



January 15, 2024

Senate Committee on Judiciary
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Via email to:

Sen. Dick Sears, Chair
Sen. Nader Hashim, Vice Chair
Sen. Phil Baruth
Sen. Tanya Vyhovsky, Clerk
Sen. Robert Norris

Dear Chair Sears and Committee:

I am writing on behalf of the Office of the Child, Youth, and Family Advocate (“OCYFA”) in cautious support of S.190 of 2024.

As you know, S.190 limits depositions and allows hearsay in certain instances with the goal of protecting victims of serious crimes. The OCYFA supports this bill because it aims to mitigate the trauma experienced by child survivors of trauma, and because it contains protections for defendants to ensure due process.

The research is clear regarding the detrimental effects of trauma on young people, people with serious disabilities, and especially those who fall under both categories.¹ We want to emphasize that each case, and each survivor, are different. In some instances, survivors of harm may prefer to testify or sit for a deposition. In other instances, this kind of case involvement may be profoundly harmful. S.190 empowers both groups to seek justice in the way most appropriate for their case while also providing due process for defendants and allowing for judicial discretion when necessary.

Paired with similar legislation, such as S.6—which the OCYFA also supports—S.190 protects our most vulnerable Vermonters from facing daunting legal processes on an uneven playing field. We appreciate your committee’s ongoing efforts to bring Vermont’s legal systems up to date with the current brain science.

Thank you for your consideration, and please feel free to contact our office any time,

A handwritten signature in black ink, appearing to read "Matthew Bernstein".

Matthew Bernstein
Child, Youth, and Family Advocate

¹ See SAMSHA, “Understanding Child Trauma,” <https://www.samhsa.gov/child-trauma/understanding-child-trauma>.

To: Vermont Senate Committee on Judiciary
From: Nate Hine, Guardian ad litem
Re: S.190
Date: Jan. 13, 2024

Thank you for the opportunity to present my perspective on Section 2 of this bill, which would improve Vermont's ability to protect children.

I have been volunteering as a guardian ad litem since 2017. In this time, I have participated in CHINS, domestic docket, and other cases involving more than 150 Vermont children in every Vermont county except the 4 northernmost.

In general, our courts and advocates are able to do a reasonable job in responding to abuse of and threats to children. Unfortunately, there have been a significant number of cases in my experience where the courts are unable to hear crucial evidence as a result of obstacles built into our rules and laws, and the result has been the continued placement of children in harm's way.

Examples include:

- In a custody case, a boy under age 10 whose non-custodial parent had repeatedly abused him, including an incident of strangulation. The parent's charges were dropped because of a desire to avoid having the child testify, and he was ordered back into regular overnight contact with that parent.
- In a CHINS case, a girl under 10 whose parent had repeatedly abused her, including an incident of a deliberate burn. The parent's charges were dropped because of a desire to avoid having the child testify, and she was placed back in her parent's custody.
- In a custody case, two children under 10 were repeatedly subjected to excessively physical discipline by their non-custodial parent, including crushing to the point of being unable to breathe. The children's disclosures were not allowed into evidence, and they were ordered back into regular overnight contact with that parent.
- In a CHINS case, an adolescent boy and his siblings were repeatedly subjected to excessive physical punishment by their parent and the parent's partners, including whipping with belts and other objects, placement in stress positions, and denial of food. The children's disclosures were not allowed into evidence, and the adolescent boy was placed back in his parent's custody.

There is a cascade effect in which the failure to pursue disclosures in one venue (e.g. criminal courts, RFA cases, or DCF investigations) is used by counsel to undermine protective efforts in another venue (e.g. domestic docket, RFA, or CHINS cases). VRE 804a is one of several provisions that can lead to this effect occurring.

Article 12 of the United Nations Convention on the Rights of the Child states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The UNCRC has been ratified by every nation except the United States. Even so, a large and increasing number of US jurisdictions are finding merit in following its guidance. Unfortunately for the well-being of many Vermont children, there are a number of provisions in Vermont's laws and practices which relegate young people to a passive role under the guise of protection. Not only does this prevent courts from hearing essential information, but it also conveys to the young people concerned that their own voice has no significance to the adults deciding their futures. This can be a profoundly debilitating message for young people in stressful situations to receive.

The clause "*or through a representative or an appropriate body*" applies to our request to add this hearsay exception, which allows an interviewer or other witness to quote the child's disclosure. The current rule, on the other hand, deters the child's voice by placing the child in a position of threat (perceived and/or real) by preventing their information from being heard unless it is directly in person by the court, or maybe through deposition. Therefore, the status quo is not consistent with Article 12.

Vermont can do better, and we have a chance in this bill to move forward in this one small but important area.

Thanks for your attention.



Nate Hine
S. Strafford, VT
802-299-9555

My opinions do not represent those of the VT GAL Program or Judiciary.



January 12, 2024

Dear Members of the Senate Judiciary Committee,

KidSafe Collaborative, an organization dedicated to improving the community's response to child abuse and neglect, extends our support for the proposed legislation, S.190. Similar protections already exist for minors who are victims of sexual abuse. Extending these established protections to children who are victims of serious bodily harm is a crucial step in aligning our legal framework with what we know is best for our children.

I firmly believe that every child deserves a safe and supportive environment to heal and recover from the trauma of abuse. The proposed legislation not only reinforces the rights of minor victims but also contributes significantly to our collective responsibility in safeguarding their well-being. By shielding them from the emotional distress associated with depositions, we empower these young survivors to focus on their recovery, ensuring a more conducive environment for healing.

This legislation aligns with KidSafe Collaborative's systems change work and is a continuation of efforts that began many years ago by some of our partners. The work is a testament to our community's dedication to evolving and adapting our legal and support systems to better meet the needs of children who have experienced harm.

Thank you for your dedication to positive change for our community's youth. We trust that your deliberations will lead to the enactment of this crucial, and long overdue, legislation.

Sincerely,

A handwritten signature in black ink that reads "Meghan Masterson". The signature is written in a cursive style with a large, looping initial "M".

Meghan Masterson, Executive Director
meghanm@kidsafevt.org

Voices
for Vermont's Children



January 15, 2024

Respectfully submitted to the Senate Committee on Judiciary.

Voices for Vermont's Children fully supports S.190. Voices is a multi-issue, independent child, youth, and family advocacy organization. We do not currently have an attorney on staff and trust this committee, legislative council, the bill sponsors, and the primary advocates for this bill with the details of the language for this bill. Voices is interested in commenting on the intent behind this bill and the themes within it.

Voices understands that S.190 will likely impact a very small number of children and youth. However, we know that the impact for those youth has the potential to be profound. Voices believes deeply in youth voice, which includes a youth's ability to name the conditions for a trauma informed process or to not speak when that is their preference.

We know that it is critical to give people the opportunity to share their experiences post trauma. However, we also know that consent is a critical component of regaining power over one's story. Providing protections for the safety of the youth as they share their truth is paramount.

Voices has heard of multiple ways in which Vermont's existing hearsay laws have kept valuable information out of the court process. We understand the need to have guidelines for evidence and we default to believing children when they share information about harm that has occurred. We believe S. 190 is an important step towards allowing youth to share their experience in a setting that works for them.

Amy Rose, Policy Director

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