

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 863

95TH GENERAL ASSEMBLY

1247L.03T

2009

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to the child witness protection act.

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

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.725, to read as follows:

491.725. 1. This section shall be known and may be cited as the "Child Witness Protection Act".

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

(1) "Child", a person fourteen years of age or under, or at the discretion of the court, a person fifteen to seventeen years of age, who is a witness in any judicial proceeding under chapter 452 or 453, RSMo, or the alleged victim or witness in any judicial proceeding under chapter 455, 565, 566, or 568, RSMo. The court shall make written findings on the record when a child fifteen to seventeen years of age is included under this subdivision. "Victim" or "witness" shall not include any child accused of committing a felony; however, these terms may, in the court's discretion, include:

(a) A child where such child's participation in a felony appears to have been induced, coerced, or unwilling; or

(b) A child who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the state;

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.

15 (2) "Support person", an adult, designated by the court to serve as a support
16 person, who is known to the child victim or witness and who has no direct legal or
17 pecuniary interest in the outcome of the judicial proceeding.

18 3. In order to facilitate testimony that is fair and accurate, for the benefit of all
19 parties, and in order to protect all parties from the risks of a child becoming confused
20 while testifying in a judicial proceeding, the following child witness protection act shall
21 apply to all children testifying in court:

22 (1) Whether at a competency hearing or trial itself, the judge shall ensure that any
23 oath that is required of a child shall be administered in such a manner that the child may
24 fully understand his or her duty to tell the truth;

25 (2) The court shall take care to ensure that questions are stated in a form which is
26 appropriate to the age of the child. The court shall explain to the child that if he or she
27 does not understand a question, the child has the right to say that he or she does not
28 understand the question and to have the question restated in a form that the child does
29 understand;

30 (3) In the court's discretion, the taking of testimony from a child victim or witness
31 may be limited in duration or limited to normal school hours. The court may order a
32 recess when the energy, comfort, or attention span of the child warrants;

33 (4) Upon motion made by the child, his or her representative, or any party to the
34 judicial proceeding, at least thirty days in advance of the judicial proceeding, the court
35 may allow the child to have a toy, blanket, or similar item in his or her possession while
36 testifying, but such item shall only be allowed if:

37 (a) All parties agree; or

38 (b) If the movant shows the court by a preponderance of evidence that:

39 a. The child in question cannot reliably testify without the item in his or her
40 possession; and

41 b. Allowing the item is not likely to prejudice the trier of fact in hearing and
42 evaluating the child's testimony;

43 (5) Upon motion made by the child, his or her representative, or any party to the
44 judicial proceeding, at least thirty days in advance of the judicial proceeding, the court
45 may designate a support person, who shall be present in the courtroom, in view of the child
46 witness. The court may allow the support person to remain in close proximity to the child
47 during the child's testimony, but such action shall only be allowed if:

48 (a) All parties agree; or

49 (b) If the movant shows the court by a preponderance of the evidence that:

50 **a. The child in question cannot reliably testify without the support person in close**
51 **proximity during the testimony; and**

52 **b. Allowing the support person to be in close proximity to the child during**
53 **testimony is not likely to prejudice the trier of fact in hearing and evaluating the child's**
54 **testimony.**

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56 **The support person shall not obscure the child from the view of the defendant or the trier**
57 **of fact. A support person shall not provide the child with an answer to any question**
58 **directed to the child during the course of the child's testimony or otherwise prompt the**
59 **child or otherwise influence the testimony of the child. If the support person attempts to**
60 **influence or affect in any manner the testimony of the child victim or witness during the**
61 **giving of testimony or at any other time, the court shall exclude that support person, refer**
62 **the matter of misconduct of the support person to the prosecuting attorney, and designate**
63 **an alternative support person;**

64 **(6) The court shall prevent intimidation or harassment of the child witness by the**
65 **parties or their attorneys. Insofar as it is consistent with the constitutional rights of the**
66 **parties to confront and cross-examine adverse witnesses, the judge may rephrase any**
67 **questions in order to prevent any such intimidation or harassment; and**

68 **(7) Upon its own motion or the motion of any party to the judicial proceeding, at**
69 **least thirty days in advance of the judicial proceeding, the court may order such**
70 **accommodations as are appropriate under the circumstances to ensure the comfort of the**
71 **child victim or witness, including the following measures:**

72 **(a) Adjusting the layout of the courtroom;**

73 **(b) Conducting the proceedings outside the normal courtroom; or**

74 **(c) Relaxing the formalities of the proceedings; provided that, such measures are**
75 **consistent with the rights of all parties under the constitution and laws of the United States**
76 **and the State of Missouri.**

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