

SECOND REGULAR SESSION

HOUSE BILL NO. 1053

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PHILLIPS (Sponsor), DIXON, SUTHERLAND, PEARCE,
ERVIN, RUESTMAN, BROWN, WITTE, DUSENBERG, QUINN, STEVENSON, ENGLER, ICET,
RECTOR AND MEINERS (Co-sponsors).

Read 1st time January 13, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3689L.011

AN ACT

To repeal sections 558.018, 573.037, and 589.400, RSMo, and to enact in lieu thereof three new sections relating to sexual offenders, with penalty provisions.

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

Section A. Sections 558.018, 573.037, and 589.400, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 558.018, 573.037, and 589.400, to read
3 as follows:

558.018. 1. The court shall sentence a person who has pleaded guilty to or has been
2 found guilty of the felony of forcible rape, statutory rape in the first degree, forcible sodomy,
3 statutory sodomy in the first degree, **possession of child pornography**, or an attempt to commit
4 any of the crimes designated in this subsection to an extended term of imprisonment if it finds
5 the defendant is a persistent sexual offender.

6 2. A "persistent sexual offender" is one who has previously pleaded guilty to or has been
7 found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible
8 sodomy, sodomy, statutory sodomy in the first degree, **possession of child pornography**, or an
9 attempt to commit any of the crimes designated in this subsection.

10 3. The term of imprisonment for one found to be a persistent sexual offender shall be not
11 less than thirty years, which term shall be served without probation or parole.

12 4. The court shall sentence a person who has pleaded guilty to or has been found guilty
13 of the felony of forcible rape, statutory rape in the first degree, forcible sodomy, statutory
14 sodomy in the first degree, **possession of child pornography**, or an attempt to commit any of

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

15 the preceding crimes or child molestation in the first degree when classified as a class B felony
16 or sexual abuse when classified as a class B felony to an extended term of imprisonment as
17 provided for in this section if it finds the defendant is a predatory sexual offender.

18 5. For purposes of this section, a "predatory sexual offender" is a person who:

19 (1) Has previously pleaded guilty to or has been found guilty of the felony of forcible
20 rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the
21 first degree, **possession of child pornography**, or an attempt to commit any of the preceding
22 crimes or child molestation in the first degree when classified as a class B felony or sexual abuse
23 when classified as a class B felony; or

24 (2) Has previously committed an act which would constitute an offense listed in
25 subsection 4 of this section, whether or not the act resulted in a conviction; or

26 (3) Has committed an act or acts against more than one victim which would constitute
27 an offense or offenses listed in subsection 4 of this section, whether or not the defendant was
28 charged with an additional offense or offenses as a result of such act or acts.

29 6. A person found to be a predatory sexual offender shall be imprisoned for life with
30 eligibility for parole, however subsection 4 of section 558.019 shall not apply to persons found
31 to be predatory sexual offenders for the purposes of determining the minimum prison term or the
32 length of sentence as defined or used in such subsection. Notwithstanding any other provision
33 of law, in no event shall a person found to be a predatory sexual offender receive a final
34 discharge from parole.

35 7. Notwithstanding any other provision of law, the court shall set the minimum time
36 required to be served before a predatory sexual offender is eligible for parole, conditional release
37 or other early release by the department of corrections. The minimum time to be served by a
38 person found to be a predatory sexual offender who:

39 (1) Has previously pleaded guilty to or has been found guilty of the felony of forcible
40 rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the
41 first degree, **possession of child pornography**, or an attempt to commit any of the preceding
42 crimes and pleads guilty to or is found guilty of the felony of forcible rape, statutory rape in the
43 first degree, forcible sodomy, statutory sodomy in the first degree, **possession of child**
44 **pornography**, or an attempt to commit any of the preceding crimes shall be any number of years
45 but not less than thirty years;

46 (2) Has previously pleaded guilty to or has been found guilty of child molestation in the
47 first degree when classified as a class B felony or sexual abuse when classified as a class B
48 felony and pleads guilty to or is found guilty of attempting to commit or committing forcible
49 rape, statutory rape in the first degree, forcible sodomy or statutory sodomy in the first degree,
50 **possession of child pornography**, shall be any number of years but not less than fifteen years;

51 (3) Has previously pleaded guilty to or has been found guilty of the felony of forcible
52 rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the
53 first degree, **possession of child pornography**, or an attempt to commit any of the preceding
54 crimes and pleads guilty to or is found guilty of child molestation in the first degree when
55 classified as a class B felony or sexual abuse when classified as a class B felony shall be any
56 number of years but not less than fifteen years;

57 (4) Has previously pleaded guilty to or has been found guilty of child molestation in the
58 first degree when classified as a class B felony or sexual abuse when classified as a class B
59 felony, and pleads guilty to or is found guilty of child molestation in the first degree when
60 classified as a class B felony or sexual abuse when classified as a class B felony shall be any
61 number of years but not less than fifteen years;

62 (5) Is found to be a predatory sexual offender pursuant to subdivision (2) or (3) of
63 subsection 5 of this section shall be any number of years within the range to which the person
64 could have been sentenced pursuant to the applicable law if the person was not found to be a
65 predatory sexual offender.

66 8. Notwithstanding any provision of law to the contrary, the department of corrections,
67 or any division thereof, may not furlough an individual found to be and sentenced as a persistent
68 sexual offender or a predatory sexual offender.

573.037. 1. A person commits the crime of possession of child pornography if, knowing
2 of its content and character, such person possesses any obscene material that has a child as one
3 of its participants or portrays what appears to be a child as an observer or participant of sexual
4 conduct.

5 2. Possession of child pornography is a class [A misdemeanor] **C felony** unless the
6 [person has pleaded guilty to or has been found guilty of an offense under this section,] **number**
7 **of images possessed which violate subsection 1 of this section exceeds ninety-nine**, in which
8 case it is a class [D] **B felony**.

589.400. 1. Sections 589.400 to 589.425 shall apply to:

2 (1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found
3 guilty of, or pled guilty to committing, or attempting to commit, a felony offense of chapter 566,
4 RSMo, or any offense of chapter 566, RSMo, where the victim is a minor; or

5 (2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found
6 guilty of, or pled guilty to committing, or attempting to commit one or more of the following
7 offenses: kidnapping, pursuant to section 565.110, RSMo; felonious restraint; promoting
8 prostitution in the first degree; promoting prostitution in the second degree; promoting
9 prostitution in the third degree; incest; abuse of a child, pursuant to section 568.060, RSMo; use
10 of a child in a sexual performance; **possession of child pornography**; or promoting sexual

11 performance by a child; and committed or attempted to commit the offense against a victim who
12 is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen
13 years of age; or

14 (3) Any person who, since July 1, 1979, has been committed to the department of mental
15 health as a criminal sexual psychopath; or

16 (4) Any person who, since July 1, 1979, has been found not guilty as a result of mental
17 disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

18 (5) Any person who is a resident of this state who has, since July 1, 1979, or is hereafter
19 convicted of, been found guilty of, or pled guilty to or nolo contendere in any other state or under
20 federal jurisdiction to committing, or attempting to commit, an offense which, if committed in
21 this state, would be a violation of chapter 566, RSMo, or a felony violation of any offense listed
22 in subdivision (2) of this subsection or has been or is required to register in another state or has
23 been or is required to register under federal or military law; or

24 (6) Any person who has been or is required to register in another state or has been or is
25 required to register under federal or military law and who works or attends school or training on
26 a full-time or on a part-time basis in Missouri. "Part-time" in this subdivision means for more
27 than fourteen days in any twelve-month period.

28 2. Any person to whom sections 589.400 to 589.425 apply shall, within ten days of
29 conviction, release from incarceration, or placement upon probation, register with the chief law
30 enforcement official of the county in which such person resides unless such person has already
31 registered in that county for the same offense. Any person to whom sections 589.400 to 589.425
32 apply if not currently registered in their county of residence shall register with the chief law
33 enforcement official of such county within ten days of August 28, 2003. The chief law
34 enforcement official shall forward a copy of the registration form required by section 589.407
35 to a city, town, village, or campus law enforcement agency located within the county of the chief
36 law enforcement official, if so requested. Such request may ask the chief law enforcement
37 official to forward copies of all registration forms filed with such official. The chief law
38 enforcement official may forward a copy of such registration form to any city, town, village, or
39 campus law enforcement agency, if so requested.

40 3. The registration requirements of sections 589.400 through 589.425 are lifetime
41 registration requirements unless all offenses requiring registration are reversed, vacated or set
42 aside or unless the registrant is pardoned of the offenses requiring registration.