

FIRST REGULAR SESSION

HOUSE BILL NO. 436

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZWEIFEL (Sponsor), CORCORAN, MEADOWS, HOSKINS, SPRENG, JOLLY, VILLA, YOUNG, JOHNSON (61), DARROUGH, WHORTON, YAEGER, FRASER, BAKER (25), PAGE AND OXFORD (Co-sponsors).

Read 1st time February 2, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0913L.02I

AN ACT

To amend chapter 565, RSMo, by adding thereto eight new sections relating to the crime of abuse of a person receiving mental health services, with penalty provisions.

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

Section A. Chapter 565, RSMo, is amended by adding thereto eight new sections, to be
2 known as sections 565.204, 565.205, 565.207, 565.209, 565.211, 565.213, 565.215, and 565.217,
3 to read as follows:

**565.204. For purposes of sections 565.204 to 565.217, "person receiving mental
2 health services" means any person with a diagnosed mental defect, disorder, disease, or
3 condition for which such person is receiving inpatient or outpatient treatment and/or
4 services in a mental health facility or in an outpatient or office setting.**

**565.205. 1. A person commits the crime of abuse of a person receiving mental
2 health services in the first degree if such person attempts to kill, knowingly causes or
3 attempts to cause serious physical injury, as defined in section 565.002, to any person
4 receiving mental health services.**

**5 2. Abuse of a person receiving mental health services in the first degree is a class
6 A felony.**

**565.207. 1. A person commits the crime of abuse of a person receiving mental
2 health services in the second degree if such person:**

3 (1) Knowingly causes, attempts to cause physical injury to any person receiving

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.

4 mental health services by means of a deadly weapon or dangerous instrument; or
 5 (2) Recklessly or knowingly causes serious physical injury, as defined in section
 6 565.002, to a person receiving mental health services.

7 2. Abuse of a person receiving mental health services in the second degree is a class
 8 B felony.

565.209. 1. A person commits the crime of abuse of a person receiving mental
 2 health services in the third degree if such person:

3 (1) Knowingly causes or attempts to cause physical contact with any person
 4 receiving mental health services knowing the other person will regard the contact as
 5 harmful or provocative; or

6 (2) Knowingly engages in conduct involving more than one occasion that causes
 7 grave emotional distress to a person receiving mental health services. The course of
 8 conduct shall be such that a reasonable person would have cause to believe that such
 9 conduct would result in a person receiving mental health services to suffer grave emotional
 10 distress; or

11 (3) Purposely or knowingly places a person receiving mental health services in
 12 apprehension of immediate physical injury; or

13 (4) Intentionally fails to provide care, goods, or services to a person receiving
 14 mental health services in a manner not consistent with an acceptable course of treatment
 15 for such person. The cause of the conduct shall be such that a reasonable person would
 16 have cause to believe that such conduct is not part of an acceptable course of treatment and
 17 would cause a person receiving mental health services to suffer physical or emotional
 18 distress; or

19 (5) Knowingly acts or knowingly fails to act in a manner which results in a grave
 20 risk to the life, body, or health of a person receiving mental health services.

21 2. Abuse of a person receiving mental health services in the third degree is a class
 22 A misdemeanor.

565.211. The department of health and senior services shall investigate incidents
 2 and reports of abuse of persons receiving mental health services and, upon substantiation
 3 of the report of abuse of a person receiving mental health services, shall promptly report
 4 the incident to the appropriate law enforcement agency and prosecutor and shall
 5 determine whether protective services are required. If the department is unable to
 6 substantiate whether abuse occurred due to the failure of the operator or any of the
 7 operator's agents or employees to cooperate with the investigation, the incident shall be
 8 promptly reported to appropriate law enforcement agencies.

565.213. 1. When any adult day care worker; chiropractor; Christian Science

2 practitioner; coroner; dentist; embalmer; employee of the departments of social services,
3 mental health, or health and senior services; employee of a local area agency on aging or
4 an organized area agency on aging program; funeral director; home health agency or home
5 health agency employee; hospital and clinic personnel engaged in examination, care, or
6 treatment of persons; in-home services owner, provider, operator, or employee; law
7 enforcement officer; long-term care facility administrator or employee; medical examiner;
8 medical resident or intern; mental health professional; minister; nurse; nurse practitioner;
9 optometrist; other health practitioner; peace officer; pharmacist; physical therapist;
10 physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social
11 worker; or other person with responsibility for the care of a person receiving mental health
12 services has reasonable cause to suspect that such a person has been subjected to abuse or
13 neglect or observes such a person being subjected to conditions or circumstances which
14 would reasonably result in abuse or neglect, he or she shall immediately report or cause
15 a report to be made to the department of mental health. Any other person who becomes
16 aware of circumstances which may reasonably be expected to be the result of or result in
17 abuse or neglect may report to the department.

18 2. Any person who knowingly fails to make a report as required in subsection 1 of
19 this section is guilty of a class A misdemeanor.

20 3. Any person who knowingly files a false report of abuse of a person receiving
21 mental health services is guilty of a class A misdemeanor.

22 4. Every person who has been previously convicted of or pled guilty to making a
23 false report to the department and who is subsequently convicted of making a false report
24 under subsection 3 of this section is guilty of a class D felony.

25 5. Evidence of prior convictions of false reporting shall be heard by the court, out
26 of the hearing of the jury, prior to the submission of the case to the jury, and the court
27 shall determine the existence of the prior convictions.

 565.215. Any person, official or institution complying with the provisions of section
2 565.213 in the making of a report, or in cooperating with the department in any of its
3 activities pursuant to sections 565.211 and 565.213, except any person, official or institution
4 violating section 565.205, 565.207 or 565.209, shall be immune from any civil or criminal
5 liability for making such a report, or in cooperating with the department, unless such
6 person acted negligently, recklessly, in bad faith, or with malicious purpose.

 565.217. 1. Any owner or employee of a mental health facility, as defined in section
2 632.005, RSMo, or an Alzheimer's special unit or program, as defined in section 198.505,
3 RSMo, who:

4 (1) Has sexual contact, as defined in section 566.010, RSMo, with a patient is guilty

5 of a class B misdemeanor. Any person who commits a second or subsequent violation of
6 this subdivision is guilty of a class D felony; or

7 (2) Has sexual intercourse or deviate sexual intercourse, as defined in section
8 566.010, RSMo, with a patient is guilty of a class A misdemeanor. Any person who
9 commits a second or subsequent violation of this subdivision is guilty of a class C felony.

10 2. The provisions of this section shall not apply to an owner or employee of a mental
11 health facility or Alzheimer's special unit or program who engages in sexual conduct, as
12 defined in section 566.010, RSMo, with a patient to whom the owner or employee is
13 married.

14 3. Consent of the victim is not a defense to a prosecution under this section.