

1 S.190

2 Introduced by Senators Norris, Collamore, Lyons and Wrenner

3 Referred to Committee on Judiciary

4 Date: January 3, 2024

5 Subject: Criminal procedure; depositions; hearsay

6 Statement of purpose of bill as introduced: This bill proposes to, in a criminal
7 case involving serious bodily injury to a minor: (1) limit depositions of the
8 victim if the victim is under 16 years of age and (2) allow hearsay statements
9 by the victim if the victim is 12 years of age or under.

10 An act relating to statements made by a child victim of an offense involving
11 serious bodily injury

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

13 ~~Sec. 1. Rule 15(e) of the Vermont Rules of Criminal Procedure is amended to~~

14 read:

15 (e) Limitations.

16 * * *

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

18 (A) No deposition of a victim under the age of 16 shall be taken in a
19 prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602
20 ~~(lewd and lascivious conduct with a child), 3252 (sexual assault), 3253~~

1 ~~(aggravated sexual assault), or 3253a (aggravated sexual assault of a child), or~~
2 an offense involving serious bodily injury as defined in 13 V.S.A. § 1021
3 except by agreement of the parties or after approval of the court pursuant to
4 subparagraph (B) of this paragraph (5).

5 (B) The court shall not approve a deposition under this subdivision
6 unless the court finds that the testimony of the child is necessary to assist the
7 trial, that the evidence sought is not reasonably available by any other means,
8 and that the probative value of the testimony outweighs the potential detriment
9 to the child of being deposed. In determining whether to approve a deposition
10 under this subdivision, the court shall consider the availability of recorded
11 statements of the victim and the complexity of the issues involved.

12 (C)(i) If a deposition is taken pursuant to this paragraph (5), the court
13 shall issue a protective order to protect the deponent from emotional harm,
14 unnecessary annoyance, embarrassment, oppression, invasion of privacy, or
15 undue burden of expense or waste of time. The protective order may include,
16 among other remedies, the following: (I) that the deposition may be taken
17 only on specified terms and conditions, including a designation of the time,
18 place, and manner of taking the deposition; (II) that the deposition may be
19 taken only by written questions; (III) that certain matters not be inquired into,
20 or that the scope of the deposition be limited to certain matters; (IV) that the
21 ~~deposition be conducted with only such persons present as the court may~~

1 ~~designate; or (V) that after the deposition has been taken, the tape or~~
2 transcription be sealed until further order of the court. The restrictions of 13
3 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this paragraph
4 (5).

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

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

9 RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR
10 UNDER; PERSON WITH A MENTAL ILLNESS OR AN
11 INTELLECTUAL OR DEVELOPMENTAL DISABILITY

12 (a) Statements by a person who is a child 12 years of age or under or who
13 is a person with a mental illness as defined in 13 V.S.A. § 7101(14) or
14 intellectual or developmental disability as defined in 1 V.S.A. §§ 146, 148 at
15 the time the statements were made are not excluded by the hearsay rule if the
16 court specifically finds at the time they are offered that:

17 (1) the statements are offered in a civil, criminal, or administrative
18 proceeding in which the child or person with a mental illness or intellectual or
19 developmental disability is a putative victim of sexual assault under 13 V.S.A.
20 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
21 assault of a child under 13 V.S.A. § 3255a, lewd or lascivious conduct under

1 ~~13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A.~~
2 ~~§ 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under~~
3 ~~33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379,~~
4 ~~an offense involving serious bodily injury as defined in 13 V.S.A. § 1021, or~~
5 ~~wrongful sexual activity and the statements concern the alleged crime or the~~
6 ~~wrongful sexual activity; or the statements are offered in a juvenile proceeding~~
7 ~~under chapter 52 of Title 33 involving a delinquent act alleged to have been~~
8 ~~committed against a child 13 years of age or under or a person with a mental~~
9 ~~illness or intellectual or developmental disability if the delinquent act would be~~
10 ~~an offense listed herein if committed by an adult and the statements concern~~
11 ~~the alleged delinquent act; or the child is the subject of a petition alleging that~~
12 ~~the child is in need of care or supervision under chapter 53 of Title 33, and the~~
13 ~~statement relates to the sexual abuse of the child;~~

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

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

20 (4) the time, content, and circumstances of the statements provide
21 ~~substantial indicia of trustworthiness.~~

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

4 Sec. 3. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2024.~~

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

(e) Limitations.

** * **

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

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

(B) The court shall not approve a deposition under this subdivision unless the court finds that the testimony of the child is necessary to assist the trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the child of being deposed. In determining whether to approve a deposition under this subdivision, the court shall consider the availability of recorded statements of the victim and the complexity of the issues involved.

(C)(i) If a deposition is taken pursuant to this paragraph (5), the court shall issue a protective order to protect the deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. The protective order may include, among other remedies, the following: (I) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (II) that the deposition may be taken only by written questions; (III) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (IV) that

the deposition be conducted with only such persons present as the court may designate; or (V) that after the deposition has been taken, the tape or transcription be sealed until further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this paragraph (5).

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

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

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

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

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person with a mental illness or intellectual or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily injury) or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person with a mental illness or intellectual or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

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

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

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

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

Sec. 2a. 24 V.S.A. § 1940 is amended to read:

§ 1940. SPECIAL INVESTIGATIVE UNITS; BOARDS; GRANTS

(a) *Pursuant to the authority established under section 1938 of this title, and in collaboration with law enforcement agencies, investigative agencies, victims' advocates, and social service providers, the Department of State's Attorneys and Sheriffs shall coordinate efforts to provide access in each region of the State to special investigative units ~~which~~ that:*

(1) *shall investigate:*

(A) *an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and*

(B) *potential violations of:*

(i) *13 V.S.A. § 2602 (lewd or lascivious conduct with child);*

(ii) *13 V.S.A. chapter 60 (human trafficking);*

(iii) *13 V.S.A. chapter 64 (sexual exploitation of children);*

(iv) *13 V.S.A. chapter 72 (sexual assault); and*

(v) *13 V.S.A. § 1379 (sexual abuse of a vulnerable adult); and*

(2) *may investigate:*

(A) *an incident in which a child suffers:*

(i) *bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or*

(ii) *death;*

(B) *potential violations of:*

(i) *13 V.S.A. § 2601 (lewd and lascivious conduct);*

(ii) *13 V.S.A. § 2605 (voyeurism); and*

(iii) *13 V.S.A. § 1304 (cruelty to a child); and*

(3) may assist with the investigation of other incidents, including incidents involving domestic violence and crimes against vulnerable adults.

(b) Any interview of a child pursuant to this section shall be electronically recorded. As used in this subsection, "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of the interview.

(c) A special investigative unit organized and operating under this section may accept, receive, and disburse in furtherance of its duties and functions any funds, grants, and services made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civic sources. Any employee covered by an agreement establishing a special investigative unit shall remain an employee of the donor agency.

(e)(d) A Special Investigative Unit Grants Board is created, which shall comprise the Attorney General, the Secretary of Administration, the Executive Director of State's Attorneys and Sheriffs, the Commissioner of Public Safety, the Commissioner for Children and Families, a representative of the Vermont Sheriffs' Association, a representative of the Vermont Association of Chiefs of Police, the Executive Director of the Center for Crime Victim Services, and the Executive Director of the Vermont League of Cities and Towns. Special investigative units organized and operating under this section may apply to the Board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire Board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the Department of Public Safety, the Department for Children and Families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region. Preference shall also be given to grant applications which promote policies and practices that are consistent across the State, including policies and practices concerning the referral of complaints, the investigation of cases, and the supervision and management of special investigative units. However, a sheriff's department in a county with a population of fewer than 8,000 residents shall upon application receive a grant of up to \$20,000.00 for 50 percent of the yearly salary and employee benefits costs of a part-time special investigative unit investigator, which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

~~(d)~~(e) The Board may adopt rules relating to grant eligibility criteria, processes for applications, awards, and reports related to grants authorized pursuant to this section. The Attorney General shall be the adopting authority.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2024.