

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 727
3 entitled “An act relating to the admissibility of a child’s hearsay statements in a
4 proceeding before the Human Services Board” respectfully reports that it has
5 considered the same and recommends that the Senate propose to the House that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 § 4916b. HUMAN SERVICES BOARD HEARING

10 (a) Within 30 days ~~of~~ after the date on which the administrative reviewer
11 mailed notice of placement of a report on the Registry, the person who is the
12 subject of the substantiation may apply in writing to the Human Services
13 Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A.
14 § 3091. When the Department receives notice of the appeal, it shall make note
15 in the Registry record that the substantiation has been appealed to the Board.

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

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

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

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

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

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

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

18 (B) Article VIII of the Vermont Rules of Evidence (Hearsay) shall
19 not apply to any hearing held pursuant to this subchapter with respect to
20 statements made by a child who is at least 13 years of age and under 16 years
21 of age who is alleged to have been abused or neglected and the child shall not

1 be required to testify or give evidence at any hearing held under this
2 subchapter in either of the following circumstances:

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

9 (ii) The hearing officer determines that the child is physically
10 unavailable to testify or the Department has made diligent efforts to locate the
11 child and was unsuccessful. Evidence shall be admissible if the time, content,
12 and circumstances of the statements provide substantial indicia of
13 trustworthiness.

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

19 (c) A hearing may be stayed upon request of the petitioner if there is a
20 related case pending in the Criminal or Family Division of the Superior Court

1 ~~which~~ that arose out of the same incident of abuse or neglect for which the
2 person was substantiated.

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

7 Sec. 2. EFFECTIVE DATE

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

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11 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE