

SECOND REGULAR SESSION

# HOUSE BILL NO. 1868

## 102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RICHEY.

4079H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 491.075, RSMo, and to enact in lieu thereof one new section relating to the admissibility of statements made by certain persons.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 491.075, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 491.075, to read as follows:

491.075. 1. A statement made by a child under the age of ~~fourteen~~ **eighteen**, or a vulnerable person, relating to an offense under chapter 565, 566, 568 or 573, performed by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) (a) The child or vulnerable person testifies at the proceedings; or

(b) The child or vulnerable person is unavailable as a witness; or

(c) The child or vulnerable person is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child or vulnerable person unavailable as a witness at the time of the criminal proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of ~~fourteen~~ **eighteen**, or a vulnerable person, who is alleged to be victim of an

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 offense under chapter 565, 566, 568 or 573 is sufficient corroboration of a statement,  
19 admission or confession regardless of whether [~~or not~~] the child or vulnerable person is  
20 available to testify regarding the offense.

21         3. A statement may not be admitted under this section unless the prosecuting attorney  
22 makes known to the accused or the accused's counsel his or her intention to offer the  
23 statement and the particulars of the statement sufficiently in advance of the proceedings to  
24 provide the accused or the accused's counsel with a fair opportunity to prepare to meet the  
25 statement.

26         4. Nothing in this section shall be construed to limit the admissibility of statements,  
27 admissions or confessions otherwise admissible by law.

28         5. For the purposes of this section, "vulnerable person" shall mean a person who, as a  
29 result of an inadequately developed or impaired intelligence or a psychiatric disorder that  
30 materially affects ability to function, lacks the mental capacity to consent, or whose  
31 developmental level does not exceed that of an ordinary child of fourteen years of age.

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