

1 S.174

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Court rules; Rules of Evidence; hearsay; testimony where victim is a  
6 minor; depositions; disclosure of confidential records

7 Statement of purpose of bill as introduced: This bill proposes to expand the  
8 hearsay exception under specific circumstances to include statements made by  
9 a child or person with a mental illness or developmental disability who is a  
10 victim of a crime involving bodily injury or serious bodily injury; expand the  
11 application of Rule 807 of the Rules of Evidence regarding testimony of a  
12 child or person with a mental illness or developmental disability to include  
13 cases involving bodily injury or serious bodily injury; prohibit the taking of a  
14 deposition of a child who is a victim of a physical assault except by agreement  
15 of the parties or after court approval; and require a hearing before a court may  
16 issue a subpoena for a victim's personal records.

17 An act relating to the evidentiary rules governing proceedings concerning a  
18 child or person with a mental illness or developmental disability who is a  
19 victim of an offense involving bodily injury or serious bodily injury

20 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 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

4 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 developmental disability as defined in 18 V.S.A. § 8722(2) at the time the  
8 statements were made are not excluded by the hearsay rule if the court  
9 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 developmental  
12 disability is a putative victim of sexual assault under 13 V.S.A. § 3252,  
13 aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of  
14 a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A.  
15 § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest  
16 under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913,  
17 sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, any offense in  
18 which bodily injury or serious bodily injury is an element as defined in  
19 13 V.S.A. § 1021, or wrongful sexual activity and the statements concern the  
20 alleged crime or the wrongful sexual activity; or the statements are offered in a  
21 juvenile proceeding under chapter 52 of Title 33 involving a delinquent act

1       alleged to have been committed against a child 13 years of age or under or a  
2       person with a mental illness or developmental disability if the delinquent act  
3       would be an offense listed herein if committed by an adult and the statements  
4       concern the alleged delinquent act; or the child is the subject of a petition  
5       alleging that the child is in need of care or supervision under chapter 53 of  
6       Title 33, and the 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 developmental disability  
12       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  
17       developmental disability to testify for the state.

1 Sec. 2. Rule 807 of the Vermont Rules of Evidence is amended to read:

2 Rule 807. TESTIMONY WHERE VICTIM IS A MINOR, A ~~MENTALLY~~  
3 ~~ILL PERSON OR A MENTALLY RETARDED PERSON~~  
4 PERSON WITH A MENTAL ILLNESS OR  
5 DEVELOPMENTAL DISABILITY

6 (a) Application. This rule applies only to the testimony of a child age 12 or  
7 under or ~~mentally ill or mentally retarded person as defined in 14 V.S.A.~~  
8 ~~§ 3061(4) or (5) in a proceeding~~ a person with a mental illness or  
9 developmental disability:

10 (1) in a prosecution for sexual assault under 13 V.S.A. § 3252 or  
11 aggravated sexual assault under 13 V.S.A. § 3253 alleged to have been  
12 committed against that child or ~~mentally ill or mentally retarded person~~ a  
13 person with a mental illness or developmental disability;

14 (2) in a prosecution for lewd and lascivious conduct with a child under  
15 13 V.S.A. § 2602 or incest under 13 V.S.A. § 205 alleged to have been  
16 committed against that child;

17 (3) in a prosecution for abuse, neglect or exploitation under 33 V.S.A.  
18 § 6913 or lewd and lascivious conduct under 13 V.S.A. § 2601 alleged to have  
19 been committed against that ~~mentally ill or mentally retarded person~~ person  
20 with a mental illness or developmental disability;



1 incident, regardless of the stage of the case, without approval of the court for  
2 good cause shown and a showing that other means are not available to obtain  
3 the information sought. Such permission shall include limitations on the  
4 subject matter of further questioning.

5 (2) Multiple Defendants. No witness may be deposed more than once  
6 regarding different or multiple offenses arising out of the same incident and  
7 involving two or more different defendants, without approval of the court for  
8 good cause shown and a showing that other means are not available to obtain  
9 the information sought. In cases involving co-defendants, questioning shall be  
10 conducted in the alphabetical order of the defendants' last names unless  
11 otherwise agreed by the defendants. Repetitive questioning shall be avoided.

12 (3) Depositions of Law Enforcement Officers. Absent agreement of the  
13 parties or approval of the court for good cause shown, no deposition shall be  
14 taken of a law enforcement officer:

15 (A) who has been designated by the State as a person who performed  
16 only a ministerial function with respect to the case or whom the prosecutor  
17 does not intend to call at trial; and

18 (B) whose involvement with the case is fully set out in a police report  
19 or other statement prepared by the law enforcement officer and furnished to the  
20 defense; and

1           (C) who has been made available for a recorded in-person or  
2 telephonic interview.

3           (4) Misdemeanors. No depositions shall be taken in misdemeanor cases  
4 except by agreement of the parties or after approval of the court for good cause  
5 shown. In determining whether to allow a deposition in misdemeanor cases,  
6 the court may consider, among other things, the consequences to the defendant,  
7 the importance of the witness's testimony, the complexity of the issues  
8 involved, the complexity of the witness's expected testimony (e.g., experts),  
9 and any other opportunities available to the defendant to discover the  
10 information sought by the deposition.

11           (5) Depositions of Minors in Sexual and Physical Assault Cases.

12           (A) No deposition of a victim under the age of 16 shall be taken in a  
13 prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602  
14 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253  
15 (aggravated sexual assault), ~~or~~ 3253a (aggravated sexual assault of a child), or  
16 an offense involving bodily injury or serious bodily injury as defined in  
17 13 V.S.A. § 1021 except by agreement of the parties or after approval of the  
18 court pursuant to subparagraph (B) of this paragraph (5).

19           (B) The court shall not approve a deposition under this subdivision  
20 unless the court finds that the testimony of the child is necessary to assist the  
21 trial, that the evidence sought is not reasonably available by any other means,

1 and that the probative value of the testimony outweighs the potential detriment  
2 to the child of being deposed. In determining whether to approve a deposition  
3 under this subdivision, the court shall consider the availability of recorded  
4 statements of the victim and the complexity of the issues involved.

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

18 \* \* \*

1 Sec. 4. 13 V.S.A. § 6607 is amended to read:

2 § 6607. DISCLOSURE OF CONFIDENTIAL RECORDS; NOTICE TO  
3 PROSECUTION; HEARING

4 When a defendant seeks access to a victim's school records, or to any other  
5 records of a victim which are by law confidential, the defendant shall provide  
6 written notice to the prosecutor ~~that the records have been requested prior to~~  
7 ~~the service of any subpoena requesting the records~~ and the Court. The Court  
8 shall hold a hearing to determine whether a particularized showing has been  
9 met before ruling on the request.

10 Sec. 5. EFFECTIVE DATE

11 This act shall take effect on July 1, 2014.