

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 945

94TH GENERAL ASSEMBLY

Reported from the Committee on Corrections and Public Institutions March 15, 2007 with recommendation that House Committee Substitute for House Bill No. 945 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules March 27, 2007 with recommendation that House Committee Substitute for House Bill No. 945 Do Pass.

Taken up for Perfection April 10, 2007. House Committee Substitute for House Bill No. 945 ordered Perfected and printed.

D. ADAM CRUMBLISS, Chief Clerk

2256L.02P

AN ACT

To repeal sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, and to enact in lieu thereof six new sections relating to crimes against criminal justice officials, with penalty provisions.

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

Section A. Sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 556.061, 559.100,
3 565.015, 565.081, 565.082, and 565.083, to read as follows:

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

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

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

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

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.

10 (4) "Confinement":

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

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

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

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

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, RSMo;

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, kidnaping, murder in the second degree, assault
37 of a law enforcement officer, **emergency personnel, or corrections personnel** in the first
38 degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first
39 degree, statutory rape in the first degree when the victim is a child less than twelve years of age
40 at the time of the commission of the act giving rise to the offense, statutory sodomy in the first
41 degree when the victim is a child less than twelve years of age at the time of the commission of
42 the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection
43 3 of section 568.060, RSMo, and child kidnapping;

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

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

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

51 (12) "Forcible compulsion" means either:

52 (a) Physical force that overcomes reasonable resistance; or

53 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
54 physical injury or kidnapping of such person or another person;

55 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
56 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
57 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an
58 act committed upon such person if he or she became unconscious, unable to appraise the nature
59 of such person's conduct or unable to communicate unwillingness to an act, after consenting to
60 the act;

61 (14) "Infraction" has the meaning specified in section 556.021;

62 (15) "Inhabitable structure" has the meaning specified in section 569.010, RSMo;

63 (16) "Knowingly" has the meaning specified in section 562.016, RSMo;

64 (17) "Law enforcement officer" means any public servant having both the power and
65 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
66 authorized to carry firearms and to make arrests for violations of the laws of the United States;

67 (18) "Misdemeanor" has the meaning specified in section 556.016;

68 (19) "Offense" means any felony, misdemeanor or infraction;

69 (20) "Physical injury" means physical pain, illness, or any impairment of physical
70 condition;

71 (21) "Place of confinement" means any building or facility and the grounds thereof
72 wherein a court is legally authorized to order that a person charged with or convicted of a crime
73 be held;

74 (22) "Possess" or "possessed" means having actual or constructive possession of an
75 object with knowledge of its presence. A person has actual possession if such person has the
76 object on his or her person or within easy reach and convenient control. A person has
77 constructive possession if such person has the power and the intention at a given time to exercise
78 dominion or control over the object either directly or through another person or persons.

79 Possession may also be sole or joint. If one person alone has possession of an object, possession
80 is sole. If two or more persons share possession of an object, possession is joint;

81 (23) "Public servant" means any person employed in any way by a government of this
82 state who is compensated by the government by reason of such person's employment, any person
83 appointed to a position with any government of this state, or any person elected to a position with
84 any government of this state. It includes, but is not limited to, legislators, jurors, members of the
85 judiciary and law enforcement officers. It does not include witnesses;

86 (24) "Purposely" has the meaning specified in section 562.016, RSMo;

87 (25) "Recklessly" has the meaning specified in section 562.016, RSMo;

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

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

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

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

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

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

106 (32) "Voluntary act" has the meaning specified in section 562.011, RSMo.

559.100. 1. The circuit courts of this state shall have power, herein provided, to place
2 on probation or to parole persons convicted of any offense over which they have jurisdiction,
3 except as otherwise provided in sections 195.275 to 195.296, RSMo, section 558.018, RSMo,
4 section 559.115, section 565.020, RSMo, sections 566.030, 566.060, 566.067, 566.151, and
5 566.213, RSMo, **section 565.081, RSMo**, section 571.015, RSMo, and subsection 3 of section
6 589.425, RSMo.

7 2. The circuit court shall have the power to revoke the probation or parole previously
8 granted and commit the person to the department of corrections. The circuit court shall

9 determine any conditions of probation or parole for the defendant that it deems necessary to
10 ensure the successful completion of the probation or parole term, including the extension of any
11 term of supervision for any person while on probation or parole. The circuit court may require
12 that the defendant pay restitution for his crime. The probation or parole may be revoked for
13 failure to pay restitution or for failure to conform his behavior to the conditions imposed by the
14 circuit court. The circuit court may, in its discretion, credit any period of probation or parole as
15 time served on a sentence.

**565.015. 1. A person commits the crime of murder of a criminal justice official in
2 the first degree if, after deliberation upon the matter, he or she knowingly causes the death
3 of a criminal justice official and:**

4 **(1) The criminal justice official was engaged in the performance of lawful duties;**
5 **or**

6 **(2) The person knowingly caused the death of the criminal justice official because**
7 **of his or her status as a criminal justice official.**

8 **2. Murder of a criminal justice official in the first degree is a felony which shall be**
9 **punished by death unless the trier finds that there are mitigating circumstances which are**
10 **sufficient to justify a sentence of life imprisonment without eligibility for probation, parole,**
11 **or conditional release except by act of the governor.**

12 **3. For purposes of this section, "criminal justice official" means any person who**
13 **is a peace officer as defined in subdivision (3) of section 590.010, RSMo, prosecuting**
14 **attorney, assistant prosecuting attorney, circuit attorney, assistant circuit attorney, judge,**
15 **jailer, probation and parole officer, or any employee of a correctional center or anyone**
16 **assigned to work in a correctional center as defined in section 217.010, RSMo.**

17 **4. A trial for murder of a criminal justice official in the first degree shall be**
18 **conducted according to the laws applicable to murder in the first degree unless there is a**
19 **conflict with the provisions contained in this section in which case the provisions of this**
20 **section shall be applied.**

21 **565.081. 1. A person commits the crime of assault of a law enforcement officer,**
22 **emergency personnel, or [probation and parole officer] corrections personnel in the first degree**
23 **if such person attempts to kill or knowingly causes or attempts to cause serious physical injury**
24 **to a law enforcement officer [or] , emergency personnel, or corrections personnel.**

25 **2. As used in this section, "emergency personnel" means any paid or volunteer**
26 **firefighter, emergency room or trauma center personnel, or emergency medical technician as**
27 **defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.**

8 3. As used in this section, "corrections personnel" means any employee of a
9 correctional center or any person assigned to work in a correctional center, as defined in
10 section 217.010, RSMo, probation and parole officer, or any jailer.

11 4. Assault of a law enforcement officer, emergency personnel, or [probation and parole
12 officer] **corrections personnel** in the first degree is a class A felony.

13 5. No person who pleads guilty to or is found guilty of assault of a law enforcement
14 officer, emergency personnel, or corrections personnel in the first degree may be granted
15 a suspended imposition of sentence or suspended execution of sentence or may be sentenced
16 to pay a fine.

 565.082. 1. A person commits the crime of assault of a law enforcement officer,
2 emergency personnel, or [probation and parole officer] **corrections personnel** in the second
3 degree if such person:

4 (1) Knowingly causes or attempts to cause physical injury to a law enforcement officer,
5 emergency personnel, or [probation and parole officer] **corrections personnel** by means of a
6 deadly weapon or dangerous instrument;

7 (2) Knowingly causes or attempts to cause physical injury to a law enforcement officer,
8 emergency personnel, or [probation and parole officer] **corrections personnel** by means other
9 than a deadly weapon or dangerous instrument;

10 (3) Recklessly causes serious physical injury to a law enforcement officer, emergency
11 personnel, or [probation and parole officer] **corrections personnel**; or

12 (4) While in an intoxicated condition or under the influence of controlled substances or
13 drugs, operates a motor vehicle in this state and when so operating, acts with criminal negligence
14 to cause physical injury to a law enforcement officer, emergency personnel, or [probation and
15 parole officer] **corrections personnel**;

16 (5) Acts with criminal negligence to cause physical injury to a law enforcement officer,
17 emergency personnel, or [probation and parole officer] **corrections personnel** by means of a
18 deadly weapon or dangerous instrument;

19 (6) Purposely or recklessly places a law enforcement officer, emergency personnel, or
20 [probation and parole officer] **corrections personnel** in apprehension of immediate serious
21 physical injury; or

22 (7) Acts with criminal negligence to create a substantial risk of death or serious physical
23 injury to a law enforcement officer, emergency personnel, or [probation and parole officer]
24 **corrections personnel**.

25 2. As used in this section, "emergency personnel" means any paid or volunteer
26 firefighter, emergency room or trauma center personnel, or emergency medical technician as
27 defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

28 3. **As used in this section, "corrections personnel" means any employee of a**
29 **correctional center or any person assigned to work in a correctional center, as defined in**
30 **section 217.010, RSMo, probation and parole officer, or any jailer.**

31 4. Assault of a law enforcement officer, emergency personnel, or [probation and parole
32 officer] **corrections personnel** in the second degree is a class B felony unless committed
33 pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a
34 class C felony.

 565.083. 1. A person commits the crime of assault of a law enforcement officer,
2 emergency personnel, or [probation and parole officer] **corrections personnel** in the third degree
3 if:

4 (1) Such person recklessly causes physical injury to a law enforcement officer,
5 emergency personnel, or [probation and parole officer] **corrections personnel**;

6 (2) Such person purposely places a law enforcement officer, emergency personnel, or
7 [probation and parole officer] **corrections personnel** in apprehension of immediate physical
8 injury;

9 (3) Such person knowingly causes or attempts to cause physical contact with a law
10 enforcement officer, emergency personnel, or [probation and parole officer] **corrections**
11 **personnel** without the consent of the law enforcement officer [or] , emergency personnel, **or**
12 **corrections personnel.**

13 2. As used in this section, "emergency personnel" means any paid or volunteer
14 firefighter, emergency room or trauma center personnel, or emergency medical technician as
15 defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

16 3. **As used in this section, "corrections personnel" means any employee of a**
17 **correctional center or any person assigned to work in a correctional center, as defined in**
18 **section 217.010, RSMo, probation and parole officer, or any jailer.**

19 4. Assault of a law enforcement officer, emergency personnel, or [probation and parole
20 officer] **corrections personnel** in the third degree is a class A misdemeanor.

✓