



Testimony on H.523 (Hearsay Bill)
House Committee on Judiciary
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Thank you for opportunity to testify on this important legislation. The Center and the State's Attorney Victim Advocates who comprise the Victim Assistance Program strongly support H.523 and the protections it offers for Vermont's most vulnerable crime victims: children under twelve years old and other individuals over age twelve who live with psychiatric, intellectual, or developmental disabilities.

This bill extends existing protections available for very young or disabled victims in sex crime cases to cases involving bodily injury or serious bodily injury as defined in 13 V.S.A. § 1201.

Thirty years that have passed since Rule 804a and Rule 807 were first adopted in Vermont¹ for child sex abuse victims. The underlying premise of the current procedural rules is that very young children or individuals with psychiatric, intellectual, or developmental disabilities may lack the emotional coping skills necessary to withstand the trauma of confronting their abusers in court—or of undergoing criminal depositions—without additional safeguards.

The challenge for prosecutors and State's Attorney Victim Advocates is that the emotional trauma of participating in court proceedings for vulnerable victims is not necessarily confined to sex abuse cases.

¹ These protections were first codified by the Legislature in 1985 for children under twelve in Vermont Rules of Evidence 804a and 807. See V.R.E. 807, Reporter's Notes.

Because physical abuse cases are not subject to V.R.E. 804a and 807's testimonial protections or deposition protections under V.R.Cr.P. 15(e)(5), prosecutors are confronted with the unfortunate choice of whether to put a child victim of physical abuse on the stand to testify against his or her parent or whether to dismiss a case rather than subjecting a disabled adult to a deposition. These challenges have come into greater focus due to recent Legislative enactments intended to strengthen Vermont's child protection laws, including the creation of special investigative units and child advocacy centers. As more and more physical abuse cases are investigated and referred for criminal prosecution, the absence of special protections for these victims has become even more apparent.

The Center's support of this Legislation does not come without due consideration of the constitutional implications that may arise in criminal prosecutions under this proposal. In a recent opinion issued by the United States Supreme Court in *Ohio v. Clark*, 135 S. Ct. 2173 (2015), a unanimous Court held that a three-year-old child's out-of-court statements made to a teacher concerning physical abuse at the hands of his mother's boyfriend did not implicate the Sixth Amendment's Confrontation Clause. Simply put, the constitutional dimensions of these cases has evolved. It's important that state procedural rules evolve as well, to fully encompass these changes.

The Center respectfully requests that the Committee recommend adoption of H.523 in order to bring Vermont's court procedures in line with the needs of those who rely on the system most for protection.

Thank you for considering this bill.