

FIRST REGULAR SESSION

HOUSE BILL NO. 831

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (50) (Sponsor), SCHATZ, LEARA, ELMER,
HOUGHTON, GOSEN, BARNES, JONES (110), CORNEJO AND RICHARDSON (Co-sponsors).

2059H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 556.061 and 568.060, RSMo, and to enact in lieu thereof two new sections relating to abuse of a child, with a penalty provision and an emergency clause.

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

Section A. Sections 556.061 and 568.060, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 556.061 and 568.060, to read as follows:

556.061. In this code, unless the context requires a different definition, the following shall apply:

(1) "Affirmative defense" has the meaning specified in section 556.056;

(2) "Burden of injecting the issue" has the meaning specified in section 556.051;

(3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(4) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or otherwise; or

c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;

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 (b) A person is not in confinement if:

18 a. The person is on probation or parole, temporary or otherwise; or

19 b. The person is under sentence to serve a term of confinement which is not continuous,
20 or is serving a sentence under a work-release program, and in either such case is not being held
21 in a place of confinement or is not being held under guard by a person having the legal power
22 and duty to transport the person to or from a place of confinement;

23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not
24 constitute consent if:

25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
26 to constitute the offense and such mental incapacity is manifest or known to the actor; or

27 (b) It is given by a person who by reason of youth, mental disease or defect, or
28 intoxication, is manifestly unable or known by the actor to be unable to make a reasonable
29 judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

30 (c) It is induced by force, duress or deception;

31 (6) "Criminal negligence" has the meaning specified in section 562.016;

32 (7) "Custody", a person is in custody when the person has been arrested but has not been
33 delivered to a place of confinement;

34 (8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first
35 degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical
36 injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree, assault
37 of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse
38 in the first degree, robbery in the first degree, statutory rape in the first degree when the victim
39 is a child less than twelve years of age at the time of the commission of the act giving rise to the
40 offense, statutory sodomy in the first degree when the victim is a child less than twelve years of
41 age at the time of the commission of the act giving rise to the offense, and, abuse of a child
42 [pursuant to subdivision (2) of subsection 3 of] **if the child dies as a result of injuries**
43 **sustained from conduct chargeable under** section 568.060, child kidnapping, and parental
44 kidnapping committed by detaining or concealing the whereabouts of the child for not less than
45 one hundred twenty days under section 565.153;

46 (9) "Dangerous instrument" means any instrument, article or substance, which, under the
47 circumstances in which it is used, is readily capable of causing death or other serious physical
48 injury;

49 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from
50 which a shot, readily capable of producing death or serious physical injury, may be discharged,
51 or a switchblade knife, dagger, billy, blackjack or metal knuckles;

52 (11) "Felony" has the meaning specified in section 556.016;

- 53 (12) "Forcible compulsion" means either:
54 (a) Physical force that overcomes reasonable resistance; or
55 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
56 physical injury or kidnapping of such person or another person;
- 57 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
58 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
59 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an
60 act committed upon such person if he or she became unconscious, unable to appraise the nature
61 of such person's conduct or unable to communicate unwillingness to an act, after consenting to
62 the act;
- 63 (14) "Infraction" has the meaning specified in section 556.021;
- 64 (15) "Inhabitable structure" has the meaning specified in section 569.010;
- 65 (16) "Knowingly" has the meaning specified in section 562.016;
- 66 (17) "Law enforcement officer" means any public servant having both the power and
67 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
68 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 69 (18) "Misdemeanor" has the meaning specified in section 556.016;
- 70 (19) "Offense" means any felony, misdemeanor or infraction;
- 71 (20) "Physical injury" means physical pain, illness, or any impairment of physical
72 condition;
- 73 (21) "Place of confinement" means any building or facility and the grounds thereof
74 wherein a court is legally authorized to order that a person charged with or convicted of a crime
75 be held;
- 76 (22) "Possess" or "possessed" means having actual or constructive possession of an
77 object with knowledge of its presence. A person has actual possession if such person has the
78 object on his or her person or within easy reach and convenient control. A person has
79 constructive possession if such person has the power and the intention at a given time to exercise
80 dominion or control over the object either directly or through another person or persons.
81 Possession may also be sole or joint. If one person alone has possession of an object, possession
82 is sole. If two or more persons share possession of an object, possession is joint;
- 83 (23) "Public servant" means any person employed in any way by a government of this
84 state who is compensated by the government by reason of such person's employment, any person
85 appointed to a position with any government of this state, or any person elected to a position with
86 any government of this state. It includes, but is not limited to, legislators, jurors, members of the
87 judiciary and law enforcement officers. It does not include witnesses;
- 88 (24) "Purposely" has the meaning specified in section 562.016;

89 (25) "Recklessly" has the meaning specified in section 562.016;

90 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more
91 persons as part of an established or prescribed pattern of activity;

92 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or
93 permanent medical or psychological damage, manifested by impairment of a behavioral,
94 cognitive or physical condition. Serious emotional injury shall be established by testimony of
95 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
96 medical or psychological certainty;

97 (28) "Serious physical injury" means physical injury that creates a substantial risk of
98 death or that causes serious disfigurement or protracted loss or impairment of the function of any
99 part of the body;

100 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;
101 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,
102 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

103 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the
104 breast of any female person, or any such touching through the clothing, for the purpose of
105 arousing or gratifying sexual desire of any person;

106 (31) "Sexual performance", any performance, or part thereof, which includes sexual
107 conduct by a child who is less than seventeen years of age;

108 (32) "Voluntary act" has the meaning specified in section 562.011.

568.060. 1. As used in this section, the following terms shall mean:

2 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any
3 person eighteen years of age or older. For purposes of this section, abuse shall not include injury
4 inflicted on a child by accidental means by a person with care, custody, or control of the child,
5 or discipline of a child by a person with care, custody, or control of the child, including spanking,
6 in a reasonable manner;

7 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any
8 means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or
9 kicking;

10 (3) "Mental injury", an injury to the intellectual or psychological capacity or the
11 emotional condition of a child as evidenced by an observable and substantial impairment of the
12 ability of the child to function within his or her normal range of performance or behavior;

13 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and
14 control of a child under the age of eighteen years, the care reasonable and necessary to maintain
15 the physical and mental health of the child, when such failure presents a substantial probability
16 that death or physical injury or sexual injury would result;

17 (5) "Physical injury", physical pain, illness, or any impairment of physical condition,
18 including but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary
19 disfigurement and impairment of any bodily function or organ;

20 (6) "Serious emotional injury", an injury that creates a substantial risk of temporary or
21 permanent medical or psychological damage, manifested by impairment of a behavioral,
22 cognitive, or physical condition. Serious emotional injury shall be established by testimony of
23 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
24 medical or psychological certainty;

25 (7) "Serious physical injury", a physical injury that creates a substantial risk of death or
26 that causes serious disfigurement or protracted loss or impairment of the function of any part of
27 the body.

28 2. A person commits the offense of abuse or neglect of a child if such person knowingly
29 causes a child who is less than eighteen years of age:

30 (1) To suffer physical or mental injury as a result of abuse or neglect; or

31 (2) To be placed in a situation in which the child may suffer physical or mental injury
32 as the result of abuse or neglect.

33 3. A person commits the offense of abuse or neglect of a child if such person recklessly
34 causes a child who is less than eighteen years of age to suffer from abusive head trauma.

35 4. A person does not commit the offense of abuse or neglect of a child by virtue of the
36 sole fact that the person delivers or allows the delivery of child to a provider of emergency
37 services.

38 5. The offense of abuse or neglect of a child is:

39 **(1) A class C felony, without eligibility for probation or parole until the defendant has**
40 **served no less than one year of such sentence, unless the person has previously been found guilty**
41 **of a violation of this section or of a violation of the law of any other jurisdiction that prohibits**
42 **the same or similar conduct or the injury inflicted on the child is a serious emotional injury or**
43 **a serious physical injury, in which case abuse or neglect of a child is a class B felony, without**
44 **eligibility for probation or parole until the defendant has served not less than five years of such**
45 **sentence; or**

46 **(2) A class A felony if the child dies as a result of injuries sustained from conduct**
47 **chargeable under the provisions of this section.**

48 6. Notwithstanding subsection 5 of this section to the contrary, the offense of abuse or
49 neglect of a child is a class A felony, without eligibility for probation or parole until the
50 defendant has served not less than fifteen years of such sentence, if:

51 (1) The injury is a serious emotional injury or a serious physical injury;

52 (2) The child is less than fourteen years of age; and

53 (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual
54 exploitation of a minor as defined under section 573.023.

55 7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or
56 neglect of a child to an appropriate public or private agency for treatment or counseling so long
57 as the agency has consented to taking such referrals. Nothing in this subsection shall limit the
58 discretion of the circuit or prosecuting attorney to prosecute a person who has been referred for
59 treatment or counseling pursuant to this subsection.

60 8. Nothing in this section shall be construed to alter the requirement that every element
61 of any crime referred to herein must be proven beyond a reasonable doubt.

62 9. Discipline, including spanking administered in a reasonable manner, shall not be
63 construed to be abuse under this section.

Section B. Because immediate action is necessary to protect children the repeal and
2 reenactment of section A of this act is deemed necessary for the immediate preservation of the
3 public health, welfare, peace, and safety, and is hereby declared to be an emergency act within
4 the meaning of the constitution, and the repeal and reenactment of section A of this act shall be
5 in full force and effect upon its passage and approval.

✓