quasi-criminal record is seemingly in direct conflict with the rest of Vermont's juvenile statutes that seek to rehabilitate rather than punish the juvenile.[106]

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> -force, coercion, or threat to victimize the child, or
> -a significant difference in age, size or developmental level to victimize the child.
>
> If the perpetrator of sexual abuse is age eighteen or older and the victim is age thirteen or younger, sexual abuse will always be substantiated. Other age differentials must be evaluated according to the above criteria.

*Id.*

[103] *See* Policy Manual No. 56, *supra* note 8. Information about children under the age of 10 who have sexually abused other children and their victims are entered in the Central Registry; however they are coded differently in the "Soundex listing" as Y rather than P. *See id.* "P" stands for "perpetrator." In conversations with SRS officials it was unclear exactly what "Y" means, however it was stated that it could stand for "youthful perpetrator." Telephone interview by Angela Clark with Cindy Wolcott, Policy and Practice Chief, SRS (Nov. 20, 1997).

[104] *See supra* text accompanying note 15.

[105] *See* VT. STAT. ANN. tit. 15A, § 2-203(8) (1991). Part of an adoption preplacement evaluation is a check on whether the proposed adoptive parent has been "the subject of a substantiated complaint filed with the Department." *Id.* This is only one factor that is considered and may or may not be dispositive. *See id.* § 2-204 (Determining Suitability To Be Adoptive Parent). Section 2-203(8) states:

> whether the person has been subject to an abuse prevention order issued under 15 V.S.A. § 1103 or 1104, charged with or convicted of domestic assault in violation of 13 V.S.A. § 1042 (domestic assault), § 1043 (first degree aggravated domestic assault), or § 1044 (second degree aggravated assault) or the subject of a substantiated complaint filed with the department, or subject to a court order restricting the person's rights to parental rights and responsibilities or parent-child contact with a child.

VT. STAT. ANN. tit. 15A, § 2-203(8).

[106] *See* VT. STAT. ANN. tit. 33, § 5501. This section sets out the purposes of Vermont's juvenile statute. One enumerated purpose is to "provide for the care, protection, and wholesome moral, mental and physical development" of children who come within the purview of the court. *See id.* § 5501(a)(1). Another listed purpose is to "remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior . . . ." *Id.* § 5501(a)(2).

These statutes, so long as certain statutory considerations are met, grant a juvenile with a record a clean slate upon entering adulthood.[107] For example, pursuant to Vermont's juvenile statute, if a juvenile's record is sealed, any proceedings under Vermont's juvenile laws are considered never to have occurred, and the person, the court, and law enforcement officers and departments must reply to any request for information as if no record exists.[108]

Further, specific protections are granted to juveniles under Vermont's juvenile laws. For instance, juveniles' fingerprints are kept separate from adult fingerprints in accordance with special security measures. Moreover, the fingerprints can ultimately be destroyed once juvenile court jurisdiction is terminated, provided there has not been any additional criminal offenses committed by the child after reaching his or her sixteenth birthday.[109] Likewise, juvenile law enforcement records are kept separate from other records and limited in their access.[110] Further, any hearings conducted under Vermont's Juvenile Proceedings Act must be conducted without publicity unless there is consent by the child and his or her parent or guardian.[111] In keeping with the express purpose of the Juvenile Proceedings Act, a Vermont court stated that the goals of the juvenile justice system are rehabilitative and the records of the juvenile's misconduct remain confidential so as to

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[107] *See id.* § 5538.

[108] *See id.* § 5538(c). This section states:

> Upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this act shall be considered to never to have occurred, all index references thereto shall be deleted, and the person, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

*Id.*

[109] *See id.* § 5537.

[110] *See id.* § 5536. This section states in pertinent part:

> Law enforcement reports and files concerning a person subject to the jurisdiction of the juvenile court shall be maintained separate from the records and files of arrests of other persons. Unless a charge of delinquency is transferred for criminal prosecution under this act or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. . . .

*Id.*

[111] *See* VT. STAT. ANN. tit 33, § 5523(d).

guard against a permanent stigma.[112]

Even when a minor has committed a "serious crime," as that term is defined under Vermont law, if a child is between the ages of ten and fourteen, the case must originate in juvenile court and can be transferred to adult court only upon motion and after a hearing.[113] This provision of the Vermont juvenile statute was the product of a special session of the Vermont Legislature convened in the summer of 1981. The session was called to review the State's juvenile laws in the wake of a tragic rape of two young girls, one of whom died, by youths aged fifteen and sixteen.[114] The change in the law was specifically motivated by the fact that, under Vermont law, the fifteen-year-old defendant, if found guilty, would have been freed on his eighteenth birthday.[115] Although some commentators charged that the juvenile delinquency laws were too hastily rewritten in the heat of passion,[116] the Legislature was careful not to move too far in a punitive direction and set out factors for courts to consider in deciding whether to transfer a case from juvenile to adult court.[117] Specifically, courts are authorized to consider factors such as: age; home environment; emotional, psychological and physical maturity; and the juvenile's relationship with and adjustment to school and the community.[118]

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[112] *See In re R.D.*, 574 A.2d 160, 161 (Vt. 1990). The court stated that, in Vermont, the "juvenile justice system serves rehabilitative rather than punitive goals; in order to make change and growth possible, the delinquent is protected from the stigma of his misconduct by the confidentiality of juvenile proceedings, records and files." *Id.*

[113] *See* VT. STAT. ANN. tit. 33, § 5506(a). Recent data collected by the Vermont Center for Justice Research shows that, since 1988, only 18 juveniles who were 15 years of age or younger have had their cases brought in adult criminal court. *See* VERMONT CENTER FOR JUSTICE RESEARCH, THE DATALINE 5 No. 4, (Sept. 1997).

[114] *See* Patricia D. Yunger, *The Serious Young Offender Under Vermont's Juvenile Law: Beyond the Reach of Parens Patriae*, 7-8 VT. L. REV. 173, 173 n.1 (1982-83).

[115] *See id.* at 173 n.2 (citing *The Aftermath*, BURLINGTON FREE PRESS, Oct. 4, 1981, at 18).

[116] *See* Yunger, *supra* note 109, at 173 n.4. (CITING BURLINGTON FREE PRESS, Jan. 6, 1982, at 12A).

[117] *See* VT. STAT. ANN. tit. 33, § 5506(d). These factors mirror those enunciated by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966).

[118] *See* VT. STAT. ANN. tit. 33, § 5506(d). According to this section, the factors are:
(1) the maturity of the child as determined by consideration of his age; home; environment; emotional, psychological and physical maturity, and relationship with and adjustment to school and the community;
(2) the extent and nature of the child's prior record of delinquency;
(3) the nature of past treatment efforts and the nature of the child's re-

Yet, even with Vermont's juvenile laws so strongly biased in favor of treatment and rehabilitation, the Vermont Supreme Court in *Selivonik* upheld the Vermont registry system. The court deferred to the Vermont Legislature and found that it had carved out a special area of concern with respect to child sexual abuse. Any change to the registry statute, which the supreme court interpreted as mandating that juveniles and adult offenders be treated without distinction, was to be left to the legislative process.[119] However, the court's dicta suggested that it was favorably disposed to legislative modification of a registry law that appears contrary to Vermont's other juvenile laws. The Vermont Supreme Court noted a specific concern that if the juvenile charges against Tonya Selivonik had resulted in a conviction, her record would have been sealed.[120] The court also appeared concerned that, although legislative history reveals that the intent of the Legislature was to deal with repeat offenders through use of the Registry, the laws equally affect a person such as Tonya Selivonik who has committed a single offense.[121] In the only other reported case addressing these issues, a Virginia court likewise upheld that State's registry system and how it affects juveniles. In *J.P. v. Carter,*[122] the appellate court held that listing a thirteen-year-old juvenile in the state's

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sponse to them;
(4) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
(5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;
(6) the prospects for rehabilitation of the child by use of procedures, services and facilities available through juvenile proceedings;
(7) whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to a court of criminal jurisdiction.

*Id.*

[119] *See In re Selivonik*, 670 A.2d at 834.

[120] *See id.* The court opined that "[i]t is somewhat ironic that if petitioner had been convicted of child sexual abuse in juvenile proceedings, her record would have been sealed to protect her from the stigma of her misconduct in adulthood" . . . and that "[m]oreover, her conviction in juvenile court would not have permitted the imposition of any civil disabilities resulting from the conviction or operated to disqualify her from any civil service application or appointment." *Id.* at 834. Furthermore, the charges brought against Tonya Selivonick in juvenile court based on this same incident were dismissed. *See id.* at 836.

[121] *See id.* at 834 n.3.

[122] *See* J.P. v. Clarence Carter, Comm'r of the Virginia Dep't of Social Services, 485 S.E.2d 162 (Va. Ct. App. 1997).

central registry as a "founded" sexual abuser pursuant to the Virginia Child Abuse and Neglect Act, did not conflict with the State's Juvenile Justice Act.[123] The court expressly rejected the juvenile's contention that the registry law was punitive.[124] The court also found that since the registry was not open to the public, the general confidentiality protections afforded to juveniles under Virginia's juvenile statute were not compromised.[125] In sum, the court found that although the purposes and policies of the two statutes were different, they were not "disharmonious."[126]

Although most states do not distinguish between juveniles

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[123] *See* VA. CODE ANN. § 16.1-226 to -348 (Michie 1995). *But see supra* note 43.

[124] *See J.P.*, 485 S.E.2d at 172. Instead, the court found that "any possible aspect of punishment is . . . ancillary to the primary purpose the registry serves, which is to protect the abused child and the community from offenders." *Id.*

[125] *See* VA. CODE ANN. § 63.1-248.8 (Michie 1995). This section states:

> The central registry shall contain such information as shall be prescribed by State Board regulation. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with Sate Board regulations. Any central registry check of a person who has applied to be a volunteer with a Virginia affiliate of Big Brother/Big Sisters of America, volunteer fire company or volunteer rescue squad, or with a court-appointed special advocate program pursuant to § 9-173.8 shall be conducted at no charge.

*Id.* Note however that Virginia law allows access to its registry to a broad group of individuals and entities including, at the discretion of the Department of Social Services if the requesting person is found to have a "legitimate interest," and the Department adjudges it to be in the victim's best interests, to the following:

> 1. any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams, law enforcement agencies, and Commonwealth's attorneys;
> 2. child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child protective services plan or an order of any court;
> 3. personnel of the school or child day program attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian;
> 4. or a parent, grandparent, or any other person when such parent, grandparentor other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.

*Id.* § 63.1-209(A)(i)-(iv).

[126] *See J.P.*, 485 S.E.2d at 172.

and adults when promulgating and implementing child abuse registry laws, some states refrain from including juveniles under the purview of their laws and regulations at all. These states, by virtue of express statutory or regulatory language, limit perpetrators of abuse to adults or someone in a caretaker position. In Oklahoma, for example, statutory language requires that all forms of abuse, including sexual abuse,[127] must be committed by a person responsible for the child's health or welfare.[128] Such "responsible persons," as defined by statute, include various categories of individuals, none of which could include juveniles except when juveniles are also parents or where the juvenile is an employee of a child treatment or child care facility.[129]

Similarly, in Florida, only parents, adult household members or other persons responsible for the child's welfare can cause abuse or neglect to a child under Florida law.[130] Florida regulations make clear that a child may be named as a perpetrator only if the child is a certain type of "employee" as defined by statute,[131] or is the parent of the victim.[132] The regulations explicitly state that "child-to-child" abuse in a facility or in the home does not meet the definition of abuse.[133] However, the Florida registry stat-

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[127] By contrast, in Vermont, juveniles are not precluded by law from committing acts of sexual abuse. *See supra* Part III.

[128] *See* OKLA. STAT. ANN. tit. 10, § 7102 B.5 (West Supp. 1998). This section states in pertinent part that "'[s]exual abuse' includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's health or welfare." *Id.*

[129] *See id.* § 7102.B.4. The statute states in pertinent part:

> Persons responsible for a child's health or welfare includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title.

*Id.*

[130] *See* FLA. ADMIN. CODE ANN. r. 65c-10.002(9)(d) (1997).

[131] *See* FLA. STAT. ANN. § 415.503(12) (West Supp. 1998). "Employee" includes individuals working for a "private school, public or private child day care center, residential home, institution, facility or agency; or any other person legally responsible for the child's welfare in a residential setting." *Id.* "Employee" also encompasses an adult sitter or relative entrusted with a child's care. *See id.*

[132] *See* FLA. ADMIN. CODE ANN. r. 65c-10.002(9)(d)(3).

[133] *See id.* at r. 65c-10.002(9)(d)(2). Under this regulation, however, the incident

ute does mandate that an agency respond to reports involving a known or suspected juvenile sexual offender.[134] These reports are to be received by the Department and then sent to the appropriate law enforcement personnel within specified time frames.[135]

Likewise, Massachusetts regulations clearly establish that alleged perpetrators must be caretakers and set forth examples to assist caseworkers and others with the important distinction between caretakers and non-caretakers.[136] The regulations explicitly state that the responsible state agency's primary duty is to protect children from abuse or neglect inflicted by their parents or parent substitutes.[137] However, the agency may make referrals to other agencies in non-caretaker situations[138] and offer voluntary services as found to be appropriate.[139]

Even under the states' respective sex offender registration and notification laws, commonly known as "Megan's laws,"[140] juveniles often are either excluded from the reporting and notification requirements of the laws or are treated less harshly than adults. Thirty-three states and the District of Columbia do not expressly subject juveniles to their sex offender registration laws at all.[141] Those states that do,[142] usually provide for lesser periods of

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may be accepted as a report of neglect if it is alleged that the staff, parent, guardian, adult household member or other person responsible for the child's welfare failed to properly supervise the children. *See id.*

134 *See* FLA. STAT. ANN. § 415.504(2)(d).

135 *See id.*

136 *See* MASS. REGS. CODE tit. 110, § 4.33(4).

137 *See id.*

138 *See id.* § 4.33(4)(Example C); *see also id.* § 4.50.

139 *See id.* § 4.33(4)(Example C).

140 *See* N.J. STAT. ANN. §§ 2C:7-1 to -11 (West 1995). This is the original "Megan's Law" promulgated by the New Jersey Legislature following the murder of 7-year-old Megan Kanka after she was lured into the house of a neighbor and convicted sex offender in July 1994.

141 These states are: Alabama (ALA. CODE §§ 13A-11-200 to -203 (1994)), Alaska (ALASKA STAT. §§ 12.63.010 to .63.100 (1996)), Arkansas (ARK. CODE ANN. §§ 12-12-901 to -920 (Michie Supp. 1997)), Connecticut (CONN. GEN. STAT. ANN. § 54-102r (West Supp. 1997)), Delaware (DEL. CODE ANN. tit. 11, § 4120 (1995, Supp. 1996 & Interim Supp. 1997)), District of Columbia (D.C. CODE ANN. §§ 24-1101 to -1117 (Supp. 1997), Florida (FLA. STAT. ANN. § 775.21 (West Supp. 1998)), Georgia (GA. CODE ANN. § 42-1-12 (1997)), Hawaii (HAW. REV. STAT. § 707-743 (Supp. 1996)), Idaho (IDAHO CODE §§ 18-8301 to -8311 (1997)), Illinois (730 ILL. COMP. STAT. 150/1 to 150/10.9 (West 1997)), Kansas (KAN. STAT. ANN. §§ 22-4901 to -4910 (Supp. 1996)); *see also* State v. Ward, 886 P.2d 890 (Kan. Ct. App. 1994) (clarifying that adjudications under the Kansas Juvenile Offenders Code are not "criminal convictions"

registration, special requirements prior to registration, or special waiver mechanisms.[143] For example, the legislative history of the Washington statute reveals a clear intent on the part of the Legislature to make it easier for juveniles to be relieved of the registration requirement.[144]

In Mississippi, juveniles are only required to register after

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and are excluded in determining whether a person is a "habitual sex offender" and subject to state's registration laws), Kentucky (KY. REV. STAT. ANN. §§ 17.500 to .540 (Michie 1996)), Maine (ME. REV. STAT. ANN. tit. 34-A, §§ 11101 to 11144 (West Supp. 1997)), Maryland (MD. ANN. CODE art. 27, § 792 (Supp. 1997)), Missouri (MO. ANN. STAT. §§ 589.400 to .425 (West Supp. 1998)), Montana (MONT. CODE ANN. §§ 46-23-501 to -511 (1997)), Nebraska (NEB. REV. STAT. §§ 29-4001 to -4013 (Supp. 1996), Nevada (NEV. REV. STAT. ANN. §§ 179D.350 to .550 (Michie 1997)), New Hampshire (N.H. REV. STAT. ANN. §§ 651-B:1 to B:9 (Supp. 1997)), New Mexico (N.M. STAT. ANN. §§ 29-11A-1 to 11A-8 (Michie 1978)), New York (N.Y. CORRECT. LAW §§ 168-a to 168-v (McKinney Supp. 1997)), North Carolina (N.C. GEN. STAT. §§ 14-208.5 to 208.13 (Supp. 1997)), North Dakota (N.D. CENT. CODE § 12.1-32-15 (Supp. 1995)), Ohio (OHIO REV. CODE ANN. §§ 2950.01 to 2950.99 (Anderson 1996)), Oklahoma (OKLA. STAT. ANN. tit. 57, §§ 581 to 588 (West Supp. 1998)), Pennsylvania (42 PA. CONS. STAT. ANN. §§ 9791 to 9799.6 (West Supp. 1997)), Rhode Island (R.I. GEN. LAWS §§ 11-37.1-1 to .1-19 (Supp. 1997)), South Dakota (S.D. CODIFIED LAWS §§ 22-22-30 to -22-41 (Michie Supp. 1997)), Tennessee (TENN. CODE ANN. §§ 40-39-101 to -39-110 (1997)), Utah (UTAH CODE ANN. § 77-27-21.5 (Supp. 1997)), Vermont (VT. STAT. ANN. tit. 13, §§ 5401 to 5413 (Supp. 1997)), West Virginia (W. VA. CODE §§ 61-8F-1 to -8F-10 (1997)), and Wyoming (WYO. STAT. ANN. §§ 7-19-301 to -306 (Michie 1997)).

[142] States that expressly include juveniles under registration and notification laws are as follows: Arizona (ARIZ. REV. STAT. ANN. §§ 13-3821 to -3826 (1989 & Supp. 1997)), California (CAL. PENAL CODE § 290 (West Supp. 1998)), Colorado (COLO. REV. STAT. § 18-3-412.5 (1997)), Indiana (IND. CODE ANN. §§ 5-2-12-1 to -12-13 (Michie 1997)), Iowa (IOWA CODE ANN. §§ 692A.1 to 692A.15 (West Supp. 1997), Louisiana (LA. REV. STAT. ANN. §§ 15:540 to :549 (West Supp. 1997)), Massachusetts (MASS. ANN. LAWS ch. 22C, § 37 (Law. Co-op. 1994)), Michigan (MICH. STAT. ANN. §§ 4.475(1) to (12) (Law. Co-op. 1997)), Minnesota (MINN. STAT. ANN. §§ 243.165 to .166 (West Supp. 1998)), Mississippi (MISS. CODE ANN. §§ 45-33-1 to -19 (Supp. 1997)), New Jersey (N.J. STAT. ANN. §§ 2C:7-1 to -11 (West 1995 & Supp. 1997)), Oregon (OR. REV. STAT. §§ 181.585 to .602 (1995)), South Carolina (S.C. CODE ANN. §§ 23-3-400 to -490 (Law. Co-op. Supp. (1997)), Texas (TEX. STAT. ANN. art. 62.01 to .12 (West Supp. 1998)), Virginia (VA. CODE ANN. §§ 19.2-298.1 to -298.3 (Michie Supp. 1997)), Washington (WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1998)), and Wisconsin (WIS. STAT. ANN. § 301.45 (West Supp. 1997)).

[143] *See* Mark J. Swearingen, *Megan's Law As Applied to Juveniles: Protecting Children At the Expense of Children*, 7 SETON HALL CONST. L.J. 525, 570 (1997).

[144] *See id.* at 572-73. One Washington legislator, State Representative Hargrove, the sponsor of the amendment, told the House Judiciary Committee that "[t]he thrust of [his] amendment is to make it easier for a juvenile to wash their [sic] record clean and start over as an adult." *Id.*

they have been convicted twice of a sex offense,[145] and, in other states, courts have discretion in deciding whether to mandate that a juvenile be required to register.[146] However, some states do hold juveniles as accountable as adults under their respective Megan's laws,[147] and challenges to two of these statutes with regards to juveniles have been upheld.[148]

## *IV. Recommendations*

A review of the states' child abuse registry systems in this country has brought to light many of their deficits, especially with respect to their application to juveniles. These deficits range from statutory and regulatory vagueness regarding how juveniles are to be treated under the various registry systems, to the treatment of juveniles under child abuse registry laws without due consideration of their status as juveniles. States must review their child abuse registry statutes and any administrative regulations and policies that govern the registries with an eye towards correcting these deficits. In doing so, states should consider the following recommendations.

First, state legislatures should not defer to the responsible state agency on issues such as how juveniles are to be treated under the states' registry laws, but rather should address this issue through the legislative process and ensure that juvenile treatment under registry statutes is consistent with treatment of juveniles under other juvenile statutes of the state. Legislatures should seriously consider modeling their abuse registry statutes on states such as Florida and Massachusetts that preclude juveniles from being labeled abusers unless the minor is in a caretaker position, as in the case of minor parents. Also, minors suspected of abuse should not be ignored, rather, referrals should be made to the

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145 *See id.* at 570-71 (citing MISS. CODE ANN. § 45-33-1(1) (Supp. 1996)).

146 *See id.* at 571 (citing ARIZ. REV. STAT. ANN. § 13-3821(C) (West Supp. 1996) and IOWA CODE ANN. § 692A.2 (West Supp. 1996)).

147 *See id.* at 574. *See, e.g.*, N.J. STAT. ANN. §§ 2C:7-1 to -11.

148 *See* State of New Jersey In the Interest of B.G., 674 A.2d 178, 185 (N.J. Super. Ct. App. Div. 1996), where a juvenile-appellant unsuccessfully claimed on appeal that the registration and community notification requirements of New Jersey's Megan's law were inconsistent with the state's Code of Juvenile Justice. *See also* Doe v. Weld, 954 F. Supp. 425 (D. Mass. 1996) (upholding the Massachusetts's sex offender registration laws in their application to juveniles).

appropriate agencies for follow up prosecution or treatment and services as needed.[149]

Second, if a state decides that juveniles' names should be entered in a child abuse registry upon a substantiation of abuse or neglect, the legislature should include certain requirements in the statute. Specifically, a child's name should not be entered in a child abuse registry until such allegation is proven by, at a minimum, a preponderance standard after an administrative fair hearing. Further, even if abuse is found under the preponderance standard, a child's name should not be entered into the registry unless the following specific findings are also made: 1) the child is capable of understanding the nature of the allegations and the consequences of his or her actions. This would presumably rule out young children and those children who, due to disability or developmental delay, are functioning at a younger age level than their chronological age. A specific age at which point it is presumed that a child is capable of such understanding and reflection should be avoided, rather such determination should be made on a case-by-case basis focusing on the particular accused juvenile. If a particular age is chosen, it should be only after careful review of recommendations of child development experts; (2) the need to protect the victim and society generally outweighs the adverse impact of stigmatizing the accused juvenile by entering his or her name in a child abuse registry; and (3) in cases where there are allegations of sexual abuse, that the nature of the act is not one of sexual exploration.[150]

Finally, if states opt to include children in child abuse registries, the state should maintain a separate registry with special

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[149] Studies reveal that 50% of adult sex offenders committed sexual offenses as adolescents but 85% to 95% of juvenile offenders enrolled in treatment programs are rehabilitated through psychological treatment. *See* Sander Rothchild, *Beyond Incarceration: Juvenile Sex Offender Treatment Programs Offer Youths a Second Chance*, 4 J.L. & POL'Y 719, 746 (1996) (*citing* Eddie Lucio, Jr., Treating Sex Offenders Saves Lives, Austin Am. Statesman, Feb. 21, 1995 and Get Control of Child Rapists, Tampa Trib., Aug. 16, 1995).

[150] *See supra* Part III for discussion of current criteria SRS uses to determine whether sexual act is abuse or exploratory. *See also, The Revised Report from the National Task Force on Juvenile Sex Offending, 1993 of the National Adolescent Perpetrator Network*, Juvenile and Family Court Journal, Vol. 44, No. 4, at 11 (1993) (defining "sexually abusive behavior" as "any sexual behavior which occurs 1) without consent; 2) without equality; or 3) as a result of coercion"). *Id.*

provisions to ensure maximum confidentiality and limited access. Also, no matter which precise system is chosen, accused juveniles should be offered treatment at the state's expense[151] and ongoing opportunities to prove to an independent hearing officer that they have been rehabilitated. Once it is proven that particular individuals no longer pose a threat to society, their names should be expunged from the registry. These opportunities could be automatically initiated by periodic agency review of these cases with the focus on assessing the treatment and progress the juvenile has made towards rehabilitation. At a minimum, prior to the time a child listed in the registry reaches the age of eighteen, there should be a rehabilitation review of the juvenile's case and the opportunity for a hearing if the agency denies expungement. This type of process would focus all parties involved on treatment and provide an incentive for juveniles to seek treatment. Also, a process focused on rehabilitating accused juveniles would hopefully lead to a clean slate for these youths as they embark upon adulthood, a process compatible with the goals of most state juvenile laws.

In conclusion, the *Selivonik* court appears to support the rehabilitation model, expressing in its decision concern that the only pathway to expungement in Vermont is by challenging the truthfulness of an allegation. The court noted that "although an expungement remedy is available in theory, the Legislature left no discretion in the Human Services Board to expunge an act for reasons other than that the allegation is untrue."[152] The Vermont Legislature, as well as other state legislatures, should be encouraged to take steps in promulgating changes to their child abuse registry laws. At a minimum, the laws should focus on treatment and rehabilitation of the accused juvenile rather than the current "sentence" of a life long registry listing and the resultant stigma.

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[151] *See* Policy Manual No. 56, *supra* note 8, the parents of a perpetrator under age ten are notified by letter that their child has been found to have engaged in "inappropriate sexual activity" and the social worker is to assist the family in securing treatment where appropriate. *See id.*

[152] *See In re Selivonik*, 670 A.2d at 834.