

FIRST REGULAR SESSION
[CORRECTED]
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 615
103RD GENERAL ASSEMBLY

0601H.04P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 491.075, 492.304, 566.151, 567.030, and 595.045, RSMo, and to enact in lieu thereof six new sections relating to judicial proceedings, with penalty provisions.

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

Section A. Sections 491.075, 492.304, 566.151, 567.030, and 595.045, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 491.075, 492.304, 566.151, 567.030, 589.700, and 595.045, to read as follows:

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

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

(2) (a) The child or vulnerable person testifies at the proceedings; or

(b) The child or vulnerable person is unavailable as a witness; or

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

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant,

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.

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.

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.

**589.700. 1. In addition to any fine imposed for a violation of section 566.203,
2 566.206, 566.209, 566.210, 566.211, 566.215, or 567.030, the court shall enter a judgment
3 of restitution in the amount specified in this subsection in favor of the state of Missouri,
4 payable to the human trafficking and sexual exploitation fund established under this
5 section, upon a plea of guilty or a finding of guilt for a violation of section 566.203,
6 566.206, 566.209, 566.210, 566.211, 566.215, or 567.030, excluding restitution ordered
7 under section 566.218. The judgment of restitution shall be in the amount of:**

8 (1) Under section 566.203, 566.206, 566.209, 566.210, or 566.211, ten thousand
9 dollars for each identified victim of the offense or offenses for which restitution is
10 required under this subsection;

11 (2) Under section 567.030, two thousand five hundred dollars for each identified
12 victim of the offense or offenses for which restitution is required under this subsection;
13 and

14 (3) Two thousand five hundred dollars for each county in which such offense or
15 offenses occurred.

16 2. There is hereby created in the state treasury the "Human Trafficking and
17 Sexual Exploitation Fund", which shall consist of proceeds from the human trafficking
18 restitution collected for violations of sections 566.203, 566.206, 566.209, 566.210, 566.211,

19 **566.215, and 567.030. The state treasurer shall be custodian of the fund. In accordance**
20 **with sections 30.170 and 30.180, the state treasurer may approve disbursements. The**
21 **fund shall be a dedicated fund and, upon appropriation, moneys in this fund shall be**
22 **distributed to the county or counties where the human trafficking offense or offenses**
23 **occurred. Upon receipt of moneys from the fund, a county shall allocate the**
24 **disbursement as follows:**

25 **(1) For any violation under section 566.203, 566.206, 566.209, 566.210, or**
26 **566.211, ten thousand dollars for each identified victim of the offense or offenses that**
27 **occurred in the county toward local rehabilitation services for victims of human**
28 **trafficking including, but not limited to, mental health and substance abuse counseling;**
29 **general education, including parenting skills; housing relief; vocational training; and**
30 **employment counseling;**

31 **(2) For any violation under section 567.030, two thousand five hundred dollars**
32 **for each identified victim of the offense or offenses that occurred in the county toward**
33 **local rehabilitation services for victims of human trafficking including, but not limited**
34 **to, mental health and substance abuse counseling; general education, including**
35 **parenting skills; housing relief; vocational training; and employment counseling; and**

36 **(3) Two thousand five hundred dollars toward local efforts to prevent human**
37 **trafficking including, but not limited to, education programs for persons convicted of**
38 **human trafficking offenses and increasing the number of local law enforcement**
39 **members charged with enforcing human trafficking laws.**

40 **3. Notwithstanding the provisions of section 33.080 to the contrary, any moneys**
41 **remaining in the fund at the end of the biennium shall not revert to the credit of the**
42 **general revenue fund.**

43 **4. The state treasurer shall invest moneys in the fund in the same manner as**
44 **other funds are invested. Any interest and moneys earned on such investments shall be**
45 **credited to the fund.**

595.045. 1. There is established in the state treasury the "Crime Victims'
2 Compensation Fund". A surcharge of seven dollars and fifty cents shall be assessed as costs
3 in each court proceeding filed in any court in the state in all criminal cases including
4 violations of any county ordinance or any violation of criminal or traffic laws of the state,
5 including an infraction and violation of a municipal ordinance; except that no such fee shall
6 be collected in any proceeding in any court when the proceeding or the defendant has been
7 dismissed by the court or when costs are to be paid by the state, county, or municipality. A
8 surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile court
9 proceeding in which a child is found by the court to come within the applicable provisions of
10 subdivision (3) of subsection 1 of section 211.031.

11 2. Notwithstanding any other provision of law to the contrary, the moneys collected
12 by clerks of the courts pursuant to the provisions of subsection 1 of this section shall be
13 collected and disbursed in accordance with sections 488.010 to 488.020 and shall be payable
14 to the director of the department of revenue.

15 3. The director of revenue shall deposit annually the amount of two hundred fifty
16 thousand dollars to the state forensic laboratory account administered by the department of
17 public safety to provide financial assistance to defray expenses of crime laboratories if such
18 analytical laboratories are registered with the federal Drug Enforcement Agency or the
19 Missouri department of health and senior services. Subject to appropriations made therefor,
20 such funds shall be distributed by the department of public safety to the crime laboratories
21 serving the courts of this state making analysis of a controlled substance or analysis of blood,
22 breath or urine in relation to a court proceeding.

23 4. The remaining funds collected under subsection 1 of this section shall be denoted
24 to the payment of an annual appropriation for the administrative and operational costs of the
25 office for victims of crime and, if a statewide automated crime victim notification system is
26 established pursuant to section 650.310, to the monthly payment of expenditures actually
27 incurred in the operation of such system. Additional remaining funds shall be subject to the
28 following provisions:

29 (1) On the first of every month, the director of revenue or the director's designee shall
30 determine the balance of the funds in the crime victims' compensation fund available to
31 satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075,
32 excluding sections 595.050 and 595.055;

33 (2) Beginning on September 1, 2004, and on the first of each month, the director of
34 revenue or the director's designee shall deposit fifty percent of the balance of funds available
35 to the credit of the crime victims' compensation fund and fifty percent to the services to
36 victims' fund established in section 595.100.

37 5. The director of revenue or such director's designee shall at least monthly report the
38 moneys paid pursuant to this section into the crime victims' compensation fund and the
39 services to victims fund to the department of public safety.

40 6. The moneys collected by clerks of municipal courts pursuant to subsection 1 of this
41 section shall be collected and disbursed as provided by sections 488.010 to 488.020. Five
42 percent of such moneys shall be payable to the city treasury of the city from which such funds
43 were collected. The remaining ninety-five percent of such moneys shall be payable to the
44 director of revenue. The funds received by the director of revenue pursuant to this subsection
45 shall be distributed as follows:

46 (1) On the first of every month, the director of revenue or the director's designee shall
47 determine the balance of the funds in the crime victims' compensation fund available to

48 satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075,
49 excluding sections 595.050 and 595.055;

50 (2) Beginning on September 1, 2004, and on the first of each month the director of
51 revenue or the director's designee shall deposit fifty percent of the balance of funds available
52 to the credit of the crime victims' compensation fund and fifty percent to the services to
53 victims' fund established in section 595.100.

54 7. These funds shall be subject to a biennial audit by the Missouri state auditor. Such
55 audit shall include all records associated with crime victims' compensation funds collected,
56 held or disbursed by any state agency.

57 8. In addition to the moneys collected pursuant to subsection 1 of this section, the
58 court shall enter a judgment in favor of the state of Missouri, payable to the crime victims'
59 compensation fund, of sixty-eight dollars upon a plea of guilty or a finding of guilt for a class
60 A or B felony; forty-six dollars upon a plea of guilty or finding of guilt for a class C ~~[or]~~, D,
61 **or** E felony; and ten dollars upon a plea of guilty or a finding of guilt for any misdemeanor
62 under Missouri law except for those in chapter 252 relating to fish and game, chapter 302
63 relating to drivers' and commercial drivers' license, chapter 303 relating to motor vehicle
64 financial responsibility, chapter 304 relating to traffic regulations, chapter 306 relating to
65 watercraft regulation and licensing, and chapter 307 relating to vehicle equipment regulations.
66 Any clerk of the court receiving moneys pursuant to such judgments shall collect and disburse
67 such crime victims' compensation judgments in the manner provided by sections 488.010 to
68 488.020. Such funds shall be payable to the state treasury and deposited to the credit of the
69 crime victims' compensation fund.

70 9. The clerk of the court processing such funds shall maintain records of all
71 dispositions described in subsection 1 of this section and all dispositions where a judgment
72 has been entered against a defendant in favor of the state of Missouri in accordance with this
73 section; all payments made on judgments for alcohol-related traffic offenses; and any
74 judgment or portion of a judgment entered but not collected. These records shall be subject to
75 audit by the state auditor. The clerk of each court transmitting such funds shall report
76 separately the amount of dollars collected on judgments entered for alcohol-related traffic
77 offenses from other crime victims' compensation collections or services to victims
78 collections.

79 10. The department of revenue shall maintain records of funds transmitted to the
80 crime victims' compensation fund by each reporting court and collections pursuant to
81 subsection 16 of this section and shall maintain separate records of collection for alcohol-
82 related offenses.

83 11. The state courts administrator shall include in the annual report required by
84 section 476.350 the circuit court caseloads and the number of crime victims' compensation
85 judgments entered.

86 12. All awards made to injured victims under sections 595.010 to 595.105 and all
87 appropriations for administration of sections 595.010 to 595.105, except sections 595.050 and
88 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance
89 remaining in the crime victims' compensation fund at the end of each biennium shall not be
90 subject to the provision of section 33.080 requiring the transfer of such unexpended balance
91 to the ordinary revenue fund of the state, but shall remain in the crime victims' compensation
92 fund. In the event that there are insufficient funds in the crime victims' compensation fund to
93 pay all claims in full, all claims shall be paid on a pro rata basis. If there are no funds in the
94 crime victims' compensation fund, then no claim shall be paid until funds have again
95 accumulated in the crime victims' compensation fund. When sufficient funds become
96 available from the fund, awards which have not been paid shall be paid in chronological order
97 with the oldest paid first. In the event an award was to be paid in installments and some
98 remaining installments have not been paid due to a lack of funds, then when funds do become
99 available that award shall be paid in full. All such awards on which installments remain due
100 shall be paid in full in chronological order before any other postdated award shall be paid.
101 Any award pursuant to this subsection is specifically not a claim against the state, if it cannot
102 be paid due to a lack of funds in the crime victims' compensation fund.

103 13. When judgment is entered against a defendant as provided in this section and such
104 sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement,
105 payment, benefit, compensation, salary, or other transfer of money from the state of Missouri
106 to such defendant an amount equal to the unpaid amount of such judgment. Such amount
107 shall be paid forthwith to the crime victims' compensation fund and satisfaction of such
108 judgment shall be entered on the court record. Under no circumstances shall the general
109 revenue fund be used to reimburse court costs or pay for such judgment. The director of the
110 department of corrections shall have the authority to pay into the crime victims' compensation
111 fund from an offender's compensation or account the amount owed by the offender to the
112 crime victims' compensation fund, provided that the offender has failed to pay the amount
113 owed to the fund prior to entering a correctional facility of the department of corrections.

114 14. All interest earned as a result of investing funds in the crime victims'
115 compensation fund shall be paid into the crime victims' compensation fund and not into the
116 general revenue of this state.

117 15. Any person who knowingly makes a fraudulent claim or false statement in
118 connection with any claim hereunder is guilty of a class A misdemeanor.

119 16. The department may receive gifts and contributions for the benefit of crime
120 victims. Such gifts and contributions shall be credited to the crime victims' compensation
121 fund as used solely for compensating victims under the provisions of sections 595.010 to
122 595.075.

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