

1 H.193

2 Introduced by Representatives Sullivan of Dorset, Beck of St. Johnsbury,
3 Brumsted of Shelburne, Killacky of South Burlington, McCoy
4 of Poultney, and Notte of Rutland City

5 Referred to Committee on

6 Date:

7 Subject: Crimes; human trafficking

8 Statement of purpose of bill as introduced: This bill proposes to prohibit
9 promoting or advertising the services of someone who is trafficked; allow out-
10 of-court statements by a victim of human trafficking who is under 12 years of
11 age; and permit a victim of human trafficking who is under 12 years of age or
12 who has psychiatric, intellectual, or developmental disability to testify in a
13 court proceeding by two-way closed-circuit television or by recorded
14 testimony.

15 An act relating to permitting out-of-court statement by victims of human
16 trafficking

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

18 Sec. 1. 13 V.S.A. § 2652 is amended to read:

19 § 2652. HUMAN TRAFFICKING

20 (a) No person shall knowingly:

1 (1) recruit, entice, harbor, transport, provide, promote, advertise, or
2 obtain by any means a person under ~~the age of~~ 18 years of age for the purpose
3 of having the person engage in a commercial sex act;

4 (2) recruit, entice, harbor, transport, provide, promote, advertise, or
5 obtain a person through force, fraud, or coercion for the purpose of having the
6 person engage in a commercial sex act;

7 (3) compel a person through force, fraud, or coercion to engage in a
8 commercial sex act;

9 (4) benefit financially or by receiving anything of value from
10 participation in a venture, knowing that force, fraud, or coercion was or will be
11 used to compel any person to engage in a commercial sex act as part of the
12 venture;

13 (5) subject a person to labor servitude;

14 (6) recruit, entice, harbor, transport, provide, promote, advertise, or
15 obtain a person for the purpose of subjecting the person to labor servitude; or

16 (7) benefit financially or by receiving anything of value from
17 participation in a venture, knowing that a person will be subject to labor
18 servitude as part of the venture.

19 (b) A person who violates subsection (a) of this section shall be imprisoned
20 for a term up to and including life or fined not more than \$500,000.00, or both.

1 (c)(1)(A) A person who is a victim of sex trafficking in violation of
2 subdivisions 2652(a)(1)-(4) of this title shall not be found in violation of or be
3 the subject of a delinquency petition based on chapter 59 (lewdness and
4 prostitution) or 63 (obscenity) of this title for any conduct committed as a
5 victim of sex trafficking.

6 (B) Notwithstanding any other provision of law, a person under ~~the~~
7 ~~age of 18 years of age~~ shall be immune from prosecution in the Criminal
8 Division of the Superior Court for a violation of section 2632 of this title
9 (prohibited acts; prostitution), but may be ~~treated as a juvenile under 33 V.S.A.~~
10 ~~chapter 52 or~~ referred to the Department for Children and Families for
11 treatment under 33 V.S.A. chapter 53.

12 (2) If a person who is a victim of sex trafficking in violation of
13 subdivisions 2652(a)(1)-(4) of this title is prosecuted for any offense or is the
14 subject of any delinquency petition other than a violation of chapter 59
15 (lewdness and prostitution) or 63 (obscenity) of this title that arises out of the
16 sex trafficking or benefits the sex trafficker, the person may raise as an
17 affirmative defense that he or she committed the offense as a result of force,
18 fraud, or coercion by a sex trafficker.

19 (d) In a prosecution for a violation of this section, the victim's alleged
20 consent to the human trafficking is immaterial and shall not be admitted.

1 (e) If a person who is a victim of human trafficking is under 18 years of age
2 at the time of the offense, the State may treat the person as the subject of a
3 child in need of care or supervision proceeding.

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

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

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

13 (1) the statements are offered in a civil, criminal, or administrative
14 proceeding in which the child or person with a mental illness or intellectual or
15 developmental disability is a putative victim of sexual assault under 13 V.S.A.
16 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
17 assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under
18 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A.
19 § 2602, incest under 13 V.S.A. § 205, human trafficking under 13 V.S.A.
20 § 2652 or 2653, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual
21 abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual

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

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

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

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

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

1 Sec. 3. Rule 807 of the Vermont Rules of Evidence is amended to read:

2 RULE 807. TESTIMONY WHERE VICTIM IS A MINOR OR A PERSON
3 WITH A PSYCHIATRIC, INTELLECTUAL, OR
4 DEVELOPMENTAL DISABILITY

5 (a) Application. -- This rule applies only to the testimony of a child ~~age~~
6 12 years of age or under or a person with a psychiatric, intellectual, or
7 developmental disability as defined in 1 V.S.A. §§ 146-148 in a proceeding:

8 (1) in a prosecution for sexual assault under 13 V.S.A. § 3252, ~~or~~
9 aggravated sexual assault under 13 V.S.A. § 3253, human trafficking under
10 13 V.S.A. § 2652, or aggravated human trafficking under 13 V.S.A. § 2653
11 alleged to have been committed against that child or person with a psychiatric,
12 intellectual, or developmental disability;

13 (2) in a prosecution for lewd and lascivious conduct with a child under
14 13 V.S.A. § 2602 or incest under 13 V.S.A. § 205 alleged to have been
15 committed against that child;

16 (3) in a prosecution for abuse, neglect or exploitation under 33 V.S.A.
17 § 6913 or lewd and lascivious conduct under 13 V.S.A. § 2601 alleged to have
18 been committed against that person with a psychiatric, intellectual, or
19 developmental disability;

20 (4) under chapter 55 of Title 33 involving a delinquent act alleged to
21 have been committed against that child or person with a psychiatric,

1 intellectual, or developmental disability, if that delinquent act would be an
2 offense listed in this subsection if committed by an adult;

3 (5) in a civil action in which one of the parties or witnesses has been an
4 alleged victim of causes of action alleging sexual assault, lewd and lascivious
5 conduct or sexual activity as defined in 33 V.S.A. § 6902;

6 (6) in a prosecution for domestic assault under 13 V.S.A. § 1042 or
7 aggravated domestic assault under 13 V.S.A. § 1043 or § 1044 alleged to have
8 been committed against that child or person with a psychiatric, intellectual, or
9 developmental disability.

10 (b) Who may move. -- The court may, on motion of any party, on its own
11 motion or on motion of the attorney or guardian ad litem for the child or person
12 with a psychiatric, intellectual, or developmental disability order that the
13 testimony of the child or person with a psychiatric, intellectual, or
14 developmental disability be taken by two-way closed-circuit television or by
15 recorded testimony under this rule.

16 (c) Finding a trauma. -- The court shall make an order for two-way closed-
17 circuit television or recorded testimony under this rule only upon a finding that
18 requiring the child or person with a psychiatric, intellectual, or developmental
19 disability to testify in court will present a substantial risk of trauma to the child
20 or person with a psychiatric, intellectual, or developmental disability which

1 would substantially impair the ability of the child or person with a psychiatric,
2 intellectual, or developmental disability to testify.

3 (d) Recorded testimony. -- The testimony of the child or person with a
4 psychiatric, intellectual, or developmental disability may be taken outside the
5 courtroom and recorded for showing in the courtroom before the court and the
6 finder of fact in the proceeding. Only the court and the attorneys may question
7 the child or person with a psychiatric, intellectual, or developmental disability.
8 In pro se proceedings, the court may modify the provisions of this subsection
9 relating to the role of a pro se party. The court shall permit the person against
10 whom the child, or person with a psychiatric, intellectual, or developmental
11 disability is testifying to observe and hear the testimony of the child or person
12 with a psychiatric, intellectual, or developmental disability in person and to
13 confer personally with his or her attorney. Only the person against whom the
14 testimony is directed, the attorneys, the court, persons necessary to operate the
15 equipment and any person who is not a potential witness and whose presence
16 the court finds would contribute to the welfare and well-being of the child or
17 person with a psychiatric, intellectual, or developmental disability may be
18 present in the room with the child or person with a psychiatric, intellectual, or
19 developmental disability during the testimony. The persons operating the
20 equipment shall be situated whenever possible in such a way that they can see
21 and hear the child or person with a psychiatric, intellectual, or developmental

1 disability during the testimony, but the child or person with a psychiatric,
2 intellectual, or developmental disability cannot see or hear them. If the
3 testimony is taken under this subsection, the court shall also ensure that:

4 (1) the recording is both visual and aural and is recorded on film or
5 videotape or by other electronic means;

6 (2) the recording equipment was capable of making an accurate
7 recording, the operator of the equipment was competent, and the recording is
8 accurate and is not altered except as ordered by the court;

9 (3) each voice on the recording is identified; and

10 (4) each party is afforded an opportunity to view the recording before it
11 is shown in the courtroom.

12 (e) Two-way closed-circuit television. -- The testimony of the child or
13 person with a psychiatric, intellectual, or developmental disability may be
14 taken in a room other than the courtroom and be televised by two-way closed-
15 circuit equipment to be viewed by the finder of fact and others present in the
16 courtroom. Only the persons necessary to operate the equipment and a person
17 who is not a potential witness and whose presence the court finds would
18 contribute to the welfare and well-being of the child or person with a
19 psychiatric, intellectual, or developmental disability may be present in the
20 room with the child or person with a psychiatric, intellectual, or developmental
21 disability during the testimony.

1 (f) Placing of the party against whom the testimony is directed. -- During
2 the recording of testimony under subsection (d) of this rule the party shall be
3 situated in such a way that the child or person with a psychiatric, intellectual,
4 or developmental disability can hear and see the party unless the court finds
5 that requiring the child or person with a psychiatric, intellectual, or
6 developmental disability to hear and see the party presents a substantial risk of
7 trauma to the child or person with a psychiatric, intellectual, or developmental
8 disability which would substantially impair the ability of the child or person
9 with a psychiatric, intellectual, or developmental disability to testify, in which
10 case the court may order that the party be situated in such a way that the child
11 or person with a psychiatric, intellectual, or developmental disability cannot
12 hear or see the party. During the taking of testimony by two-way closed-
13 circuit equipment under subsection (e) the party's image shall be transmitted to
14 the witness unless the court finds that requiring the witness to hear and see the
15 party presents a substantial risk of trauma to the witness which would
16 substantially impair the ability of the witness to testify, in which case the
17 image of the party shall not be transmitted to the witness.

18 (g) In-court testimony not required. -- If the court orders the testimony of a
19 child or person with a psychiatric, intellectual, or developmental disability to
20 be taken under this rule, the child or person with a psychiatric, intellectual, or
21 developmental disability may not be required to testify in court at the

1 proceeding for which the testimony was taken, unless otherwise ordered by the
2 court for good cause shown.

3 Sec. 4. EFFECTIVE DATE

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