

1 S.190

2 Introduced by Senators Norris, Collamore, Lyons and Wrenner

3 Referred to Committee on

4 Date:

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 only
17 on specified terms and conditions, including a designation of the time, place,
18 and manner of taking the deposition; (II) that the deposition may be taken only
19 by written questions; (III) that certain matters not be inquired into, or that the
20 scope of the deposition be limited to certain matters; (IV) that the deposition be
21 conducted with only such persons present as the court may designate; or (V)

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

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

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

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

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

16 (1) the statements are offered in a civil, criminal, or administrative
17 proceeding in which the child or person with a mental illness or intellectual or
18 developmental disability is a putative victim of sexual assault under 13 V.S.A.
19 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
20 assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under
21 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A.

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

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

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

19 (4) the time, content, and circumstances of the statements provide
20 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.