State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0211

SENATE BILL NO. 13

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

FOR AN ACT ENTITLED, An Act to revise certain evidentiary rules relating to the statements of children.

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

Section 1. That § 19-16-39 be amended to read as follows:

19-16-39. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible in evidence in any civil proceeding alleging child abuse or neglect or any proceeding for termination of parental rights if:

(1) The statement was made by a child under the age of ~~ten~~ thirteen years or by a child ~~ten~~ thirteen years of age or older who is developmentally disabled, as defined in § ~~27B-1-3~~ 27B-1-18; ~~and~~

(2) The statement alleges, explains, denies, or describes:

(a) Any act of sexual penetration or contact performed with or on the child; ~~or~~

(b) Any act of sexual penetration or contact with or on another child observed by the child making the statement; ~~or~~

(c) Any act of physical abuse or neglect of the child by another; or

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

(d) Any act of physical abuse or neglect of another child observed by the child making the statement; ~~and~~

(3) The court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(4) The proponent of the statement notifies other parties of an intent to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement.

For purposes of this section, an out-of-court statement includes a video, audio, or other recorded statement.