

1 H.727

2 Introduced by Representative Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Human services; child welfare services; Human Services Board
6 hearing

7 Statement of purpose of bill as introduced: This bill proposes to repeal the
8 child hearsay rule as it is applied to Human Services Board proceedings so that
9 a child is not required to testify before the Board and the child's hearsay
10 statements are admissible in the proceedings.

11 An act relating to the admissibility of a child's hearsay statements in a
12 proceeding before the Human Services Board

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1. 33 V.S.A. § 4916b is amended to read:~~

15 § 4916b. HUMAN SERVICES BOARD HEARING

16 (a) Within 30 days ~~of~~ after the date on which the administrative reviewer
17 mailed notice of placement of a report on the Registry, the person who is the
18 subject of the substantiation may apply in writing to the Human Services
19 Board for relief. The Board shall hold a fair hearing pursuant to 5 V.S.A.

20 ~~§ 3091. When the Department receives notice of the appeal, it shall make note~~

1 ~~in the Registry record that the substantiation has been appealed to the Board~~

2 ~~(b)(1) The Board shall hold a hearing within 60 days of after the receipt of~~
3 ~~the request for a hearing and shall issue a decision within 30 days of after the~~
4 ~~hearing.~~

5 ~~(2) Priority shall be given to appeals in which there are immediate~~
6 ~~employment consequences for the person appealing the decision.~~

7 ~~(3) Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to~~
8 ~~hearings held under this subsection only as follows:~~

9 ~~(A) V.R.E. 804a(a)(1) and (4) shall apply.~~

10 ~~(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or~~
11 ~~testimony given under oath at another proceeding shall be admissible evidence~~
12 ~~in a hearing held under this subsection.~~

13 ~~(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection~~
14 ~~unless the hearing officer determines, based on a preponderance of the~~
15 ~~evidence, that requiring the child to testify will present a substantial risk of~~
16 ~~trauma to the child.~~

17 ~~(D) V.R.E. 804a(b) shall not apply An individual under 18 years of~~
18 ~~age who is alleged to have been abused or neglected shall not be required to~~
19 ~~testify or give evidence at any hearing held under this subchapter. Evidence~~
20 ~~shall be admissible if it is of a type commonly relied upon by reasonably~~
21 ~~prudent persons in the conduct of their affairs. Rule 804a of the Vermont~~

1 ~~Rules of Evidence shall not apply to any hearing held under this subchapter.~~

2 (4) Convictions and adjudications ~~which~~ that arose out of the same
3 incident of abuse or neglect for which the person was substantiated, whether
4 by verdict, by judgment, or by a plea of any type, including a plea resulting in
5 a deferred sentence, shall be competent evidence in a hearing held under this
6 subchapter.

7 (c) A hearing may be stayed upon request of the petitioner if there is a
8 related case pending in the Criminal or Family Division of the Superior Court
9 ~~which~~ that arose out of the same incident of abuse or neglect for which the
10 person was substantiated.

11 (d) If no review by the Board is requested, the Department's decision in the
12 case shall be final, and the person shall have no further right for review under
13 this section. The Board may grant a waiver and permit such a review upon
14 good cause shown.

15 Sec. 2. EFFECTIVE DATE

16 ~~This act shall take effect on July 1, 2018.~~

~~*Sec. 1. 33 V.S.A. § 4916b is amended to read:*~~

~~*§ 4916b. HUMAN SERVICES BOARD HEARING*~~

~~*(a) Within 30 days of after the date on which the administrative reviewer
mailed notice of placement of a report on the Registry, the person who is the
subject of the substantiation may apply in writing to the Human Services*~~

~~Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S. 4
§ 3091. When the Department receives notice of the appeal, it shall make note
in the Registry record that the substantiation has been appealed to the Board.~~

~~(b)(1) The Board shall hold a hearing within 60 days of after the receipt of
the request for a hearing and shall issue a decision within 30 days of after the
hearing.~~

~~(2) Priority shall be given to appeals in which there are immediate
employment consequences for the person appealing the decision.~~

~~(3) Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to
hearings held under this subsection only as follows:~~

~~(A) V.R.E. 804a(a)(1) and (4) shall apply.~~

~~(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or
testimony given under oath at another proceeding shall be admissible evidence
in a hearing held under this subsection.~~

~~(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection
unless the hearing officer determines, based on a preponderance of the
evidence, that requiring the child to testify will present a substantial risk of
trauma to the child.~~

~~(D) V.R.E. 804a(b) shall not apply. A child under 18 years of age who
is alleged to have been abused or neglected shall not be required to testify, or
give evidence at any hearing held under this subchapter. Article VIII of the~~

~~Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child under 18 years of age who is alleged to have been abused or neglected. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.~~

~~(4) Convictions and adjudications ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.~~

~~(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated.~~

~~(d) If no review by the Board is requested, the Department's decision in the case shall be final, and the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown.~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2018.~~

~~Sec. 1. 33 V.S.A. § 4916b is amended to read:~~

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days of after the date on which the administrative reviewer mailed notice of placement of a report on the Registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the Department receives notice of the appeal, it shall make note in the Registry record that the substantiation has been appealed to the Board.

(b)(1) The Board shall hold a hearing within 60 days of after the receipt of the request for a hearing and shall issue a decision within 30 days of after the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) ~~Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:~~

~~(A) V.R.E. 804a(a)(1) and (4) shall apply.~~

~~(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.~~

~~(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of~~

trauma to the child.

(D) V.R.E. 804a(b) shall not apply Article VIII of the Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child 12 years of age or under who is alleged to have been abused or neglected and the child shall not be required to testify or give evidence at any hearing held under this subchapter. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(B) Article VIII of the Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child who is at least 13 years of age and under 16 years of age who is alleged to have been abused or neglected and the child shall not be required to testify or give evidence at any hearing held under this subchapter in either of the following circumstances:

(i) The hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child. Evidence of trauma need not be offered by an expert and may be offered by any adult with an ongoing significant relationship with the child. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(ii) The hearing officer determines that the child is physically

unavailable to testify or the Department has made diligent efforts to locate the child and was unsuccessful. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(4) Convictions and adjudications ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the Board is requested, the Department's decision in the case shall be final, and the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.