



2022 South Dakota Legislature

Senate Bill 82

Introduced by: **Senator Duhamel**

1 **An Act to revise the admissibility of certain statements made by persons with**
 2 **developmental disabilities concerning certain crimes.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 19-19-806.1 be AMENDED:**

5 **19-19-806.1.** A statement made by a child under the age of thirteen, or by a ~~child~~
 6 ~~thirteen years of age or older~~ person of any age who is developmentally disabled as
 7 defined in § 27B-1-18, describing any act of sexual contact or rape performed with or on
 8 the child or person by another, or describing any act of physical abuse or neglect of the
 9 child or person by another, or any act of physical abuse or neglect of another child
 10 observed by the child or person making the statement, not otherwise admissible by statute
 11 or court rule, is admissible in evidence in criminal proceedings against the defendant or in
 12 any proceeding under chapters 26-7A, 26-8A, 26-8B, and 26-8C in the courts of this state
 13 if:

- 14 (1) The court finds, in a hearing conducted outside the presence of the jury, that the
 15 time, content, and circumstances of the statement provide sufficient indicia of
 16 reliability; and
 17 (2) The child or person either:
 18 (a) Testifies at the proceedings; or
 19 (b) Is unavailable as a witness.

20 However, if the child or person is unavailable as a witness, such statement may be
 21 admitted only if there is corroborative evidence of the act.

22 No statement may be admitted under this section unless the proponent of the
 23 statement makes known the proponent's intention to offer the statement and the
 24 particulars of it, including the name and address of the declarant, to the adverse party,
 25 sufficiently in advance of the trial or hearing to provide the adverse party with a fair
 26 opportunity to prepare to meet the statement.