

SECOND REGULAR SESSION

HOUSE BILL NO. 2772

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (141).

5693H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 491.015, RSMo, and to enact in lieu thereof one new section relating to witnesses in certain criminal cases.

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

Section A. Section 491.015, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 491.015, to read as follows:

491.015. 1. In prosecutions under chapter 566 or prosecutions related to sexual conduct under chapter 568, opinion and reputation evidence of the complaining witness' prior sexual conduct, **acts, or practices** is inadmissible **at any trial, hearing, or court proceeding and not a subject for inquiry during a deposition or discovery**; evidence of specific instances of the complaining witness' prior sexual conduct, **acts, or practices** or the absence of such instances or conduct is inadmissible **at any trial, hearing, or any other court proceeding, and not a subject for inquiry during a deposition or discovery**, except where such specific instances are:

(1) Evidence of the sexual conduct of the complaining witness with the defendant to prove consent where consent is a defense to the alleged crime and the evidence is reasonably contemporaneous with the date of the alleged crime; or

(2) Evidence of specific instances of sexual activity showing alternative source or origin of semen, pregnancy or disease;

(3) Evidence of immediate surrounding circumstances of the alleged crime; or

(4) Evidence relating to the previous chastity of the complaining witness in cases, where, by statute, previously chaste character is required to be proved by the prosecution.

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. Evidence of the sexual conduct, **acts, or practices** of the complaining witness
18 offered under this section is admissible to the extent that the court finds the evidence relevant
19 to a material fact or issue.

20 3. If the defendant proposes to offer evidence of the sexual conduct, **acts, or**
21 **practices** of the complaining witness under this section, he **or she** shall file with the court a
22 written motion accompanied by an offer of proof or make an offer of proof on the record
23 outside the hearing of the jury. The court shall hold an in camera hearing to determine the
24 sufficiency of the offer of proof and may at that hearing hear evidence if the court deems it
25 necessary to determine the sufficiency of the offer of proof. If the court finds any of the
26 evidence offered admissible under this section the court shall make an order stating the scope
27 of the evidence which may be introduced. Objections to any decision of the court under this
28 section may be made by either the prosecution or the defendant in the manner provided by
29 law. The in camera hearing shall be recorded and the court shall set forth its reasons for its
30 ruling. The record of the in camera hearing shall be sealed for delivery to the parties and to
31 the appellate court in the event of an appeal or other post trial proceeding.

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