

SECOND REGULAR SESSION

# HOUSE BILL NO. 1907

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JONES (117) (Sponsor) AND TALBOY (Co-sponsor).

5997L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 491.075, 565.072, 565.073, 565.074, 568.060, and 630.005, RSMo, and to enact in lieu thereof six new sections relating to vulnerable persons, 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Section A. Sections 491.075, 565.072, 565.073, 565.074, 568.060, and 630.005, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 491.075, 565.072, 565.073, 565.074, 568.055, and 630.005, to read as follows:

491.075. 1. A statement made by a child under the age of fourteen **or a vulnerable person** relating to an offense under chapter 565, 566, 568 or 573, performed [with or on a child] 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, 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.

16 notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age  
17 of fourteen, **or a vulnerable person**, who is alleged to be victim of an offense under chapter  
18 565, 566, 568 or 573 is sufficient corroboration of a statement, admission or confession  
19 regardless of whether or not the child **or vulnerable person** is available to testify regarding the  
20 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 statement  
23 and the particulars of the statement sufficiently in advance of the proceedings to provide the  
24 accused or the accused's counsel with a fair opportunity to prepare to meet the statement.

25 4. Nothing in this section shall be construed to limit the admissibility of statements,  
26 admissions or confessions otherwise admissible by law.

27 **5. For the purposes of this section, "vulnerable person" shall mean a person who,**  
28 **as a result of an inadequately developed or impaired intelligence or a substantial**  
29 **psychiatric disorder, lacks the mental capacity to consent, or whose developmental level**  
30 **does not exceed that of an ordinary child of fourteen years of age.**

565.072. 1. A person commits the crime of domestic assault in the first degree if he or  
2 she attempts to kill or knowingly causes or attempts to cause serious physical injury to a family  
3 or household member, **including any child who is a member of the family or household**, or  
4 an adult who is or has been in a continuing social relationship of a romantic or intimate nature  
5 with the actor, as defined in section 455.010.

6 2. Domestic assault in the first degree is a class B felony unless in the course thereof the  
7 actor inflicts serious physical injury on the victim or has previously pleaded guilty to or been  
8 found guilty of committing this crime, in which case it is a class A felony.

565.073. 1. A person commits the crime of domestic assault in the second degree if the  
2 act involves a family or household member, **including any child who is a member of the**  
3 **family or household**, or an adult who is or has been in a continuing social relationship of a  
4 romantic or intimate nature with the actor, as defined in section 455.010, and he or she:

5 (1) Attempts to cause or knowingly causes physical injury to such family or household  
6 member by any means, including but not limited to, by use of a deadly weapon or dangerous  
7 instrument, or by choking or strangulation; or

8 (2) Recklessly causes serious physical injury to such family or household member; or

9 (3) Recklessly causes physical injury to such family or household member by means of  
10 any deadly weapon.

11 2. Domestic assault in the second degree is a class C felony.

565.074. 1. A person commits the crime of domestic assault in the third degree if the  
2 act involves a family or household member, **including any child who is a member of the**

3 **family or household**, or an adult who is or has been in a continuing social relationship of a  
4 romantic or intimate nature with the actor, as defined in section 455.010 and:

5 (1) The person attempts to cause or recklessly causes physical injury to such family or  
6 household member; or

7 (2) With criminal negligence the person causes physical injury to such family or  
8 household member by means of a deadly weapon or dangerous instrument; or

9 (3) The person purposely places such family or household member in apprehension of  
10 immediate physical injury by any means; or

11 (4) The person recklessly engages in conduct which creates a grave risk of death or  
12 serious physical injury to such family or household member; or

13 (5) The person knowingly causes physical contact with such family or household  
14 member knowing the other person will regard the contact as offensive; or

15 (6) The person knowingly attempts to cause or causes the isolation of such family or  
16 household member by unreasonably and substantially restricting or limiting such family or  
17 household member's access to other persons, telecommunication devices or transportation for  
18 the purpose of isolation.

19 2. Except as provided in subsection 3 of this section, domestic assault in the third degree  
20 is a class A misdemeanor.

21 3. A person who has pleaded guilty to or been found guilty of the crime of domestic  
22 assault in the third degree more than two times against any family or household member as  
23 defined in section 455.010, or of any offense committed in violation of any county or municipal  
24 ordinance in any state, any state law, any federal law, or any military law which, if committed  
25 in this state, would be a violation of this section, is guilty of a class D felony for the third or any  
26 subsequent commission of the crime of domestic assault. The offenses described in this  
27 subsection may be against the same family or household member or against different family or  
28 household members.

**568.055. 1. As used in this section the following terms shall mean:**

2 (1) **"Abuse", the infliction of physical, sexual, or mental injury or harm, except**  
3 **abuse shall not include injury or harm inflicted on a child by accidental means by an adult**  
4 **household member or discipline of a child, including spanking, in a reasonable manner;**

5 (2) **"Mental injury", an injury to the intellectual or psychological capacity or the**  
6 **emotional condition of a child as evidenced by an observable and substantial impairment**  
7 **of the ability of the child to function within his or her normal range of performance or**  
8 **behavior;**

9 (3) **"Neglect", the failure to provide, by those responsible for the care, custody, and**  
10 **control of a child under the age of eighteen years, when such failure harms the health,**

11 safety or welfare of the child or presents a substantial probability that death or physical  
12 injury would result;

13 (4) "Physical injury", physical pain, illness, or any impairment of physical  
14 condition, including, but not limited to, permanent or temporary disfigurement and  
15 impairment of any bodily function or organ;

16 (5) "Serious emotional injury", an injury that creates a substantial risk of  
17 temporary or permanent medical or psychological damage, manifested by impairment of  
18 a behavioral, cognitive or physical condition. Serious emotional injury shall be established  
19 by testimony of qualified experts upon the reasonable expectation of probable harm to a  
20 reasonable degree of medical or psychological certainty;

21 (6) "Serious physical injury", a physical injury that creates a substantial risk of  
22 death or that causes serious disfigurement or protracted loss or impairment of the function  
23 of any part of the body;

24 (7) "Shaken baby syndrome", a physical injury caused by the rotational  
25 acceleration of the head by any means, including, but not limit to, shaking, jerking,  
26 pushing, pulling, slamming, or kicking.

27 2. A person commits the offense of abuse or neglect of a child if such person  
28 knowingly causes a child who is less than eighteen years of age:

29 (1) To suffer unjustifiable physical or mental injury as a result of abuse or neglect;

30 (2) To be placed in a situation in which the child may suffer physical or mental  
31 injury as the result of abuse or neglect; or

32 (3) To suffer from shaken baby syndrome.

33 3. A person does not commit abuse or neglect of a child by virtue of the sole fact  
34 that the person delivers or allows the delivery of a child to a provider of emergency  
35 services.

36 4. Abuse or neglect of a child is a class C felony, without eligibility for probation  
37 or parole until the defendant has served no less than one year of such sentence, unless the  
38 person has previously been found guilty of a violation of this section or of a violation of the  
39 law of any other jurisdiction that prohibits the same or similar conduct or the injury  
40 inflicted on the child is a serious emotional injury or a serious physical injury, in which  
41 case abuse or neglect of a child is a class B felony, without eligibility for probation or  
42 parole until the defendant has served no less than five years of such sentence.

43 5. Notwithstanding subsection 4 of this section to the contrary, abuse or neglect of  
44 a child is a class A felony, without eligibility for probation or parole until the defendant has  
45 served not less than fifteen years of such sentence, if:

46 (1) The injury is a serious emotional injury or a serious physical injury;

47           **(2) The child is less than fourteen years of age; and**

48           **(3) The injury is the result of sexual abuse as defined under section 566.100 or**  
49 **sexual exploitation of a minor as defined under section 573.023.**

50           **6. The circuit or prosecuting attorney may refer a person who is suspected of abuse**  
51 **or neglect of a child to an appropriate public or private agency for treatment or counseling**  
52 **so long as the agency has consented to taking such referrals. Nothing in this subsection**  
53 **shall limit the discretion of the circuit or prosecuting attorney to prosecute a person who**  
54 **has been referred for treatment or counseling pursuant to this subsection.**

630.005. As used in this chapter and chapters 631, 632, and 633, unless the context  
2 clearly requires otherwise, the following terms shall mean:

3           (1) "Administrative entity", a provider of specialized services other than transportation  
4 to clients of the department on behalf of a division of the department;

5           (2) "Alcohol abuse", the use of any alcoholic beverage, which use results in intoxication  
6 or in a psychological or physiological dependency from continued use, which dependency  
7 induces a mental, emotional or physical impairment and which causes socially dysfunctional  
8 behavior;

9           (3) "Chemical restraint", medication administered with the primary intent of restraining  
10 a patient who presents a likelihood of serious physical injury to himself or others, and not  
11 prescribed to treat a person's medical condition;

12           (4) "Client", any person who is placed by the department in a facility or program licensed  
13 and funded by the department or who is a recipient of services from a regional center, as defined  
14 in section 633.005;

15           (5) "Commission", the state mental health commission;

16           (6) "Consumer", a person:

17           (a) Who qualifies to receive department services; or

18           (b) Who is a parent, child or sibling of a person who receives department services; or

19           (c) Who has a personal interest in services provided by the department. A person who  
20 provides services to persons affected by intellectual disabilities, developmental disabilities,  
21 mental disorders, mental illness, or alcohol or drug abuse shall not be considered a consumer;

22           (7) "Day program", a place conducted or maintained by any person who advertises or  
23 holds himself out as providing prevention, evaluation, treatment, habilitation or rehabilitation  
24 for persons affected by mental disorders, mental illness, intellectual disabilities, developmental  
25 disabilities or alcohol or drug abuse for less than the full twenty-four hours comprising each daily  
26 period;

27           (8) "Department", the department of mental health of the state of Missouri;

28           (9) "Developmental disability", a disability:

- 29 (a) Which is attributable to:
- 30 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or a learning
- 31 disability related to a brain dysfunction; or
- 32 b. Any other mental or physical impairment or combination of mental or physical
- 33 impairments; and
- 34 (b) Is manifested before the person attains age twenty-two; and
- 35 (c) Is likely to continue indefinitely; and
- 36 (d) Results in substantial functional limitations in two or more of the following areas of
- 37 major life activities:
- 38 a. Self-care;
- 39 b. Receptive and expressive language development and use;
- 40 c. Learning;
- 41 d. Self-direction;
- 42 e. Capacity for independent living or economic self-sufficiency;
- 43 f. Mobility; and
- 44 (e) Reflects the person's need for a combination and sequence of special,
- 45 interdisciplinary, or generic care, habilitation or other services which may be of lifelong or
- 46 extended duration and are individually planned and coordinated;
- 47 (10) "Director", the director of the department of mental health, or his designee;
- 48 (11) "Domiciled in Missouri", a permanent connection between an individual and the
- 49 state of Missouri, which is more than mere residence in the state; it may be established by the
- 50 individual being physically present in Missouri with the intention to abandon his previous
- 51 domicile and to remain in Missouri permanently or indefinitely;
- 52 (12) "Drug abuse", the use of any drug without compelling medical reason, which use
- 53 results in a temporary mental, emotional or physical impairment and causes socially
- 54 dysfunctional behavior, or in psychological or physiological dependency resulting from
- 55 continued use, which dependency induces a mental, emotional or physical impairment and causes
- 56 socially dysfunctional behavior;
- 57 (13) "Habilitation", a process of treatment, training, care or specialized attention which
- 58 seeks to enhance and maximize a person with an intellectual disability or a developmental
- 59 disability to cope with the environment and to live as normally as possible;
- 60 (14) "Habilitation center", a residential facility operated by the department and serving
- 61 only persons who are developmentally disabled;
- 62 (15) "Head of the facility", the chief administrative officer, or his designee, of any
- 63 residential facility;

64 (16) "Head of the program", the chief administrative officer, or his designee, of any day  
65 program;

66 (17) "Individualized habilitation plan", a document which sets forth habilitation goals  
67 and objectives for residents and clients with an intellectual disability or a developmental  
68 disability, and which details the habilitation program as required by law, rules and funding  
69 sources;

70 (18) "Individualized rehabilitation plan", a document which sets forth the care, treatment  
71 and rehabilitation goals and objectives for patients and clients affected by alcohol or drug abuse,  
72 and which details the rehabilitation program as required by law, rules and funding sources;

73 (19) "Individualized treatment plan", a document which sets forth the care, treatment and  
74 rehabilitation goals and objectives for patients and clients with mental disorders or mental  
75 illness, and which details the treatment program as required by law, rules and funding sources;

76 (20) "Investigator", an employee or contract agent of the department of mental health  
77 who is performing an investigation regarding an allegation of abuse or neglect or an investigation  
78 at the request of the director of the department of mental health or his designee;

79 (21) "Least restrictive environment", a reasonably available setting or mental health  
80 program where care, treatment, habilitation or rehabilitation is particularly suited to the level and  
81 quality of services necessary to implement a person's individualized treatment, habilitation or  
82 rehabilitation plan and to enable the person to maximize his or her functioning potential to  
83 participate as freely as feasible in normal living activities, giving due consideration to potentially  
84 harmful effects on the person and the safety of other facility or program clients and public safety.  
85 For some persons with mental disorders, intellectual disabilities, or developmental disabilities,  
86 the least restrictive environment may be a facility operated by the department, a private facility,  
87 a supported community living situation, or an alternative community program designed for  
88 persons who are civilly detained for outpatient treatment or who are conditionally released  
89 pursuant to chapter 632;

90 (22) "Mental disorder", any organic, mental or emotional impairment which has  
91 substantial adverse effects on a person's cognitive, volitional or emotional function and which  
92 constitutes a substantial impairment in a person's ability to participate in activities of normal  
93 living;

94 (23) "Mental illness", a state of impaired mental processes, which impairment results in  
95 a distortion of a person's capacity to recognize reality due to hallucinations, delusions, faulty  
96 perceptions or alterations of mood, and interferes with an individual's ability to reason,  
97 understand or exercise conscious control over his actions. The term "mental illness" does not  
98 include the following conditions unless they are accompanied by a mental illness as otherwise  
99 defined in this subdivision:

- 100 (a) Mental retardation, developmental disability or narcolepsy;  
101 (b) Simple intoxication caused by substances such as alcohol or drugs;  
102 (c) Dependence upon or addiction to any substances such as alcohol or drugs;  
103 (d) Any other disorders such as senility, which are not of an actively psychotic nature;  
104 (24) "Mental retardation", significantly subaverage general intellectual functioning  
105 which:
- 106 (a) Originates before age eighteen; and  
107 (b) Is associated with a significant impairment in adaptive behavior;  
108 (25) "Minor", any person under the age of eighteen years;  
109 (26) "Patient", an individual under observation, care, treatment or rehabilitation by any  
110 hospital or other mental health facility or mental health program pursuant to the provisions of  
111 chapter 632;
- 112 (27) "Psychosurgery",  
113 (a) Surgery on the normal brain tissue of an individual not suffering from physical  
114 disease for the purpose of changing or controlling behavior; or  
115 (b) Surgery on diseased brain tissue of an individual if the sole object of the surgery is  
116 to control, change or affect behavioral disturbances, except seizure disorders;  
117 (28) "Rehabilitation", a process of restoration of a person's ability to attain or maintain  
118 normal or optimum health or constructive activity through care, treatment, training, counseling  
119 or specialized attention;
- 120 (29) "Residence", the place where the patient has last generally lodged prior to admission  
121 or, in case of a minor, where his family has so lodged; except, that admission or detention in any  
122 facility of the department shall not be deemed an absence from the place of residence and shall  
123 not constitute a change in residence;
- 124 (30) "Resident", a person receiving residential services from a facility, other than mental  
125 health facility, operated, funded or licensed by the department;
- 126 (31) "Residential facility", any premises where residential prevention, evaluation, care,  
127 treatment, habilitation or rehabilitation is provided for persons affected by mental disorders,  
128 mental illness, intellectual disability, developmental disabilities or alcohol or drug abuse; except  
129 the person's dwelling;
- 130 (32) "Specialized service", an entity which provides prevention, evaluation,  
131 transportation, care, treatment, habilitation or rehabilitation services to persons affected by  
132 mental disorders, mental illness, intellectual disabilities, developmental disabilities or alcohol  
133 or drug abuse;
- 134 (33) "Vendor", a person or entity under contract with the department, other than as a  
135 department employee, who provides services to patients, residents or clients;



136 (34) "Vulnerable person", any person in the custody, care, or control of the department  
137 that is receiving services from an operated, funded, licensed, or certified program, **or any person**  
138 **who, as a result of an inadequately developed or impaired intelligence or a substantial**  
139 **psychiatric disorder, lacks the mental capacity to consent, or whose developmental level**  
140 **does not exceed that of an ordinary child of fourteen years of age.**

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[568.060. 1. A person commits the crime of abuse of a child if such  
2 person:

3 (1) Knowingly inflicts cruel and inhuman punishment upon a child less  
4 than seventeen years old; or

5 (2) Photographs or films a child less than eighteen years old engaging in  
6 a prohibited sexual act or in the simulation of such an act or who causes or  
7 knowingly permits a child to engage in a prohibited sexual act or in the  
8 simulation of such an act for the purpose of photographing or filming the act.

9 2. As used in this section "prohibited sexual act" means any of the  
10 following, whether performed or engaged in either with any other person or  
11 alone: sexual or anal intercourse, masturbation, bestiality, sadism, masochism,  
12 fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity  
13 is to be depicted for the purpose of sexual stimulation or gratification of any  
14 individual who may view such depiction.

15 3. Abuse of a child is a class C felony, unless:

16 (1) In the course thereof the person inflicts serious emotional injury on  
17 the child, or the offense is committed as part of a ritual or ceremony in which  
18 case the crime is a class B felony; or

19 (2) A child dies as a result of injuries sustained from conduct chargeable  
20 pursuant to the provisions of this section, in which case the crime is a class A  
21 felony.

22 4. As used in this section, the word "fetishism" means a condition in  
23 which erotic feelings are excited by an object or body part whose presence is  
24 psychologically necessary for sexual stimulation or gratification.]

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