

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 190
3 entitled “An act relating to statements made by a child victim of an offense
4 involving serious bodily injury” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. Rule 15(e) of the Vermont Rules of Criminal Procedure is amended to
8 read:

9 (e) Limitations.

10 * * *

11 (5) Depositions of Minors in ~~Sexual Assault~~ Cases Involving Sexual
12 Assault or Serious Bodily Injury.

13 (A) No deposition of a victim under the age of 16 shall be taken in a
14 prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602
15 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253
16 (aggravated sexual assault), ~~or~~ 3253a (aggravated sexual assault of a child), or
17 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily) injury except
18 by agreement of the parties or after approval of the court pursuant to
19 subparagraph (B) of this paragraph (5).

20 (B) The court shall not approve a deposition under this subdivision
21 unless the court finds that the testimony of the child is necessary to assist the

1 trial, that the evidence sought is not reasonably available by any other means,
2 and that the probative value of the testimony outweighs the potential detriment
3 to the child of being deposed. In determining whether to approve a deposition
4 under this subdivision, the court shall consider the availability of recorded
5 statements of the victim and the complexity of the issues involved.

6 (C)(i) If a deposition is taken pursuant to this paragraph (5), the court
7 shall issue a protective order to protect the deponent from emotional harm,
8 unnecessary annoyance, embarrassment, oppression, invasion of privacy, or
9 undue burden of expense or waste of time. The protective order may include,
10 among other remedies, the following: (I) that the deposition may be taken only
11 on specified terms and conditions, including a designation of the time, place,
12 and manner of taking the deposition; (II) that the deposition may be taken only
13 by written questions; (III) that certain matters not be inquired into, or that the
14 scope of the deposition be limited to certain matters; (IV) that the deposition
15 be conducted with only such persons present as the court may designate; or (V)
16 that after the deposition has been taken, the tape or transcription be sealed until
17 further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply
18 to depositions taken pursuant to this paragraph (5).

19 (ii) If a deposition is taken pursuant to this paragraph (5), the court
20 shall appoint an attorney to represent the child for the purposes of the
21 deposition.

1 Sec. 2. Rule 804a of the Vermont Rules of Evidence is amended to read:

2 RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR
3 UNDER; PERSON WITH A MENTAL ILLNESS OR AN
4 INTELLECTUAL OR DEVELOPMENTAL DISABILITY

5 (a) Statements by a person who is a child 12 years of age or under or who
6 is a person with a mental illness as defined in 18 V.S.A. § 7101(14) or
7 intellectual or developmental disability as defined in 1 V.S.A. §§ 146, 148 at
8 the time the statements were made are not excluded by the hearsay rule if the
9 court specifically finds at the time they are offered that:

10 (1) the statements are offered in a civil, criminal, or administrative
11 proceeding in which the child or person with a mental illness or intellectual or
12 developmental disability is a putative victim of sexual assault under 13 V.S.A.
13 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
14 assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under
15 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A.
16 § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under
17 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379,
18 or 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily injury) or
19 wrongful sexual activity and the statements concern the alleged crime or the
20 wrongful sexual activity; or the statements are offered in a juvenile proceeding
21 under chapter 52 of Title 33 involving a delinquent act alleged to have been

1 committed against a child 13 years of age or under or a person with a mental
2 illness or intellectual or developmental disability if the delinquent act would be
3 an offense listed herein if committed by an adult and the statements concern
4 the alleged delinquent act; or the child is the subject of a petition alleging that
5 the child is in need of care or supervision under chapter 53 of Title 33, and the
6 statement relates to the sexual abuse of the child;

7 (2) the statements were not taken in preparation for a legal proceeding
8 and, if a criminal or delinquency proceeding has been initiated, the statements
9 were made prior to the defendant’s initial appearance before a judicial officer
10 under Rule 5 of the Vermont Rules of Criminal Procedure;

11 (3) the child or person with a mental illness or intellectual or
12 developmental disability is available to testify in court or under Rule 807; and

13 (4) the time, content, and circumstances of the statements provide
14 substantial indicia of trustworthiness.

15 (b) Upon motion of either party in a criminal or delinquency proceeding,
16 the court shall require the child or person with a mental illness or intellectual
17 or developmental disability to testify for the state.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2024.
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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE