

SECOND REGULAR SESSION

# HOUSE BILL NO. 1541

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COLEMAN.

3556H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 491.075, 492.304, 566.151, and 567.030, RSMo, and to enact in lieu thereof four new sections relating to criminal offenses, with penalty provisions.

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

Section A. Sections 491.075, 492.304, 566.151, and 567.030, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 491.075, 492.304,  
3 566.151, and 567.030, to read as follows:

491.075. 1. A statement made by a child under the age of ~~fourteen~~ **eighteen**, or a  
2 vulnerable person, relating to an 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  
4 criminal proceedings in the courts of this state as substantive evidence to prove the truth of  
5 the matter asserted if:

6 (1) The court finds, in a hearing conducted outside the presence of the jury that the  
7 time, 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  
11 the court finds that the significant emotional or psychological trauma which would result  
12 from 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.

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

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 the age of ~~fourteen~~ **eighteen**, or a vulnerable person, who is alleged to be victim of an  
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~~ **seventeen** years  
32 of age.

492.304. 1. In addition to the admissibility of a statement under the provisions of  
2 section 492.303, the visual and aural recording of a verbal or nonverbal statement of a child  
3 when under the age of ~~fourteen who is alleged to be a victim of~~ **eighteen or a vulnerable**  
4 **person, relating to** an offense under the provisions of chapter 565, 566 ~~or~~, 568, **or 573, if**  
5 **performed by another**, is admissible into evidence if:

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

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

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

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

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

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

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

25 2. If the child **or vulnerable person** does not testify at the proceeding, the visual and  
26 aural recording of a verbal or nonverbal statement of the child **or vulnerable person** shall not  
27 be admissible under this section unless the recording qualifies for admission under section  
28 491.075.

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

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

38 **5. For the purposes of this section, "vulnerable person" shall mean a person**  
39 **who, as a result of an inadequately developed or impaired intelligence or a psychiatric**  
40 **disorder that materially affects the ability to function, lacks the mental capacity to**  
41 **consent, or whose developmental level does not exceed that of an ordinary child of**  
42 **seventeen years of age.**

566.151. 1. A person twenty-one years of age or older commits the offense of  
2 enticement of a child if he or she persuades, solicits, coaxes, entices, or lures whether by  
3 words, actions or through communication via the internet or any electronic communication,  
4 any person who is less than ~~fifteen~~ **seventeen** years of age for the purpose of engaging in  
5 sexual conduct.

6 2. It is not a defense to a prosecution for a violation of this section that the other  
7 person was a peace officer masquerading as a minor.

8 3. Enticement of a child or an attempt to commit enticement of a child is a felony for  
9 which the authorized term of imprisonment shall be not less than five years and not more than  
10 thirty years. No person convicted under this section shall be eligible for parole, probation,  
11 conditional release, or suspended imposition or execution of sentence for a period of five  
12 calendar years.

567.030. 1. A person commits the offense of patronizing prostitution if he or she:

2 (1) Pursuant to a prior understanding, gives something of value to another person as  
3 compensation for having engaged in sexual conduct with any person; or

4 (2) Gives or agrees to give something of value to another person with the  
5 understanding that such person or another person will engage in sexual conduct with any  
6 person; or

7 (3) Solicits or requests another person to engage in sexual conduct with any person in  
8 return for something of value.

9 2. It shall not be a defense that the person believed that the individual he or she  
10 patronized for prostitution was eighteen years of age or older.

11 3. The offense of patronizing prostitution is a class B misdemeanor, unless the  
12 individual who the person patronizes is less than eighteen years of age but older than  
13 ~~fourteen~~ **fifteen** years of age, in which case patronizing prostitution is a class E felony.

14 4. The offense of patronizing prostitution is a class ~~D~~ **B** felony if the individual who  
15 the person patronizes is ~~fourteen~~ **fifteen** years of age or younger. Nothing in this section  
16 shall preclude the prosecution of an individual for the offenses of:

17 (1) Statutory rape in the first degree pursuant to section 566.032;

18 (2) Statutory rape in the second degree pursuant to section 566.034;

19 (3) Statutory sodomy in the first degree pursuant to section 566.062; or

20 (4) Statutory sodomy in the second degree pursuant to section 566.064.

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