

FIRST REGULAR SESSION

HOUSE BILL NO. 406

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (90), HARRIS (110), BRINGER, JOLLY,
KELLY (36) AND WILLOUGHBY (Co-sponsors).

Read 1st time February 6, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0819L.021

AN ACT

To repeal sections 491.075 and 492.304, RSMo, and to enact in lieu thereof two new sections relating to admissibility of statements made by certain children.

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

Section A. Sections 491.075 and 492.304, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 491.075 and 492.304, to read as follows:

491.075. 1. A statement made by a child under the age of [twelve] **fourteen** relating to
2 an offense under chapter 565, 566 or 568, RSMo, performed with or on a child by another, not
3 otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings
4 in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

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

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

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

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

13 2. Notwithstanding subsection 1 of this section or any provision of law or rule of
14 evidence requiring corroboration of statements, admissions or confessions of the defendant, and
15 notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

16 of [twelve] **fourteen** who is alleged to be victim of an offense under chapter 565, 566 or 568,
17 RSMo, is sufficient corroboration of a statement, admission or confession regardless of whether
18 or not the child is available to testify regarding the offense.

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

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

492.304. 1. In addition to the admissibility of a statement under the provisions of section
2 492.303, the visual and aural recording of a verbal or nonverbal statement of a child when under
3 the age of [twelve] **fourteen** who is alleged to be a victim of an offense under the provisions of
4 chapter 565, 566 or 568, RSMo, is admissible into evidence if:

5 (1) No attorney for either party was present when the statement was made; **except that,**
6 **for any statement taken at a state-funded child assessment center as provided for in**
7 **subsection 2 of section 210.001, RSMo, an attorney representing the state of Missouri in**
8 **a criminal investigation may, as a member of a multidisciplinary investigative team,**
9 **observe the taking of such statement, but such attorney shall not be present in the room**
10 **where the interview is being conducted;**

11 (2) The recording is both visual and aural and is recorded on film or videotape or by
12 other electronic means;

13 (3) The recording equipment was capable of making an accurate recording, the operator
14 of the equipment was competent, and the recording is accurate and has not been altered;

15 (4) The statement was not made in response to questioning calculated to lead the child
16 to make a particular statement or to act in a particular way;

17 (5) Every voice on the recording is identified;

18 (6) The person conducting the interview of the child in the recording is present at the
19 proceeding and available to testify or be cross-examined by either party; and

20 (7) The defendant or the attorney for the defendant is afforded an opportunity to view
21 the recording before it is offered into evidence.

22 2. If the child does not testify at the proceeding, the visual and aural recording of a verbal
23 or nonverbal statement of the child shall not be admissible under this section unless the recording
24 qualifies for admission under section 491.075, RSMo.

25 3. If the visual and aural recording of a verbal or nonverbal statement of a child is
26 admissible under this section and the child testifies at the proceeding, it shall be admissible in

27 addition to the testimony of the child at the proceeding whether or not it repeats or duplicates the
28 child's testimony.

29 4. As used in this section, a nonverbal statement shall be defined as any demonstration
30 of the child by his or her actions, facial expressions, demonstrations with a doll or other visual
31 aid whether or not this demonstration is accompanied by words.