

SECOND REGULAR SESSION

HOUSE BILL NO. 2056

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOSMER, KREIDER AND MARSH (Co-sponsors).

Read 1st time February 26, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4745L.011

AN ACT

To repeal sections 556.061, 566.030, and 566.060, RSMo, and to enact in lieu thereof three new sections relating to felony sexual offenses, with penalty provisions.

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

Section A. Sections 556.061, 566.030, and 566.060, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 556.061, 566.030, and 566.060, to read as follows: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

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

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, forcible rape, forcible sodomy, kidnapping, murder in the second degree [and], robbery
36 in the first degree, **or an attempt to commit any of the preceding felonies;**

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

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

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

44 (12) "Forcible compulsion" means either:

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

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

48 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
49 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
50 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an
51 act committed upon such person if he or she became unconscious, unable to appraise the nature

52 of such person's conduct or unable to communicate unwillingness to an act, after consenting to
53 the act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

566.030. 1. A person commits the crime of forcible rape if such person has sexual
2 intercourse with another person by the use of forcible compulsion. Forcible compulsion includes
3 the use of a substance administered without a victim's knowledge or consent which renders the
4 victim physically or mentally impaired so as to be incapable of making an informed consent to
5 sexual intercourse.

6 2. Forcible rape or an attempt to commit forcible rape is a felony for which the
7 authorized term of imprisonment is life imprisonment or a term of years not less than [five] **ten**
8 years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly
9 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual
10 intercourse or deviate sexual intercourse with more than one person, in which case the authorized
11 term of imprisonment is life imprisonment or a term of years not less than [ten] **fifteen** years.

566.060. 1. A person commits the crime of forcible sodomy if such person has deviate
2 sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion
3 includes the use of a substance administered without a victim's knowledge or consent which
4 renders the victim physically or mentally impaired so as to be incapable of making an informed
5 consent to sexual intercourse.

6 2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the
7 authorized term of imprisonment is life imprisonment or a term of years not less than [five] **ten**
8 years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly
9 weapon or dangerous instrument in a threatening manner or subjects the victim to sexual
10 intercourse or deviate sexual intercourse with more than one person, in which case the authorized
11 term of imprisonment is life imprisonment or a term of years not less than [ten] **fifteen** years.