

FIRST REGULAR SESSION

HOUSE BILL NO. 563

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MONACO, JOLLY, KENNEDY, BONNER,
GAMBARO (Co-sponsors), HOSMER, RIZZO AND JOHNSON (90).

Read 1st time January 25, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0655L.03I

AN ACT

To repeal sections 547.170, 556.036, 556.061, 559.125, 566.067, 566.068, 566.083, 566.090, 566.093, 566.140, 566.141, 632.480 and 650.055, RSMo 2000, relating to sexual crimes, and to enact in lieu thereof fifteen new sections relating to the same subject, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 547.170, 556.036, 556.061, 559.125, 566.067, 566.068, 566.083, 2 566.090, 566.093, 566.140, 566.141, 632.480 and 650.055, RSMo 2000, are repealed and fifteen 3 new sections enacted in lieu thereof, to be known as sections 491.707, 547.170, 556.036, 4 556.061, 559.125, 566.067, 566.068, 566.069, 566.083, 566.090, 566.093, 566.140, 566.141, 5 632.480 and 650.055, to read as follows:

491.707. In all prosecutions brought pursuant to chapter 566, RSMo, sections 2 565.050, 565.060 and 565.070, RSMo, sections 568.045, 568.050, 568.060, 568.080 and 3 568.090, RSMo, and sections 573.025 and 573.040, RSMo, the defendant may be physically 4 excluded from the room in which any and all discovery deposition proceedings are 5 conducted at which the child victim testifies. For purposes of this section, a "child victim" 6 means any victim less than sixteen years of age.

547.170. In all cases where an appeal or writ of error is prosecuted from a judgment in 2 a criminal cause, except where the defendant is under sentence of death or imprisonment in the 3 penitentiary for life, [or] a sentence of imprisonment for a violation of sections 195.222, RSMo,

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

4 565.021, RSMo, 565.050, RSMo, [or] subsections 1 and 2 of section 566.030, RSMo, **section**
5 **566.032 or 566.060, RSMo**, any court or officer authorized to order a stay of proceedings under
6 the preceding provisions may allow a writ of habeas corpus, to bring up the defendant, and may
7 thereupon let [him] **the defendant** to bail upon a recognizance, with sufficient sureties, to be
8 approved by such court or judge.

556.036. 1. A prosecution for murder, **a prosecution pursuant to section 566.030 or**
2 **566.060, RSMo**, or any class A felony may be commenced at any time.

3 2. Except as otherwise provided in this section, prosecutions for other offenses must be
4 commenced within the following periods of limitation:

5 (1) For any felony, three years;

6 (2) For any misdemeanor, one year;

7 (3) For any infraction, six months.

8 3. If the period prescribed in subsection 2 has expired, a prosecution may nevertheless
9 be commenced for:

10 (1) Any offense a material element of which is either fraud or a breach of fiduciary
11 obligation within one year after discovery of the offense by an aggrieved party or by a person
12 who has a legal duty to represent an aggrieved party and who is himself or herself not a party to
13 the offense, but in no case shall this provision extend the period of limitation by more than three
14 years. As used in this subdivision, the term "person who has a legal duty to represent an
15 aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having
16 jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses committed pursuant
17 to sections 407.511 to 407.556, RSMo; and

18 (2) Any offense based upon misconduct in office by a public officer or employee at any
19 time when the defendant is in public office or employment or within two years thereafter, but in
20 no case shall this provision extend the period of limitation by more than three years; and

21 (3) Any offense based upon an intentional and willful fraudulent claim of child support
22 arrearage to a public servant in the performance of his or her duties within one year after
23 discovery of the offense, but in no case shall this provision extend the period of limitation by
24 more than three years.

25 4. An offense is committed either when every element occurs, or, if a legislative purpose
26 to prohibit a continuing course of conduct plainly appears, at the time when the course of
27 conduct or the defendant's complicity therein is terminated. Time starts to run on the day after
28 the offense is committed.

29 5. A prosecution is commenced either when an indictment is found or an information
30 filed.

31 6. The period of limitation does not run:

32 (1) During any time when the accused is absent from the state, but in no case shall this
33 provision extend the period of limitation otherwise applicable by more than three years; or

34 (2) During any time when the accused is concealing himself **or herself** from justice
35 either within or without this state; or

36 (3) During any time when a prosecution against the accused for the offense is pending
37 in this state; or

38 (4) During any time when the accused is found to lack mental fitness to proceed pursuant
39 to section 552.020, RSMo.

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;

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 **such person's** release without guard and without condition that [he] **such person** return to
17 confinement;

18 (b) A person is not in confinement if:

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

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

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

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

28 (b) It is given by a person who by reason of youth, mental disease or defect, or

29 intoxication, is manifestly unable or known by the actor to be unable to make a reasonable
30 judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

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

32 (6) "Criminal negligence" has the meaning specified in section 562.016, RSMo;

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

35 (8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first
36 degree, forcible rape, forcible sodomy, kidnapping, murder in the second degree [and], robbery
37 in the first degree, **statutory rape in the first degree when the victim is a child less than**
38 **twelve years of age at the time of the commission of the act giving rise to the offense,**
39 **statutory sodomy 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 and abuse of a child as set**
41 **forth in subdivision (2) of subsection 3 of section 568.060, RSMo;**

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

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

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

49 (12) "Forcible compulsion" means either:

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

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

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

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

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

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

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

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

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

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

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

72 (22) "Possess" or "possessed" means having actual or constructive possession of an
73 object with knowledge of its presence. A person has actual possession if such person has the
74 object on his or her person or within easy reach and convenient control. A person has
75 constructive possession if such person has the power and the intention at a given time to exercise
76 dominion or control over the object either directly or through another person or persons.
77 Possession may also be sole or joint. If one person alone has possession of an object, possession
78 is sole. If two or more persons share possession of an object, possession is joint;

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

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

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

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

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

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

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

99 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the
100 breast of any female person, or any such touching through the clothing, for the purpose of

101 arousing or gratifying sexual desire of any person;

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

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

559.125. 1. The clerk of the court shall keep in a permanent file all applications for
2 probation or parole by the court, and shall keep in such manner as may be prescribed by the court
3 complete and full records of all presentence investigations requested, probations or paroles
4 granted, revoked or terminated and all discharges from probations or paroles. All court orders
5 relating to any presentence investigation requested and probation or parole granted under the
6 provisions of this chapter and sections 558.011 and 558.026, RSMo, shall be kept in a like
7 manner, and, if the defendant subject to any such order is subject to an investigation or is under
8 the supervision of the state board of probation and parole, a copy of the order shall be sent to the
9 board. In any county where a parole board ceases to exist, the clerk of the court shall preserve
10 the records of that board.

11 2. Information and data obtained by a probation or parole officer shall be privileged
12 information and shall not be receivable in any court. Such information shall not be disclosed
13 directly or indirectly to anyone other than the members of a parole board and the judge entitled
14 to receive reports, except the court or the board may in its discretion permit the inspection of the
15 report, or parts of such report, by the defendant, or offender or his **or her** attorney, or other
16 person having a proper interest therein. **However, notwithstanding any provision of law to**
17 **the contrary, information or data received by a probation or parole officer from an**
18 **individual who is on probation or parole as defined in section 217.650, RSMo, which**
19 **relates to future contemplated crimes shall not be privileged information pursuant to this**
20 **section and shall be receivable in any court with jurisdiction over such criminal acts. A**
21 **probation or parole officer shall inform an individual who is on probation or parole, as**
22 **defined in section 217.650, RSMo, that any information obtained by the probation or**
23 **parole officer which relates to future contemplated crimes shall not be privileged**
24 **information pursuant to this section.**

25 3. The provisions of subsection 2 of this section notwithstanding, the presentence
26 investigation report shall be made available to the state and all information and data obtained in
27 connection with preparation of the presentence investigation report may be made available to the
28 state at the discretion of the court upon a showing that the receipt of the information and data is
29 in the best interest of the state.

566.067. 1. A person commits the crime of child molestation in the first degree if he or
2 she subjects another person who is less than fourteen years of age to sexual contact.

3 2. Child molestation in the first degree is a class B felony unless the actor has previously

4 **pleaded guilty to or has been convicted of an offense [under] pursuant to this chapter or has**
5 **pleaded guilty to or been convicted of an offense in another state or jurisdiction which**
6 **would have constituted an offense pursuant to this chapter if it had been committed in this**
7 **state,** or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon
8 or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or
9 ceremony, in which case the crime is a class A felony.

566.068. 1. A person **over twenty-one years of age** commits the crime of child
2 molestation in the second degree if he or she subjects another person who is less than [seventeen]
3 **sixteen** years of age to sexual contact.

4 2. Child molestation in the second degree is a class [A misdemeanor] **D felony** unless
5 the actor has previously **pleaded guilty to or been convicted of an offense [under] pursuant to**
6 **this chapter or has pleaded guilty to or been convicted of an offense in another state or**
7 **jurisdiction which would have constituted an offense pursuant to this chapter if it had been**
8 **committed in this state,** or in the course thereof the actor inflicts serious physical injury on any
9 person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense
10 is committed as part of a ritual or ceremony, in which case the crime is a class [D] C felony.

566.069. 1. A person commits the crime of child molestation in the third degree if
2 **such person subjects another person who is less than thirteen years of age to conduct which**
3 **would constitute sexual contact except that the touching occurs through clothing.**

4 2. Child molestation in the third degree is a class D felony unless the actor has
5 previously **pleaded guilty to or been convicted of an offense pursuant to this chapter or had**
6 **pleaded guilty to or been convicted of an offense in another state or jurisdiction which**
7 **would have constituted an offense pursuant to this chapter if it had been committed in this**
8 **state, or in the course thereof the actor inflicts serious physical injury, displays a deadly**
9 **weapon or a dangerous instrument in a threatening manner, or the offense is committed**
10 **as part of a ritual or ceremony in which case the crime is a class C felony.**

11 3. A person over twenty-one years of age commits the crime of child molestation in
12 the fourth degree if such person subjects another person who is less than sixteen years of
13 age to conduct which would constitute sexual contact except that the touching occurs
14 through clothing.

15 4. Child molestation in the fourth degree is a class A misdemeanor unless the actor
16 has previously **pleaded guilty to or been convicted of an offense pursuant to this chapter**
17 **or had pleaded guilty to or been convicted of an offense in another state or jurisdiction**
18 **which would have constituted an offense pursuant to this chapter if it had been committed**
19 **in this state, or in the course thereof the actor inflicts serious physical injury, displays a**
20 **deadly weapon or a dangerous instrument in a threatening manner, or the offense is**

21 **committed as part of a ritual or ceremony in which case the crime is a class D felony.**

2 566.083. 1. A person commits the crime of sexual misconduct involving a child if the
3 person:

4 (1) Knowingly exposes the person's genitals to a child less than fourteen years of age in
5 a manner that would cause a reasonable adult to believe that the conduct is likely to cause affront
6 or alarm to a child less than fourteen years of age;

7 (2) Knowingly exposes the person's genitals to a child less than fourteen years of age for
8 the purpose of arousing or gratifying the sexual desire of any person, including the child; or

9 (3) Coerces a child less than fourteen years of age to expose the child's genitals for the
10 purpose of arousing or gratifying the sexual desire of any person, including the child.

11 2. As used in this section, the term "sexual act" means any of the following, whether
12 performed or engaged in either with any other person or alone: sexual or anal intercourse,
13 masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual
14 activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or
15 gratification of any individual who may view such depiction.

16 3. Violation of this section is a class D felony[; except that the] **unless the actor has**
17 **previously pleaded guilty to or been convicted of an offense pursuant to this chapter or the**
18 **actor has previously pleaded guilty to or been convicted of an offense in another state or**
19 **jurisdiction which would constitute an offense pursuant to this chapter if it had been**
20 **committed in this state in which case it is a class C felony. A second or any subsequent**
violation of [this section is] **this chapter makes this offense** a class C felony.

2 566.090. 1. A person commits the crime of sexual misconduct in the first degree if he
3 has deviate sexual intercourse with another person of the same sex or he purposely subjects
4 another person to sexual contact or engages in conduct which would constitute sexual contact
5 except that the touching occurs through the clothing without that person's consent.

6 2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has
7 previously **pleaded guilty to or been convicted of an offense [under] pursuant to this chapter**
8 **or the actor has previously pleaded guilty to or been convicted of an offense against the**
9 **laws of another state or jurisdiction which would constitute an offense pursuant to this**
10 **chapter if it had been committed in this state, or unless in the course thereof the actor displays**
11 a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or
ceremony, in which case it is a class D felony.

2 566.093. 1. A person commits the crime of sexual misconduct in the second degree if
3 [he] **such person**:

4 (1) Exposes his **or her** genitals under circumstances in which [he] **such person** knows
that his **or her** conduct is likely to cause affront or alarm; or

5 (2) Has sexual contact in the presence of a third person or persons under circumstances
6 in which [he] **such person** knows that such conduct is likely to cause affront or alarm.

7 2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has
8 previously **pleaded guilty to or** been convicted of an offense [under] **pursuant to** this chapter
9 **or has pleaded guilty to or been convicted of an offense in another state or jurisdiction**
10 **which would constitute an offense pursuant to this chapter if it had been committed in this**
11 **state**, in which case it is a class A misdemeanor.

566.140. Any person who has pleaded guilty to or been found guilty of violating the
2 provisions of this chapter, and is granted a suspended imposition or execution of sentence or
3 placed under the supervision of the board of probation and parole shall be required to participate
4 **in and successfully complete** a program of treatment, education and rehabilitation designed for
5 perpetrators of sexual offenses. **Any person participating in such a program shall follow all**
6 **directives of the program treatment provider.** Persons required to attend a program pursuant
7 to this section may be charged a reasonable fee to cover the costs of such program.

566.141. Any person who is convicted of or pleads guilty or nolo contendere to any
2 sexual offense involving a child shall be required as a condition of probation or parole to be
3 involved in **and successfully complete** an appropriate treatment program.

632.480. As used in sections 632.480 to 632.513, the following terms mean:

2 (1) "Agency with jurisdiction", the department of corrections or the department of mental
3 health;

4 (2) "Mental abnormality", a congenital or acquired condition affecting the emotional or
5 volitional capacity which predisposes the person to commit sexually violent offenses in a degree
6 constituting such person a menace to the health and safety of others;

7 (3) "Predatory", acts directed towards strangers or individuals with whom relationships
8 have been established or promoted [for the primary purpose of victimization];

9 (4) "Sexually violent offense", the felonies of forcible rape, rape, statutory rape in the
10 first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to
11 commit any of the preceding crimes, or child molestation in the first or second degree, sexual
12 abuse, sexual assault, deviate sexual assault, or the act of abuse of a child as defined in
13 subdivision (1) of subsection 1 of section 568.060, RSMo, which involves sexual contact, and
14 as defined in subdivision (2) of subsection 1 of section 568.060, RSMo;

15 (5) "Sexually violent predator", any person who suffers from a mental abnormality which
16 makes the person more likely than not to engage in predatory acts of sexual violence if not
17 confined in a secure facility and who:

18 (a) Has pled guilty or been found guilty, or been found not guilty by reason of mental
19 disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense; or

20 (b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and
21 statutes in effect before August 13, 1980.

650.055. 1. Every individual convicted in a Missouri circuit court, of a felony, defined
2 as a violent offense [under] **pursuant to** chapter 565, RSMo, or as a sex offense [under]
3 **pursuant to** chapter 566, RSMo, excluding sections 566.010 and 566.020, RSMo, **or pursuant**
4 **to section 568.020, RSMo, subdivision (2) of subsection 1 of section 568.045, RSMo,**
5 **subdivision (2) of subsection 1 of section 568.060, or section 568.080 or 568.090, RSMo,**
6 **section 569.020, 569.025, 569.030, 569.160 or 569.170, RSMo,** shall have a blood or
7 scientifically accepted biological sample collected for purposes of DNA profiling analysis:

8 (1) Upon entering the department of correction's reception and diagnostic centers; or

9 (2) Before release from a county jail or detention facility; or

10 (3) If such individual is under the jurisdiction of the department of corrections on or after
11 August 28, 1996. Such jurisdiction includes persons currently incarcerated, persons on
12 probation, as defined in section 217.650, RSMo, and on parole, as also defined in section
13 217.650, RSMo.

14 2. The Missouri state highway patrol and department of corrections shall be responsible
15 for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to
16 this section shall be required to provide such sample, without the right of refusal, at a collection
17 site designated by the Missouri state highway patrol and the department of corrections.
18 Authorized personnel collecting or assisting in the collection of samples shall not be liable in any
19 civil or criminal action when the act is performed in a reasonable manner. Such force may be
20 used as necessary to the effectual carrying out and application of such processes and operations.
21 The enforcement of these provisions by the authorities in charge of state correctional institutions
22 and others having custody of those convicted of the felony which shall not be set aside or
23 reversed, is hereby made mandatory.

24 3. The procedure and rules for the collection, analysis, storage, expungement, use of
25 DNA database records and privacy concerns shall not conflict with procedures and rules
26 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
27 data bank system.

28 4. Unauthorized uses or dissemination of individually identifiable DNA information in
29 a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

30 5. Implementation of section 650.050 and this section shall be subject to future
31 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
32 Investigation's DNA data bank system.

Section B. Because immediate action is necessary to ensure the prosecution of serious
2 crimes in this state section 556.036 of section A of this act is deemed necessary for the

3 immediate preservation of the public health, welfare, peace and safety, and is hereby declared
4 to be an emergency act within the meaning of the constitution, and section 556.036 of section
5 A of this act shall be in full force and effect upon its passage and approval.