

Memorandum

To: Senator Sears, Chair, Senate Judiciary Committee
From: Ken Schatz, DCF Commissioner
Karen Shea, DCF Family Services Division Deputy
Commissioner
Re: H.727
Date: April 24, 2018

Thank you for the time and attention you are giving to H.727. The current statutory scheme regarding the admission of children's hearsay statements in administrative Human Services Board child abuse and neglect proceedings is not workable. This brief memo is submitted to provide an overview of the Department's position.

In 2009, the Vermont General Assembly adopted a statute that modifies how the Vermont Rule of Evidence 804a applies to HSB child abuse and neglect proceedings. At that time, a middle ground approach was adopted that allowed the 804a hearsay exception for children 12 years or younger in sexual abuse cases and made clear that the child does not have to be available to testify (one of the 804a requirements) if the "trauma case" is made based on a preponderance of the evidence. The problems that the Department faces with the current statute include:

- Hearsay exception is limited to only children 12 years old or younger
- Hearsay exception is limited to only sexual abuse cases – any case of child abuse or neglect is potentially traumatic to a child
- Trauma hearing requirement is not workable
 - HSB hearing officers have historically required expert testimony to make the trauma case – this does not work for many reasons including:
 - Expert testimony on this topic requires that the child is currently engaged with a professional therapist
 - Some child victims are too young to benefit from formal talk therapy
 - Because of the amount of time that has passed, some children are no longer engaged in therapy and/or current engagement in therapy about the trauma is clinically contraindicated
 - The Department is unable to locate many child victims or their families when the HSB proceeding occurs and therefore, the Department is forced to withdraw the substantiation and take perpetrators off the Child Protection Registry.





There are many cases where children can and want to testify and the bill as passed by the House allows for that.

The Department has withdrawn 48 substantiations of child abuse and neglect over the last three years due to the trauma of testifying and/or child victims could not be located. This means that 48 people substantiated for child abuse or neglect now have employment opportunities working with children.

This bill proposes to allow into evidence reliable hearsay statements from children. The admissibility of these statements allows hearing officers the opportunity to hear all of the available information. The hearing officer gets to decide what weight to give these statements, if any, as compared to other evidence.

Asking a child to retell their abuse or neglect story again at an administrative hearing does not benefit them in any way. We are asking them to testify in order to prevent future harm to other children. That is a heavy burden to carry and a lot to ask.

Please let us know if we can provide any further information. Thank you.

