

SECOND REGULAR SESSION

# HOUSE BILL NO. 2092

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHIPMAN.

4743H.02I

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 492.304, RSMo, and to enact in lieu thereof one new section relating to the admissibility of visual and aural recordings of a child witness under fourteen years of age.

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

Section A. Section 492.304, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 492.304, to read as follows:

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

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

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

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

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

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.

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

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.

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.

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