

SECOND REGULAR SESSION

HOUSE BILL NO. 1857

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WEBBER (Sponsor) AND JONES (50) (Co-sponsor).

5791H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 491.680, RSMo, and to enact in lieu thereof one new section relating to the testimony of child victims.

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

Section A. Section 491.680, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 491.680, to read as follows:

491.680. 1. In any criminal prosecution under the provisions of chapter 565, 566 or 568 involving an alleged child victim, upon the motion of the prosecuting attorney, the court may order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at preliminary hearings and at trial.

2. If the court finds, at a hearing, that significant emotional or psychological trauma to the child which would result from testifying in the personal presence of the defendant exists, which makes the child unavailable as a witness at the time of the preliminary hearing or trial, the court shall order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at the preliminary hearings and at trial. Such recording shall be retained by the prosecuting attorney and shall be admissible in lieu of the child's personal appearance and testimony at preliminary hearings and at trial, conflicting provisions of section 544.270 notwithstanding. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to the defendant together with all other discoverable materials.

3. Upon a finding of trauma as provided for in subsection 2 of this statute, the court may also exclude the defendant from the videotape deposition proceedings in which the child is to testify. Where any such order of exclusion is entered, the child shall not be excused as a witness

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 until the defendant has had a reasonable opportunity to review the videotape deposition in private
19 with his counsel and to consult with his counsel; and until his counsel has been afforded the
20 opportunity to cross-examine the child following such review and consultation.

21 4. The court shall preside over the depositions, which shall be conducted in accordance
22 with the rules of evidence applicable to criminal cases.

23 5. The attorney for the defendant shall have at least two opportunities to cross-examine
24 the deposed alleged child victim: once prior to the preliminary hearing and at least one additional
25 time prior to the trial.

26 6. Prior to the taking of the deposition which is to be used as substantive evidence at the
27 trial pursuant to sections 491.675 to 491.693, the defendant's attorney shall be provided with
28 such discoverable materials and information as the court may, on motion, direct; shall be
29 afforded a reasonable time to examine such materials; and shall be permitted to cross-examine
30 the child during the deposition.

31 7. If the defendant is not represented by counsel and if, upon inquiry, it appears to the
32 court that the defendant will be unable to obtain counsel within a reasonable period of time, the
33 court shall appoint the public defender or other counsel to represent the defendant at the
34 deposition.

35 **8. If the court finds there is any possibility of any level of trauma which would**
36 **result from a child testifying, the court may order that a child victim be allowed to testify**
37 **during preliminary hearings and at trial via a live, closed-circuit video system whereby the**
38 **child victim and the defendant are in different locations.**

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