

H.5

An act relating to a hearsay exception for a child under 16 years of age

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

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

RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM ~~AGE 12 OR~~
UNDER 16 YEARS OF AGE; PERSON WITH A MENTAL
ILLNESS OR AN INTELLECTUAL OR DEVELOPMENTAL
DISABILITY

(a) Statements by a person who is a child ~~12~~ under 16 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,

1 or 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily injury) or
2 wrongful sexual activity and the statements concern the alleged crime or the
3 wrongful sexual activity; or the statements are offered in a juvenile proceeding
4 under chapter 52 of Title 33 involving a delinquent act alleged to have been
5 committed against a child ~~13~~ under 16 years of age ~~or under~~ or a person with a
6 mental illness or intellectual or developmental disability if the delinquent act
7 would be an offense listed herein if committed by an adult and the statements
8 concern the alleged delinquent act; or the child is the subject of a petition
9 alleging that the child is in need of care or supervision under chapter 53 of
10 Title 33, and the statement relates to the sexual abuse of the child;

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

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

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

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

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2026.