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S.190

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

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

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

1 to the child of being deposed. In determining whether to approve a deposition
2 under this subdivision, the court shall consider the availability of recorded
3 statements of the victim and the complexity of the issues involved.

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

17 (ii) If a deposition is taken pursuant to this paragraph (5), the court
18 shall appoint an attorney to represent the child for the purposes of the
19 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. 2a. 24 V.S.A. § 1940 is amended to read:

19 § 1940. SPECIAL INVESTIGATIVE UNITS; BOARDS; GRANTS

20 (a) Pursuant to the authority established under section 1938 of this title, and
21 in collaboration with law enforcement agencies, investigative agencies,

1 victims' advocates, and social service providers, the Department of State's
2 Attorneys and Sheriffs shall coordinate efforts to provide access in each region
3 of the State to special investigative units ~~which~~ that:

4 (1) shall investigate:

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

7 (B) potential violations of:

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

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

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

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

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

13 (2) may investigate:

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

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

17 (ii) death;

18 (B) potential violations of:

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

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

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

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

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

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

14 ~~(e)~~(d) A Special Investigative Unit Grants Board is created, which shall
15 comprise the Attorney General, the Secretary of Administration, the Executive
16 Director of State’s Attorneys and Sheriffs, the Commissioner of Public Safety,
17 the Commissioner for Children and Families, a representative of the Vermont
18 Sheriffs’ Association, a representative of the Vermont Association of Chiefs of
19 Police, the Executive Director of the Center for Crime Victim Services, and the
20 Executive Director of the Vermont League of Cities and Towns. Special
21 investigative units organized and operating under this section may apply to the

1 Board for a grant or grants covering the costs of salaries and employee benefits
2 to be expended during a given year for the performance of unit duties as well
3 as unit operating costs for rent, utilities, equipment, training, and supplies.

4 Grants under this section shall be approved by a majority of the entire Board
5 and shall not exceed 50 percent of the yearly salary and employee benefit costs
6 of the unit. Preference shall be given to grant applications which include the
7 participation of the Department of Public Safety, the Department for Children
8 and Families, sheriffs' departments, community victims' advocacy
9 organizations, and municipalities within the region. Preference shall also be
10 given to grant applications which promote policies and practices that are
11 consistent across the State, including policies and practices concerning the
12 referral of complaints, the investigation of cases, and the supervision and
13 management of special investigative units. However, a sheriff's department in
14 a county with a population of fewer than 8,000 residents shall upon application
15 receive a grant of up to \$20,000.00 for 50 percent of the yearly salary and
16 employee benefits costs of a part-time special investigative unit investigator,
17 which shall be paid to the department as time is billed on a per hour rate as
18 agreed by contract up to the maximum amount of the grant.

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

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2024.