

FIRST REGULAR SESSION
[CORRECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1155
99TH GENERAL ASSEMBLY

2285H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 491.060, 491.075, 491.600, 492.304, 544.250, 556.061, 589.660, and 589.663, RSMo, and to enact in lieu thereof nine new sections relating to court proceedings.

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

Section A. Sections 491.060, 491.075, 491.600, 492.304, 544.250, 556.061, 589.660, and 589.663, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 491.060, 491.075, 491.600, 491.630, 492.304, 544.250, 556.061, 589.660, and 589.663, to read as follows:

491.060. The following persons shall be incompetent to testify:

(1) A person who is mentally incapacitated at the time of his or her production for examination;

(2) A child under ten years of age, who appears incapable of receiving just impressions of the facts respecting which the child is examined, or of relating them truly; provided, however, that except as provided in subdivision (1) of this section, a child under the age of ten who is alleged to be a victim of ~~[an]~~ **or witness to a criminal** offense ~~[pursuant to chapter 565, 566 or 568]~~ shall be considered a competent witness and shall be allowed to testify without qualification in any judicial proceeding involving such alleged offense. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony;

(3) An attorney, concerning any communication made to the attorney by such attorney's client in that relation, or such attorney's advice thereon, without the consent of such client;

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.

13 (4) Any person practicing as a minister of the gospel, priest, rabbi or other person serving
14 in a similar capacity for any organized religion, concerning a communication made to him or her
15 in his or her professional capacity as a spiritual advisor, confessor, counselor or comforter;

16 (5) A physician licensed pursuant to chapter 334, a chiropractor licensed pursuant to
17 chapter 331, a licensed psychologist or a dentist licensed pursuant to chapter 332, concerning any
18 information which he or she may have acquired from any patient while attending the patient in
19 a professional character, and which information was necessary to enable him or her to prescribe
20 and provide treatment for such patient as a physician, chiropractor, psychologist or dentist.

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

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

8 (2) (a) The child or vulnerable person testifies at the proceedings; ~~[or]~~

9 (b) The child or vulnerable person is unavailable as a witness; ~~[or]~~

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

14 **(d) The statement is offered by the state at any proceeding other than a trial.**

15 2. Notwithstanding subsection 1 of this section or any provision of law or rule of
16 evidence requiring corroboration of statements, admissions or confessions of the defendant, and
17 notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age
18 of fourteen, or a vulnerable person, who is alleged to be victim of ~~[an]~~ **a criminal** offense ~~[under~~
19 ~~chapter 565, 566, 568 or 573]~~ is sufficient corroboration of a statement, admission or confession
20 regardless of whether or not the child or vulnerable person is available to testify regarding the
21 offense.

22 3. A statement may not be admitted under this section unless the prosecuting attorney
23 makes known to the accused or the accused's counsel his or her intention to offer the statement
24 and the particulars of the statement sufficiently in advance of the proceedings to provide the
25 accused or the accused's counsel with a fair opportunity to prepare to meet the 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, **or any**
32 **person in the custody, care, or control of the department of mental health who is receiving**
33 **services from an operated, funded, licensed, or certified program.**

 491.600. 1. Any court with jurisdiction over any criminal matter may, in its discretion,
2 upon substantial evidence, which may include hearsay, that intimidation or dissuading of any
3 person who is a victim or who is a witness has occurred or is reasonably likely to occur, issue
4 orders including but not limited to the following:

5 (1) An order that a defendant not engage in activity as defined by section 575.270 and
6 maintain a prescribed geographic distance from a witness or victim;

7 (2) An order that a person before the court other than a defendant, including but not
8 limited to a subpoenaed witness or other person entering the courtroom of said court, not engage
9 in activity as defined by section 575.270, and maintain a prescribed geographic distance from
10 a witness or victim;

11 (3) An order that any person described in subdivision (1) or (2) of this section have no
12 connection whatsoever with any specified witness or any victim, except through an attorney
13 under such reasonable restrictions as the court may impose.

14 **2. Such orders shall be issued by the court at the time of filing in every case**
15 **involving a child victim, a felony offense under chapter 565, any offense under chapter 566,**
16 **or any offense under chapter 573.**

 491.630. 1. For purposes of this section, the term "personal information" shall
2 mean:

- 3 **(1) Dates of birth;**
- 4 **(2) Social Security numbers;**
- 5 **(3) Taxpayer identification numbers;**
- 6 **(4) Drivers' license numbers;**
- 7 **(5) Account numbers of financial accounts;**
- 8 **(6) Vehicle identification numbers;**
- 9 **(7) Home addresses;**
- 10 **(8) Personal telephone numbers;**
- 11 **(9) Work addresses; and**
- 12 **(10) Work phone numbers;**

13
14 **of victims or witnesses.**

15 **2. Notwithstanding any other provision of law or court rule, the state shall, upon**
16 **written request of the defendant, disclose to defendant's counsel such part or all of the**
17 **following material and information within its possession or control:**

18 **(1) The names of persons whom the state intends to call as witnesses at any hearing**
19 **or at the trial;**

20 **(2) Any of such persons' written or recorded statements; and**

21 **(3) Existing memoranda that reports or summarizes part or all of such persons'**
22 **oral statements.**

23 **3. Except as provided under subsection 7 of this section, the state shall not provide**
24 **personal information of witnesses or victims.**

25 **4. If the state does provide the defendant's counsel with unredacted personal**
26 **information of a victim or witness, the defendant's counsel shall not disclose the unredacted**
27 **identifiers to the defendant or to any other person, directly or indirectly, except as ordered**
28 **by the court for good cause shown.**

29 **5. If the state provides statements, memoranda, or other documents to the**
30 **defendant's counsel that contain personal information redacted by the state, the state shall**
31 **provide notice to the defendant's counsel that such redactions have been made.**

32 **6. Any redaction or personal information by the state shall be by blacking out or**
33 **otherwise covering up such identifiers and shall not be by removal.**

34 **7. The defendant's counsel may petition the court to order disclosure of the**
35 **personal information of a victim or witness. Upon such a petition by the defendant's**
36 **counsel, the court may order disclosure of such personal information upon a showing of**
37 **good cause after notice and a hearing where the court considers the materiality of the**
38 **information to the defendant's defense and the privacy and safety interests of the victim**
39 **or witness.**

40 **8. If the state makes the witness available for an interview or deposition, there shall**
41 **be a rebuttable presumption that the defendant has no need for that witness's personal**
42 **identifying information.**

 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]~~
3 under the age of fourteen ~~[who is alleged to be a victim of an]~~ **or a vulnerable person relating**
4 **to a criminal offense** ~~[under the provisions of chapter 565, 566 or 568]~~ is admissible into
5 evidence if:

6 (1) No attorney for either party was present when the statement was made; except that,
7 for any statement taken at a state-funded child assessment center as provided for in subsection
8 2 of section 210.001, an attorney representing the state of Missouri in a criminal investigation

9 may, as a member of a multidisciplinary investigation team, observe the taking of such statement,
10 but such attorney shall not be present in the room 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 **or vulnerable person** 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 **or vulnerable person** in the
19 recording is present at the proceeding and available to testify or be cross-examined by either
20 party; and

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

23 2. If the child **or vulnerable person** does not testify at the proceeding, the visual and
24 aural recording of a verbal or nonverbal statement of the child **or vulnerable person** shall not
25 be admissible under this section unless the recording qualifies for admission under section
26 491.075, **or the recording is offered by the state at any proceeding other than trial.**

27 3. If the visual and aural recording of a verbal or nonverbal statement of a child **or**
28 **vulnerable person** is admissible under this section and the child **or vulnerable person** testifies
29 at the proceeding, it shall be admissible in addition to the testimony of the child **or vulnerable**
30 **person** at the proceeding whether or not it repeats or duplicates the child's **or vulnerable**
31 **person's** testimony.

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

544.250. 1. No prosecuting or circuit attorney in this state shall file any information
2 charging any person or persons with any felony, until such person or persons shall first have been
3 accorded the right of a preliminary examination before some associate circuit judge in the county
4 where the offense is alleged to have been committed in accordance with this chapter. And if
5 upon such hearing the associate circuit judge shall determine that the alleged offense is one on
6 which the accused may be released, the associate circuit judge may release him as provided in
7 section 544.455 conditioned for his appearance at a time certain before a circuit judge, or
8 associate circuit judge who is specially assigned, and thereafter as directed by the court to answer
9 such charges as may be preferred against him, abide sentence and judgment therein, and not to
10 depart the court without leave; provided, a preliminary examination shall in no case be required

11 where same is waived by the person charged with the crime, or in any case where an information
12 has been substituted for an indictment as authorized by section 545.300.

13 **2. The findings by the court shall be based on evidence, in whole or in part, in the**
14 **following forms:**

15 **(1) Testimony of witnesses, including testimony of a witness concerning the contents**
16 **of his or her sworn probable cause statement without further foundation; or**

17 **(2) Written reports of expert witnesses.**

556.061. In this code, unless the context requires a different definition, the following
2 terms shall mean:

3 (1) "Access", to instruct, communicate with, store data in, retrieve or extract data from,
4 or otherwise make any use of any resources of, a computer, computer system, or computer
5 network;

6 (2) "Affirmative defense":

7 (a) The defense referred to is not submitted to the trier of fact unless supported by
8 evidence; and

9 (b) If the defense is submitted to the trier of fact the defendant has the burden of
10 persuasion that the defense is more probably true than not;

11 (3) "Burden of injecting the issue":

12 (a) The issue referred to is not submitted to the trier of fact unless supported by evidence;
13 and

14 (b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires
15 a finding for the defendant on that issue;

16 (4) "Commercial film and photographic print processor", any person who develops
17 exposed photographic film into negatives, slides or prints, or who makes prints from negatives
18 or slides, for compensation. The term commercial film and photographic print processor shall
19 include all employees of such persons but shall not include a person who develops film or makes
20 prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU), along with any
22 internal storage devices, such as internal hard drives, and internal communication devices, such
23 as internal modems capable of sending or receiving electronic mail or fax cards, along with any
24 other hardware stored or housed internally. Thus, computer refers to hardware, software and data
25 contained in the main unit. Printers, external modems attached by cable to the main unit,
26 monitors, and other external attachments will be referred to collectively as peripherals and
27 discussed individually when appropriate. When the computer and all peripherals are referred to
28 as a package, the term "computer system" is used. Information refers to all the information on
29 a computer system including both software applications and data;

30 (6) "Computer equipment", computers, terminals, data storage devices, and all other
31 computer hardware associated with a computer system or network;

32 (7) "Computer hardware", all equipment which can collect, analyze, create, display,
33 convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or
34 data. Hardware includes, but is not limited to, any data processing devices, such as central
35 processing units, memory typewriters and self-contained laptop or notebook computers; internal
36 and peripheral storage devices, transistor-like binary devices and other memory storage devices,
37 such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard
38 drive, optical disks and digital memory; local area networks, such as two or more computers
39 connected together to a central computer server via cable or modem; peripheral input or output
40 devices, such as keyboards, printers, scanners, plotters, video display monitors and optical
41 readers; and related communication devices, such as modems, cables and connections, recording
42 equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers,
43 programmable telephone dialing or signaling devices and electronic tone-generating devices; as
44 well as any devices, mechanisms or parts that can be used to restrict access to computer
45 hardware, such as physical keys and locks;

46 (8) "Computer network", two or more interconnected computers or computer systems;

47 (9) "Computer program", a set of instructions, statements, or related data that directs or
48 is intended to direct a computer to perform certain functions;

49 (10) "Computer software", digital information which can be interpreted by a computer
50 and any of its related components to direct the way they work. Software is stored in electronic,
51 magnetic, optical or other digital form. The term commonly includes programs to run operating
52 systems and applications, such as word processing, graphic, or spreadsheet programs, utilities,
53 compilers, interpreters and communications programs;

54 (11) "Computer-related documentation", written, recorded, printed or electronically
55 stored material which explains or illustrates how to configure or use computer hardware,
56 software or other related items;

57 (12) "Computer system", a set of related, connected or unconnected, computer
58 equipment, data, or software;

59 (13) "Confinement":

60 (a) A person is in confinement when such person is held in a place of confinement
61 pursuant to arrest or order of a court, and remains in confinement until:

62 a. A court orders the person's release; or

63 b. The person is released on bail, bond, or recognizance, personal or otherwise; or

64 c. A public servant having the legal power and duty to confine the person authorizes his
65 release without guard and without condition that he return to confinement;

66 (b) A person is not in confinement if:

67 a. The person is on probation or parole, temporary or otherwise; or

68 b. The person is under sentence to serve a term of confinement which is not continuous,
69 or is serving a sentence under a work-release program, and in either such case is not being held
70 in a place of confinement or is not being held under guard by a person having the legal power
71 and duty to transport the person to or from a place of confinement;

72 (14) "Consent": consent or lack of consent may be expressed or implied. Assent does
73 not constitute consent if:

74 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
75 to constitute the offense and such mental incapacity is manifest or known to the actor; or

76 (b) It is given by a person who by reason of youth, mental disease or defect, intoxication,
77 a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable
78 to make a reasonable judgment as to the nature or harmfulness of the conduct charged to
79 constitute the offense; or

80 (c) It is induced by force, duress or deception;

81 (15) "Controlled substance", a drug, substance, or immediate precursor in schedules I
82 through V as defined in chapter 195;

83 (16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that
84 circumstances exist or a result will follow, and such failure constitutes a gross deviation from
85 the standard of care which a reasonable person would exercise in the situation;

86 (17) "Custody", a person is in custody when he or she has been arrested but has not been
87 delivered to a place of confinement;

88 (18) "Damage", when used in relation to a computer system or network, means any
89 alteration, deletion, or destruction of any part of the computer system or network;

90 (19) "Dangerous felony", the felonies of arson in the first degree, assault in the first
91 degree, attempted rape in the first degree if physical injury results, attempted forcible rape if
92 physical injury results, attempted sodomy in the first degree if physical injury results, attempted
93 forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the
94 first degree, forcible sodomy, assault in the second degree if the victim of such assault is a
95 special victim as defined in subdivision (14) of section 565.002, kidnapping in the first degree,
96 kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree,
97 domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree,
98 statutory rape in the first degree when the victim is a child less than twelve years of age at the
99 time of the commission of the act giving rise to the offense, statutory sodomy in the first degree
100 when the victim is a child less than twelve years of age at the time of the commission of the act
101 giving rise to the offense, child molestation in the first or second degree, abuse of a child if the

102 child dies as a result of injuries sustained from conduct chargeable under section 568.060, child
103 kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of the
104 child for not less than one hundred twenty days under section 565.153, and an
105 "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is
106 found to be a "habitual offender" or "habitual boating offender" as such terms are defined in
107 section 577.001;

108 (20) "Dangerous instrument", any instrument, article or substance, which, under the
109 circumstances in which it is used, is readily capable of causing death or other serious physical
110 injury;

111 (21) "Data", a representation of information, facts, knowledge, concepts, or instructions
112 prepared in a formalized or other manner and intended for use in a computer or computer
113 network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic
114 storage media, punched cards and as may be stored in the memory of a computer;

115 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a
116 shot, readily capable of producing death or serious physical injury, may be discharged, or a
117 switchblade knife, dagger, billy club, blackjack or metal knuckles;

118 (23) "Digital camera", a camera that records images in a format which enables the
119 images to be downloaded into a computer;

120 (24) "Disability", a mental, physical, or developmental impairment that substantially
121 limits one or more major life activities or the ability to provide adequately for one's care or
122 protection, whether the impairment is congenital or acquired by accident, injury or disease, where
123 such impairment is verified by medical findings;

124 (25) "Elderly person", a person sixty years of age or older;

125 (26) "Felony", an offense so designated or an offense for which persons found guilty
126 thereof may be sentenced to death or imprisonment for a term of more than one year;

127 (27) "Forcible compulsion" either:

128 (a) Physical force that overcomes reasonable resistance; or

129 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
130 physical injury or kidnapping of such person or another person;

131 (28) "Incapacitated", a temporary or permanent physical or mental condition in which
132 a person is unconscious, unable to appraise the nature of his or her conduct, or unable to
133 communicate unwillingness to an act;

134 (29) "Infraction", a violation defined by this code or by any other statute of this state if
135 it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty,
136 is authorized upon conviction;

137 (30) "Inhabitable structure", a vehicle, vessel or structure:

- 138 (a) Where any person lives or carries on business or other calling; or
139 (b) Where people assemble for purposes of business, government, education, religion,
140 entertainment, or public transportation; or
141 (c) Which is used for overnight accommodation of persons.
142
- 143 Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually
144 present.
145
- 146 If a building or structure is divided into separately occupied units, any unit not occupied by the
147 actor is an inhabitable structure of another;
- 148 (31) "Knowingly", when used with respect to:
149 (a) Conduct or attendant circumstances, means a person is aware of the nature of his or
150 her conduct or that those circumstances exist; or
151 (b) A result of conduct, means a person is aware that his or her conduct is practically
152 certain to cause that result;
- 153 (32) "Law enforcement officer", any public servant having both the power and duty to
154 make arrests for violations of the laws of this state, and federal law enforcement officers
155 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 156 (33) "Misdemeanor", an offense so designated or an offense for which persons found
157 guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year
158 or less;
- 159 (34) "Of another", property that any entity, including but not limited to any natural
160 person, corporation, limited liability company, partnership, association, governmental
161 subdivision or instrumentality, other than the actor, has a possessory or proprietary interest
162 therein, except that property shall not be deemed property of another who has only a security
163 interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or
164 other security arrangement;
- 165 (35) "Offense", any felony or misdemeanor;
- 166 (36) "Physical injury", slight impairment of any function of the body or temporary loss
167 of use of any part of the body;
- 168 (37) "Place of confinement", any building or facility and the grounds thereof wherein a
169 court is legally authorized to order that a person charged with or convicted of a crime be held;
- 170 (38) "Possess" or "possessed", having actual or constructive possession of an object with
171 knowledge of its presence. A person has actual possession if such person has the object on his
172 or her person or within easy reach and convenient control. A person has constructive possession
173 if such person has the power and the intention at a given time to exercise dominion or control

174 over the object either directly or through another person or persons. Possession may also be sole
175 or joint. If one person alone has possession of an object, possession is sole. If two or more
176 persons share possession of an object, possession is joint;

177 (39) "Property", anything of value, whether real or personal, tangible or intangible, in
178 possession or in action;

179 (40) "Public servant", any person employed in any way by a government of this state who
180 is compensated by the government by reason of such person's employment, any person appointed
181 to a position with any government of this state, or any person elected to a position with any
182 government of this state. It includes, but is not limited to, legislators, jurors, members of the
183 judiciary and law enforcement officers. It does not include witnesses;

184 (41) "Purposely", when used with respect to a person's conduct or to a result thereof,
185 means when it is his or her conscious object to engage in that conduct or to cause that result;

186 (42) "Recklessly", consciously disregarding a substantial and unjustifiable risk that
187 circumstances exist or that a result will follow, and such disregard constitutes a gross deviation
188 from the standard of care which a reasonable person would exercise in the situation;

189 (43) "Serious emotional injury", an injury that creates a substantial risk of temporary or
190 permanent medical or psychological damage, manifested by impairment of a behavioral,
191 cognitive or physical condition. Serious emotional injury shall be established by testimony of
192 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
193 medical or psychological certainty;

194 (44) "Serious physical injury", physical injury that creates a substantial risk of death or
195 that causes serious disfigurement or protracted loss or impairment of the function of any part of
196 the body;

197 (45) "Services", when used in relation to a computer system or network, means use of
198 a computer, computer system, or computer network and includes, but is not limited to, computer
199 time, data processing, and storage or retrieval functions;

200 (46) "Sexual orientation", male or female heterosexuality, homosexuality or bisexuality
201 by inclination, practice, identity or expression, or having a self-image or identity not traditionally
202 associated with one's gender;

203 (47) "Vehicle", a self-propelled mechanical device designed to carry a person or persons,
204 excluding vessels or aircraft;

205 (48) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not
206 such motor or machinery is a principal source of propulsion used or capable of being used as a
207 means of transportation on water, or any boat or craft more than twelve feet in length which is
208 powered by sail alone or by a combination of sail and machinery, and used or capable of being

209 used as a means of transportation on water, but not any boat or craft having, as the only means
210 of propulsion, a paddle or oars;

211 (49) "Voluntary act":

212 (a) A bodily movement performed while conscious as a result of effort or determination.
213 Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed,
214 or having acquired control of it was aware of his or her control for a sufficient time to have
215 enabled him or her to dispose of it or terminate his or her control; or

216 (b) An omission to perform an act of which the actor is physically capable. A person is
217 not guilty of an offense based solely upon an omission to perform an act unless the law defining
218 the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by
219 law;

220 (50) "Vulnerable person", **a person who, as a result of an inadequately developed or**
221 **impaired intelligence or a psychiatric disorder that materially affects the ability to**
222 **function, lacks the mental capacity to consent, or whose developmental level does not**
223 **exceed that of an ordinary child of fourteen years of age; or** any person in the custody, care,
224 or control of the department of mental health who is receiving services from an operated, funded,
225 licensed, or certified program.

589.660. As used in sections 589.660 to 589.681, the following terms mean:

2 (1) "Address", a residential street address, school address, or work address of a person,
3 as specified on the person's application to be a program participant;

4 (2) "Application assistant", an employee of a state or local agency, or of a nonprofit
5 program that provides counseling, referral, shelter, or other specialized service to **crime** victims
6 ~~[of domestic violence, rape, sexual assault, human trafficking, or stalking,]~~ who has been
7 designated by the respective agency or program, and who has been trained and registered by the
8 secretary of state to assist individuals in the completion of program participation applications;

9 (3) "Designated address", the address assigned to a program participant by the secretary;

10 (4) "Mailing address", an address that is recognized for delivery by the United States
11 Postal Service;

12 (5) "Program", the address confidentiality program established in section 589.663;

13 (6) "Program participant", a person certified by the secretary of state as eligible to
14 participate in the address confidentiality program;

15 (7) "Secretary", the secretary of state;

16 (8) "Victim", **a natural person who suffers direct or threatened physical, emotional,**
17 **or financial harm as the result of the commission or attempted commission of an offense.**
18 **The term "victim" also includes family members of the victim who are minors or**
19 **incapacitated; or a family member of a homicide victim;**

20 **(9) "Witness", any person who has been or is expected to be summoned to testify**
21 **for the prosecution in any felony proceeding regardless of whether any action or**
22 **proceeding has yet been commenced.**

589.663. There is created in the office of the secretary of state a program to be known
2 as the "Address Confidentiality Program" to protect victims ~~[of domestic violence, rape, sexual~~
3 ~~assault, human trafficking, or stalking]~~ , **individuals residing in the same household of a**
4 **victim, and witnesses** by authorizing the use of designated addresses for such ~~[victims and their~~
5 ~~minor children]~~ **individuals**. The program shall be administered by the secretary under the
6 following application and certification procedures:

7 (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian
8 acting on behalf of an incapacitated person may apply to the secretary to have a designated
9 address assigned by the secretary to serve as the person's address or the address of the minor or
10 incapacitated person;

11 (2) The secretary may approve an application only if it is filed with the office of the
12 secretary in the manner established by rule and on a form prescribed by the secretary. A
13 completed application shall contain:

14 (a) The application preparation date, the applicant's signature, and the signature and
15 registration number of the application assistant who assisted the applicant in applying to be a
16 program participant;

17 (b) A designation of the secretary as agent for purposes of service of process and for
18 receipt of first-class mail, legal documents, and certified mail;

19 (c) ~~[A sworn statement by the applicant that the applicant]~~ **Either an application signed**
20 **by the applicant before an application assistant that the applicant** has good reason to believe
21 that he or she:

22 a. Is a victim ~~[of domestic violence, rape, sexual assault, human trafficking, or stalking]~~;
23 and

24 b. Fears ~~[further violent acts from his or her assailant]~~ **future harm; or**
25 **c. Has been certified by a prosecuting attorney that the individual is a witness;**

26 (d) The mailing address where the applicant may be contacted by the secretary or a
27 designee and the telephone number or numbers where the applicant may be called by the
28 secretary or the secretary's designee; and

29 (e) One or more addresses that the applicant requests not be disclosed for the reason that
30 disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant
31 or members of the applicant's household;

32 (3) Upon receipt of a properly completed application, the secretary may certify the
33 applicant as a program participant. A program participant is certified for four years following

34 the date of initial certification unless the certification is withdrawn or cancelled before that date.
35 The secretary shall send notification of lapsing certification and a reapplication form to a
36 program participant at least four weeks prior to the expiration of the program participant's
37 certification;
38 (4) The secretary shall forward first class mail, legal documents, and certified mail to the
39 appropriate program participants.

✓