

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

673Q0532

## SENATE JUDICIARY ENGROSSED NO. **SB 123** 2/12/2009

Introduced by: Senator Gillespie and Representative Cutler

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

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

4 Section 1. That § 19-16-38 be amended to read as follows:

5 19-16-38. A statement made by a child under the age of ~~ten~~ thirteen, or by a child ~~ten~~  
6 thirteen years of age or older who is developmentally disabled as defined in § 27B-1-18,  
7 describing any act of sexual contact or rape performed with or on the child by another, or  
8 describing any act of physical abuse or neglect of the child by another, or any act of physical  
9 abuse or neglect of another child observed by the child making the statement, not otherwise  
10 admissible by statute or court rule, is admissible in evidence in criminal proceedings against the  
11 defendant or in any proceeding under chapters 26-7A, 26-8A, 26-8B, and 26-8C in the courts  
12 of this state if:

13 (1) The court finds, in a hearing conducted outside the presence of the jury, that the time,  
14 content, and circumstances of the statement provide sufficient indicia of reliability;  
15 and



1       (2)    The child either:

2           (a)    Testifies at the proceedings; or

3           (b)    Is unavailable as a witness.

4        However, if the child is unavailable as a witness, such statement may be admitted only if  
5 there is corroborative evidence of the act.

6        No statement may be admitted under this section unless the proponent of the statement  
7 makes known ~~his~~ the proponent's intention to offer the statement and the particulars of it,  
8 including the name and address of the declarant to the adverse party sufficiently in advance of  
9 the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the  
10 statement.