

House File 2239

S-5094

1 Amend House File 2239, as passed by the House, as follows:

2 1. Page 1, after line 18 by inserting:

3 <Sec. ____ . NEW SECTION. **622.31B Admissibility of evidence**
4 **in certain physical abuse and sexual offense cases.**

5 1. As used in this section:

6 *a.* "Child" means a person under fourteen years of age.

7 *b.* "Cognitive impairment" means a deficiency in a person's
8 short-term or long-term memory; orientation as to person,
9 place, and time; deductive or abstract reasoning; or judgment
10 as it relates to safety awareness.

11 *c.* "Developmental disability" means the same as defined
12 under the federal Developmental Disabilities Assistance and
13 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
14 42 U.S.C. §15002(8).

15 *d.* "Intellectual disability" means a disability of
16 children and adults who as a result of inadequately developed
17 intelligence have a significant impairment in ability to learn
18 or to adapt to the demands of society.

19 2. In a prosecution for physical abuse or a sexual offense
20 including but not limited to a sexual offense in violation of
21 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
22 709.16, or 709.23, upon or against a child, a person with an
23 intellectual disability, person with a cognitive impairment, or
24 person with a developmental disability, the following evidence
25 shall be admitted as an exception to the hearsay rule if all of
26 the requirements in subsection 3 apply:

27 *a.* Testimony by the victim concerning an out-of-court
28 statement, whether consistent or inconsistent, made by the
29 victim to another person that is an initial disclosure of the
30 offense.

31 *b.* Testimony by another concerning an out-of-court
32 statement, whether consistent or inconsistent, made by the
33 victim that is an initial disclosure of an offense charged for
34 physical abuse or a sexual offense against the victim.

35 3. The testimony described in subsection 2 shall be admitted

1 into evidence at trial as an exception to the hearsay rule if
2 all of the following apply:

3 *a.* The party intending to offer the statement does all of
4 the following:

5 (1) Notifies the adverse party of the intent to offer the
6 statement.

7 (2) Provides the adverse party with the name of the witness
8 through whom the statement will be offered.

9 (3) Provides the adverse party with a written summary of the
10 statement to be offered.

11 *b.* The court finds, in a hearing conducted outside the
12 presence of the jury, that the timing of the statement, the
13 content of the statement, and the circumstances surrounding
14 the making of the statement provide sufficient safeguards of
15 reliability.

16 *c.* The child, person with an intellectual disability, person
17 with a cognitive impairment, or a person with a developmental
18 disability testifies at the trial.

19 4. If a statement is admitted pursuant to this section,
20 the court shall instruct the jury that it is for the jury
21 to determine the weight and credibility to be given to the
22 statement, and in making that determination, the jury shall
23 consider the age and maturity of the child or the disability
24 of the person with an intellectual disability, person with
25 a cognitive impairment, or person with a developmental
26 disability; the nature of the statement; the circumstances
27 under which the statement was made, and any other relevant
28 factors.

29 5. This section shall not prevent the admission of any
30 evidence based upon forfeiture by wrongdoing.>

31 2. Title page, line 3, after <abuse> by inserting <, and the
32 admissibility of evidence in a prosecution for physical abuse
33 or a sexual offense upon or against a child, person with an
34 intellectual disability, person with a cognitive impairment, or
35 person with a developmental disability>

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