

**A Brief Report on Adult Abuse Registries:
Additional Information**

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Executive Summary

This report is a follow-up on a November 2010 study in which we reported on how adult abuse registries operate in fourteen states. Here we provide additional information on how individuals are placed on state registries, the nature of appeals processes for the registries and the frequency of appeals and successful appeals where we were able to gather such information.

The report is based on information provided by six states: Vermont, New Hampshire, New Jersey, Missouri, Nebraska, and Wyoming.

In brief, the process in the states works as follows:

1. Statutory provisions and administrative rules govern the process for placing individuals on an abuse registry.
2. A complaint is filed.
3. The agency conducts a field investigation.
4. All information is reviewed and determination is made.
5. Specific criteria guide determinations.
6. If the investigation warrants, the individual is placed on the registry.
7. The Individual may file an administrative appeal to be removed from registry
8. If the administrative appeal is unsuccessful, the individual may appeal through the courts

Placement on a registry disqualifies an individual for employment in organizations serving the affected population in most, but not all, states.

To protect the rights of the accused, states typically notify the accused when a complaint has been filed and an investigation opened. They also provide some combination of administrative review and administrative hearing through which an individual can appeal listing on a registry.

While an extensive process is in place for individuals to appeal their presence on a registry, very few do. There have been individuals who have successfully been removed from registries through that process. Based on the limited information available from these states, incorrect placements on registries are rare, but when they occur they can be successfully appealed.

State by State Information

Vermont:

From the Vermont APS Annual Report- 2010

Establishing Statute: Title 33 Chapter 69

Reporting

A report can be made to APS in a variety of ways. One of the easiest ways to report suspected abuse is by calling the Division of Licensing and Protection's reporting and complaint toll-free number, 1-800-564-1612. The toll free number is available to any individual to report abuse or suspected abuse of vulnerable adults. The toll free line is answered twenty-four hours a day, seven days a week. APS staff answer the phone during normal business hours, between 7:45 a.m. and 4:30 p.m. After hours, weekends and holidays, the caller is directed to call the Emergency Services Program (ESP), which is a 24-hour abuse-reporting unit within the Agency of Human Services' Department for Children and Families (DCF). If determined to be necessary, ESP will provide referral information to the appropriate emergency services and then forwards a written report to APS on the next business day. Written reports, including those sent by fax, may be submitted in lieu of, or in addition to, telephone reports. Reports also may be submitted by TTY or by using the Department's web page, located at www.dail.state.vt.us/lp/aps.htm

When the Investigative Screener, in conjunction with the APS Chief, makes the decision to open a case for investigation, the investigation commences within 48 hours of receiving the report. The Investigative Screener prioritizes all calls, identifies risks and responds accordingly by notifying law enforcement and/or other emergency response services if appropriate, and by assigning an APS Investigator to examine the allegations. Typically the first contact is made to the reporter by telephone.

If a reported allegation or incident does not meet the definition of abuse or vulnerable adult as set forth in Title 33 V.S.A. § 6902, the intake information is referred to the service agency appropriate to the individual's age and/or disability for review and intervention. A letter is sent to both the reporter and the alleged victim informing them of the decision to open, or not to open, an investigation and the reason why. The letter also tells the reporter and the alleged victim that if they are in disagreement with the APS decision they may request a review of the decision by the Commissioner of the DAIL.

Investigation Process

Reports of abuse, neglect and exploitation are received by an Intake Specialist and then

forwarded to an Investigative Screener. Allegations of abuse, neglect and exploitation must meet the criteria for investigation. In order for an APS investigation to commence, the alleged victim must be a vulnerable adult as defined in Title 33 V. S. A. §6902 (14), and the alleged incident must meet the definition of abuse, neglect or exploitation set forth in Title 33 V. S. A. § 6902 (1), (6) or (7). See Appendix A. 1 The use of the term “abuse” in this report refers to abuse, neglect or exploitation.

Investigations are assigned to one of seven APS field investigators based on the following considerations; the geographical location of the alleged victim, the availability of staff, the current investigative caseload assignment and/or the special needs of the case. Due to the increasing numbers of cases and severity of the allegations, overlap of territories has become necessary. The APS investigators gather information about a reported incident by interviewing witnesses, including the reporter if applicable, reviewing relevant documents and collecting other pertinent information. At the same time, the investigators coordinate services necessary to develop a protection plan for the vulnerable adult and referrals are made to the appropriate agencies to address specific needs of the individual. At the conclusion of the investigation, the APS investigators submit an investigative report describing the investigation and the evidence gathered. If the division decides to recommend substantiation the individual is informed by registered letter of the basis for the substantiation and information on how to appeal the decision. The first opportunity to appeal is to the Commissioner of DAIL. If the Commissioner decides to uphold the substantiation, the individual is informed in writing of the result and is told how to appeal to the Human Service Board. If the Human Service Board upholds the substantiation, the individual’s name is then placed on the APS Abuse Registry. To have a name expunged from the APS Abuse Registry an individual is required to send the Commissioner of DAIL a letter requesting an expungement hearing.

Number of Reporters	2957
Number of Reports	2452
Number of Closed Screenings	1452
Number of Assigned Investigations	996
Number of Substantiated Perpetrators	82
Number of Investigations Unresolved	124
Number of Self Neglect Reports	283
Number of Self Neglect Investigations Unresolved	3

New Jersey

From the New Jersey Central Registry of Offenders Against Individuals with Developmental Disabilities Fact Sheet, Updated 02/11

Establishing Statute: N.J.S.A. 30:6D-73 et seq.

Are There Additional Considerations for Placing a Person on the Central Registry?

Yes. In addition to a substantiated finding of abuse, neglect or exploitation, the DHS investigative body will determine if any or all of the following additional elements are met: 1) For cases of substantiated abuse, whether the caregiver acted intentionally, recklessly or with careless disregard resulting in an injury or exposing the individual to a potential injury. 2) For cases of substantiated neglect, whether the caregiver acted with gross negligence, recklessness, or evidenced a pattern of behavior that caused harm or placed an individual in harm's way. 3) In cases of substantiated exploitation, through an act or set of acts, during which the caregiver dispossessed a service recipient or group of recipients of a monetary value of \$100 or more.

Who Determines Whether a Person Will Be Placed on the Central Registry?

The decision to place a person on the Central Registry is made by the DHS Commissioner or his/her designee(s) based on

1) a substantiated finding by the DHS investigative body that a caregiver abused, neglected or exploited an individual with a developmental disability 2) The investigation also produced evidence that the caregiver acted with any of the additional elements previously listed above (careless disregard, gross negligence, etc.).

What Happens When a Person is Placed on the Central Registry?

Persons who are placed on the Central Registry are required by law to immediately cease all contact with individuals with developmental disabilities for whom they directly or indirectly receive state funding, except immediate family members. Persons placed on the Central Registry may no longer be employed in facilities or programs contracted, licensed or regulated by the State of New Jersey to provide care to an individual with a developmental disability.

Do Persons Identified for Placement on the Central Registry Have the Right to Appeal?

Yes. Within ten days of notification, persons identified for placement on the Central Registry can request a pre-hearing conference with a representative of DHS, and/or within 30 days of notification, may seek an Administrative Hearing through the Office of Administrative Law. Appeal procedures are in accordance with the Administrative Procedures Act (*N.J.S.A. 52:14B-1*).

Can a Person Be Taken Off the Central Registry?

Yes. Persons may be taken off the Central Registry if DHS determines through the administrative appeal process that an error has been made, or if after five years of placement on the Central Registry, the person can affirmatively demonstrate and evidence satisfactory rehabilitation based on identified criteria.

Who Investigates Allegations for Possible Placement on the Central Registry?

The DHS Office of Program Integrity and Accountability (OPIA) will be responsible for conducting investigations for the most serious allegations of abuse, neglect or

exploitation in community settings and for all allegations in DHS Developmental Centers.

From Phone interview, 8/11/11

Current Offenders on Registry: 2

New Hampshire

From phone interview on 8/8/11

Establishing Statute: RSA 161-F49

An appeals process is in place to ensure that people placed on the registry have the opportunity to contest that. They can immediately contest their register once being notified. If they are denied they must wait one year before they can request expungement again. If that is denied, then they can take it to the probate court, and through the system from there.

Currently there are 181 substantiated complaints on their registry, representing 145 individuals. This is after roughly 1800 calls to the hotline reporting abuse or neglect. Only five people have ever been expunged from the list, and that was through the hearings process. Only one appeal has ever made it to the courts, and it was denied, at which point they did not appeal again.

Missouri

From phone interview on 8/10/11 and 8/12/11

Establishing Statute: Ch 660.315 RSMO

The Missouri registry is broken down into two units: the Central Registry Unit (CRU) and the Employee Disqualification List (EDL). The CRU is the hotline for complaints and the office that first notifies field staff of issues. The fields staff then go and investigate claims.

Depending on the results of the investigation, complaints receive one of three statuses: unsubstantiated, suspected, or reason-to-believe. Only those who receive the reason-to-believe status are eligible to be placed on the EDL. Given certain criteria those perpetrators are given a time-period on the list from six months to indefinitely. Only employees of long-term care services can be placed on the EDL.

It is possible that an individual can have a complaint filed against them for which there is reason-to-believe, but because the relationship to the victim is not one of employment, they would not be placed on this list, but whose name may be passed on to a separate agency for further action.

Nebraska

From phone interview on 8/12/11.

Establishing Statute: ?

The intake process in Nebraska begins with a call to report an abusive situation. The individual taking the call screens it for certain criteria. If those criteria are met then the report is sent to a field worker, who then investigates the claim.

When investigating the claim, a field worker will see that the person being abused fits the statutory requirement for a vulnerable adult, and that the reported abuse fits the statutory description of abuse or neglect. If these are in place then the individual ends up on Nebraska's list.

Once a person is placed on the registry, they can contest it, but only once they have already been listed. They can initially send an appeal to a third party agency within Health and Human Services to consider. If they are denied at this point they can then they qualify for an administrative hearing in order to seek expungement. If they are denied at this stage then they enter the court system through district court.

Placement on Nebraska's registry does not legally disqualify them from employment within the long-term-care sector. Their information is available to employers in order to inform hiring decisions, but they are not barred from hiring listed individuals.

Wyoming

From phone interview on 8/12/11

Establishing Statute: Title 35-20-103

The intake process for vulnerable abuse closely reflects that of the child abuse registry, as the vulnerable adult registry is housed in the early child division. Once a report has been made of some abuse, the field offices investigate the claims and both a case worker and manager have to sign off on a report for it to be substantiated, based on the information from the investigation.

For a listing to take place on the central registry, a statement of allegation must be provided to the alleged perpetrator before and after the investigation takes place, notifying them of the accusation, and informing them of the results. This allows the individual the option of an administrative hearing, which is the first step in the appeals process.

All hearings take place through the Office of Administrative Hearings, which is separate from the intake division. They can also request an adjustment to their record directly from the district manager. These types of appeals are considered by a panel once a month, and are "very paper-based."

If central registry receives a report and it is considered to be low risk, then the investigation process is bypassed and something called a safety assessment is administered. Such assessments cannot result in a listing on the registry, but are typically held in order to help address some shortcoming, rather than direct harm.