

1 H.223

2 Introduced by Representatives Norris of Sheldon, Anthony of Barre City,
3 Batchelor of Derby, Dickinson of St. Albans Town, Gregoire of
4 Fairfield, Leffler of Enosburgh, Masland of Thetford, Savage of
5 Swanton, and Till of Jericho

6 Referred to Committee on

7 Date:

8 Subject: Court procedure; Vermont Rules of Evidence

9 Statement of purpose of bill as introduced: This bill proposes to add cruelty to
10 a child to the list of offenses for which there is an exemption from the hearsay
11 rule when the victim is a child 12 years of age or under or a person with a
12 mental illness or an intellectual or developmental disability.

13 An act relating to establishing a hearsay exemption in cases involving
14 cruelty to a child

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

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

17 RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR
18 UNDER; PERSON WITH A MENTAL ILLNESS OR AN
19 INTELLECTUAL OR DEVELOPMENTAL DISABILITY

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

6 (1) the statements are offered in a civil, criminal, or administrative
7 proceeding in which the child or person with a mental illness or intellectual or
8 developmental disability is a putative victim of sexual assault under 13 V.S.A.
9 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
10 assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under
11 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A.
12 § 2602, incest under 13 V.S.A. § 205, cruelty to a child under 13 V.S.A.
13 § 1305, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of
14 a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the
15 statements concern the alleged crime or the wrongful sexual activity; or the
16 statements are offered in a juvenile proceeding under chapter 52 of Title 33
17 involving a delinquent act alleged to have been committed against a child 13
18 years of age or under or a person with a mental illness or intellectual or
19 developmental disability if the delinquent act would be an offense listed herein
20 if committed by an adult and the statements concern the alleged delinquent act;
21 or the child is the subject of a petition alleging that the child is in need of care

1 or supervision under chapter 53 of Title 33, and the statement relates to the
2 sexual abuse of the child;

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

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

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

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

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2021.