

H.727– Hearsay Exception for Children in Human Services Board Hearings

Department for Children & Families

House Judiciary

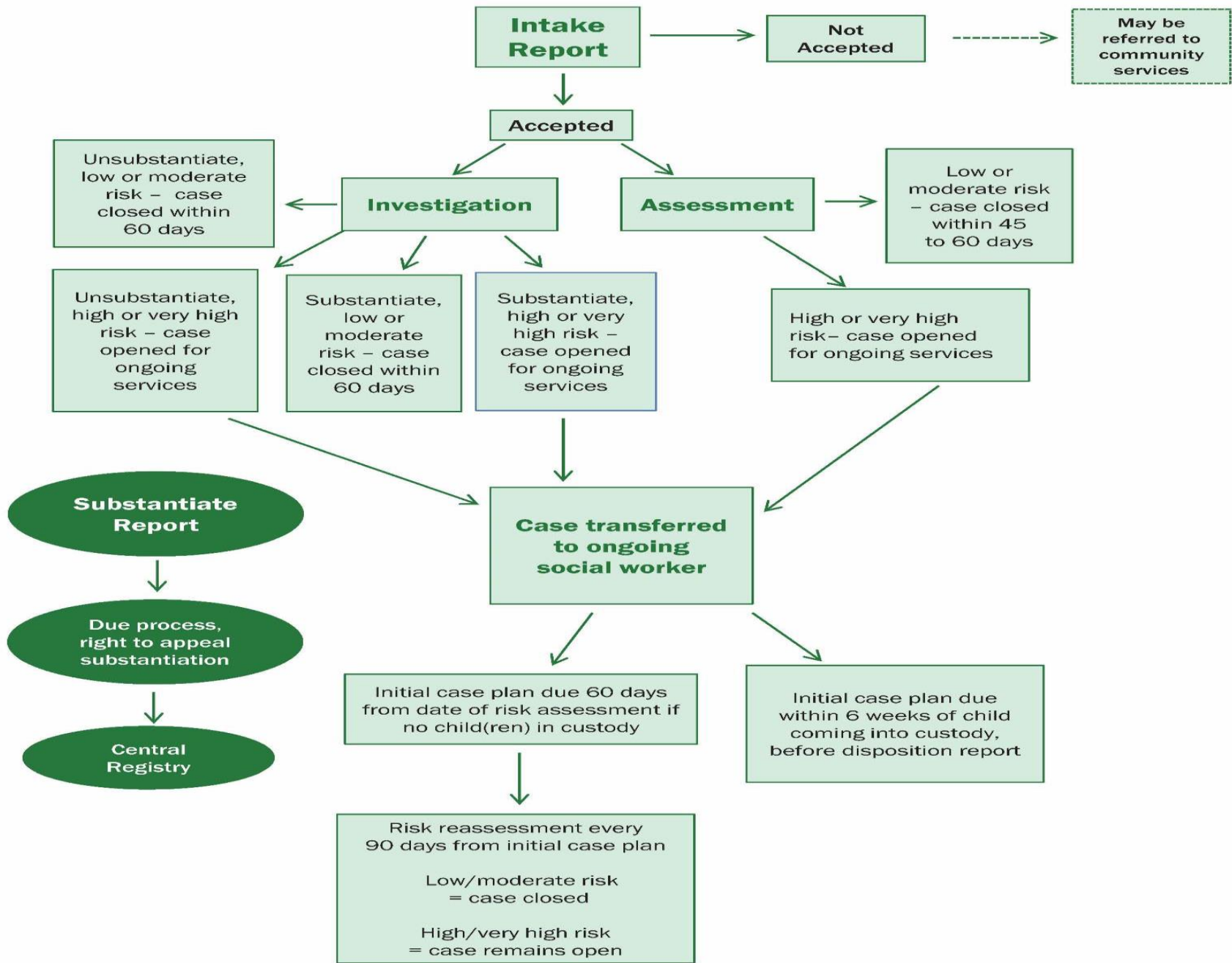
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Background

After a report of child maltreatment is made to DCF, the case follows the following steps:

- Intake screening
- Track Assignment – Assessment or Investigation
- Investigation
- Substantiation
- Placement on the Child Protection Registry

Substantiation and then placement on the Child Protection Registry is a process that happens outside of any court proceedings, this is exclusive to AHS.



Child Protection Registry

Purpose defined in Title 33, section 4911:

(4) establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults; and

(5) establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect.

Child Protection Registry

"Child Protection Registry" means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

The Child Protection Registry is not:

- Available to the general public
- Accessible without signed consent by the person

Employers doing a background check on job applicants whose responsibilities would require that they work with children or vulnerable adults request that the applicant sign a release before their would-be employer can pursue a background check.

Child Protection Registry

Who is placed on the registry and for what?

In 2016 DCF:

- Received 20,583 reports of child abuse or neglect;
- Opened 5,509 child safety interventions; and
(2674 Assessments, 2835 Investigations)
- Substantiated 737 incidents of abuse, neglect or risk of harm.

On average, there are 600 appeals and expungement requests annually, which includes past and current cases.

Youth under 18 can be placed on the registry if they are substantiated for abuse of another child. DCF has put policies in place to avoid placing a youth on the registry as much as possible.

Child Protection Registry - Appeals

An individual who has been substantiated for abuse or neglect of a child has due process rights.

First:

- A person has the right to appeal the substantiation before their name is placed on the Child Protection Registry.
- They appeal this determination to the Commissioner's Registry Review Unit (CRRU).
- CRRU utilizes independent reviewers who are contracted (AKA: Administrative Reviewers) to review each case that is appealed.

Child Protection Registry - Appeals

Second:

If the appellant is not satisfied with the result of their first appeal, then they can appeal the decision to the Human Services Board (HSB).

The HSB is a citizen's panel consisting of seven members created by the legislature pursuant to 3.V.S.A. §3090. Its duties are to act as a fair hearing board for appeals brought by individuals who are aggrieved by decisions or policies of departments and programs within the Agency of Human Services.

The HSB employs two administrative hearing officers, who are attorneys and act similarly to a judge in that they weigh the evidence presented by the appellant and the state and they make a determination that they present to the panel.

Child Protection Registry - Appeals

Third:

Human Services Board substantiation decisions may be appealed to the Vermont Supreme Court.

Child Protection Registry -Expungement

A person placed on the registry can request that their case be considered for expungement from the Child Protection Registry:

- This is available after three or seven years depending on the level of seriousness of the substantiation (there is a tiered system)*.
- The person will need to demonstrate that they are no longer a danger to the safety of children.

* Please note: we are in the process of adding two additional tiers through rulemaking; one lower-level (eligible to request expungement after one year) and one higher-level (eligible to request expungement after 15 years).

Child Protection Registry and Youth

In 2015, the legislature updated the definitions of child abuse and neglect and in that process clarified the Department's role in allegations of child sexual abuse that typically involve youth (frequently referred to as "sexting" and confined it only to situations where there is retransmission of the image). In doing so, the universe of accepted child abuse investigations involving youth was restricted.

In response to the 2015 legislation, DCF amended its policies for cases involving reported youth to include more appropriate assessment responses rather than investigations.

Please note: *the outcome of an assessment response does not result in a placement on the child protection registry.*

Child Protection Registry and Youth

Expansion of Expungement Opportunities:

- Through the administrative rulemaking process and outside of this bill, we are proposing to add two more tiers – a 1 year and 15 year tier.
- In almost all cases (except serious physical abuse by an adolescent parent), youth would be eligible at either the 1 or 3 year mark.
- In 2016, there were 61 substantiated cases of child sexual abuse involving a perpetrator under the age of 18 which is 8% of the total number of substantiated cases. The vast majority of substantiations are related to the conduct of adults perpetrated on children.

Purpose of H.727

In appeals to the HSB, allow for reliable hearsay to be admitted in lieu of a child testifying against their alleged abuser (who is often a caretaker or parent).

48: This is the number of cases that DCF has withdrawn in the last three years. This was done so that the child would not have been compelled to testify which would have caused them further trauma.

Purpose of H.727

Why is this needed?

- The current process does not adequately take into account the resulting impact on victims.
- Brain science related to trauma has shown that the expectations of child victims in recounting their experiences in the way the system requires them to do so is often not possible and that requiring them to do so again and again only compounds the original trauma experienced.

Current law

Current law in Title 33 provides that the VRE 804a hearsay exception applies to HSB appeals of child sexual abuse substantiations with some modification:

- children, under 12 who were victims of child sexual abuse, do not have to be made “available” to testify under the rule (one of the requirements of the hearsay exception) if the hearing officer finds, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.

The current law does not provide adequate protection for children.

The trauma exception is not always a reliable option and is limited to cases of sexual abuse of children under 12, not all substantiations.

H.727

H.727 proposes to amend 33 V.S.A. 4916b to provide:

- Children shall not be required to testify at HSB hearings
- Reliable children's hearsay may be admitted - Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- VRE 804a shall not apply to HSB hearings.

This proposal does not preclude children who want to testify from doing so.

What is required by the Constitution?

14th Amendment Due Process.

Please note the three different levels of appeals highlighted in previous slides.

Due Process in Administrative Hearings

Level of due process required at the administrative hearing stage includes:

- Opportunity to present evidence and argument;
- Compulsion of witness testimony by subpoena;
- Cross-examination of witnesses
- Modified evidentiary rules, and
- Findings of fact based on the evidence.

Human Services Board child abuse and neglect substantiation hearings contain all of these required elements.

Due Process in Administrative Hearings

Only *reliable* hearsay may be admitted.

What does reliable hearsay mean?

- It has a sufficient indication of reliability

Each question of whether hearsay is reliable should be evaluated by the hearing officer according to whether it appears truthful, reasonable and credible.

Examples include:

- hearsay evidence by disinterested persons (such as a nurse, teacher, doctor, daycare provider)
- hearsay that is specific and detailed
- two hearsay accounts that are consistent

Conclusion

With this legislative proposal, we are asking the legislature to amend current statute to provide that in HSB administrative hearings:

- due to the risk of trauma to child victims, children are not required to testify; and
- reliable children's hearsay is admissible in these proceedings.

Questions or comments?



Thank you!