

SECOND REGULAR SESSION

HOUSE BILL NO. 1777

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PERKINS.

4155H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 208.247, 491.075, and 492.304, RSMo, and to enact in lieu thereof five new sections relating to protection of vulnerable persons.

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

Section A. Sections 208.247, 491.075, and 492.304, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 208.247, 221.520, 221.523, 491.075, and 492.304, to read as follows:

208.247. ~~[1. Pursuant to the option granted the state by 21 U.S.C. Section 862a(d), an individual who has pled guilty or nolo contendere to or is found guilty under federal or state law of a felony involving possession or use of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. Section 862a(a) against eligibility for food stamp program benefits for such convictions, if such person, as determined by the department:~~

~~(1) Meets one of the following criteria:~~

~~(a) Is currently successfully participating in a substance abuse treatment program approved by the division of alcohol and drug abuse within the department of mental health; or~~

~~(b) Is currently accepted for treatment in and participating in a substance abuse treatment program approved by the division of alcohol and drug abuse, but is subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity; or~~

~~(c) Has satisfactorily completed a substance abuse treatment program approved by the division of alcohol and drug abuse; or~~

~~(d) Is determined by a division of alcohol and drug abuse certified treatment provider not to need substance abuse treatment; and~~

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 ~~(2) Is successfully complying with, or has already complied with, all obligations~~
18 ~~imposed by the court, the division of alcohol and drug abuse, and the division of probation~~
19 ~~and parole; and~~

20 ~~(3) Does not plead guilty or nolo contendere to or is not found guilty of an additional~~
21 ~~controlled substance misdemeanor or felony offense after release from custody or, if not~~
22 ~~committed to custody, such person does not plead guilty or nolo contendere to or is not found~~
23 ~~guilty of an additional controlled substance misdemeanor or felony offense, within one year~~
24 ~~after the date of conviction. Such a plea or conviction within the first year after conviction~~
25 ~~shall immediately disqualify the person for the exemption; and~~

26 ~~(4) Has demonstrated sobriety through voluntary urinalysis testing paid for by the~~
27 ~~participant.~~

28 ~~2. Eligibility based upon the factors in subsection 1 of this section shall be based upon~~
29 ~~documentary or other evidence satisfactory to the department of social services, and the~~
30 ~~applicant shall meet all other factors for program eligibility.~~

31 ~~3. The department of social services, in consultation with the division of alcohol and~~
32 ~~drug abuse, shall promulgate rules to carry out the provisions of this section including~~
33 ~~specifying criteria for determining active participation in and completion of a substance abuse~~
34 ~~treatment program.~~

35 ~~4. The exemption under this section shall not apply to an individual who has pled~~
36 ~~guilty or nolo contendere to or is found guilty of two subsequent felony offenses involving~~
37 ~~possession or use of a controlled substance after the date of the first controlled substance~~
38 ~~felony conviction.] Pursuant to the option granted to the state under 21 U.S.C. Section~~
39 **862a(d)(1), an individual convicted under federal or state law of a felony offense**
40 **involving possession, distribution, or use of a controlled substance shall be exempt from**
41 **the prohibition contained in 21 U.S.C. Section 862a(a) against eligibility for the**
42 **supplemental nutrition assistance program for such convictions.**

221.520. 1. As used in this section, the following terms shall mean:

2 **(1) "Extraordinary circumstance", a substantial flight risk or some other**
3 **extraordinary medical or security circumstance that dictates restraints be used to**
4 **ensure the safety and security of a pregnant offender in her third trimester or a**
5 **postpartum offender within forty-eight hours postdelivery, the staff of the county or city**
6 **jail or medical facility, other offenders, or the public;**

7 **(2) "Labor", the period of time before a birth during which contractions are**
8 **present;**

9 **(3) "Postpartum", the period of recovery immediately following childbirth,**
10 **which is six weeks for a vaginal birth or eight weeks for a cesarean birth, or longer if so**
11 **determined by a physician or nurse;**

12 (4) "Restraints", any physical restraint or other device used to control the
13 movement of a person's body or limbs.

14 2. Except in extraordinary circumstances, a county or city jail shall not use
15 restraints on a pregnant offender in her third trimester, whether during transportation
16 to and from visits to health care providers and court proceedings or medical
17 appointments and examinations, or during labor, delivery, or forty-eight hours
18 postdelivery.

19 3. Pregnant offenders shall be transported in vehicles equipped with seatbelts.

20 4. In the event a sheriff or jailer determines that extraordinary circumstances
21 exist and restraints are necessary, the sheriff or jailer shall fully document in writing
22 within forty-eight hours of the incident the reasons he or she determined such
23 extraordinary circumstances existed, the type of restraints used, and the reasons those
24 restraints were considered the least restrictive available and the most reasonable under
25 the circumstances. Such documents shall be kept on file by the county or city jail for at
26 least five years from the date the restraints were used.

27 5. If a doctor, nurse, or other health care provider treating the pregnant offender
28 in her third trimester or the postpartum offender within forty-eight hours postdelivery
29 requests that restraints not be used, the sheriff or jailer accompanying such offender
30 shall immediately remove all restraints.

31 6. Any time restraints are used on a pregnant offender in her third trimester or
32 on a postpartum offender within forty-eight hours postdelivery, the restraints shall be
33 the least restrictive available and the most reasonable under the circumstances. In no
34 case shall leg, ankle, or waist restraints or any mechanical restraints be used on any
35 such offender, and, if wrist restraints are used, such restraints shall be placed in the
36 front of such offender's body to protect the offender and the unborn child in the case of
37 a forward fall.

38 7. The county or city jail shall:

39 (1) Ensure that employees of the jail are provided with training, which may
40 include online training, on the provisions of this section; and

41 (2) Inform female offenders, in writing and orally, of any policies and practices
42 developed in accordance with this section upon admission to the jail, and post the
43 policies and practices in locations in the jail where such notices are commonly posted
44 and will be seen by female offenders.

 221.523. 1. By January 1, 2025, all county and city jails shall develop specific
2 procedures for the intake and care of offenders who are pregnant, which shall include
3 procedures regarding:

4 (1) Maternal health evaluations;

- 5 **(2) Dietary supplements, including prenatal vitamins;**
6 **(3) Timely and regular nutritious meals, which shall include, at minimum,**
7 **thirty-two ounces of milk or a calcium supplement if lactose intolerant, two cups of fresh**
8 **fruit, and two cups of fresh vegetables daily;**
9 **(4) Substance abuse treatment;**
10 **(5) Treatment for the human immunodeficiency virus and ways to avoid human**
11 **immunodeficiency virus transmission;**
12 **(6) Hepatitis C;**
13 **(7) Sleeping arrangements for such offenders, including requiring such**
14 **offenders to sleep on the bottom bunk bed;**
15 **(8) Access to mental health professionals;**
16 **(9) Sanitary materials;**
17 **(10) Postpartum recovery, including that no such offender shall be placed in**
18 **isolation during such recovery; and**
19 **(11) A requirement that a female medical professional be present during any**
20 **examination of such offender.**

21 **2. As used in this section "postpartum recovery" means, as determined by a**
22 **physician, the period immediately following delivery, including the entire period an**
23 **offender who was pregnant is in the hospital or infirmary after delivery.**

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
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.

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