

HCS HB 589 -- SEXUAL OFFENSES AND REGISTRATION, DOMESTIC VIOLENCE
AND CHILD ABUSE (Hinson)

COMMITTEE OF ORIGIN: Committee on Crime Prevention and Public
Safety

SEXUAL OFFENDER REGISTRY

This substitute changes the laws regarding sexual offender
registration and classification. In its main provisions, the
substitute:

(1) Requires the State Highway Patrol, and allows the sheriff to
maintain a website on the Internet that is public and includes only
the names and information for sexual offenders who are unclassified
or Tier III offenders. The names and information of Offenders
Pending Classification, Tier I, and Tier II offenders cannot be
included on the public website, but the patrol must, or the sheriff
may, maintain a separate registry containing all offenders to which
only law enforcement agencies will have access (Sections 43.650.1
and 589.402.1);

(2) Removes the temporary, work, and school addresses of the
offender and the physical description of the offender's vehicles
from the information that the State Highway Patrol must provide and
the sheriff may provide on the sexual offender website. The
substitute specifies that the photograph posted on the website must
be current and taken by the sheriff registering the offender and
the offender's classification level, if the offender is a Tier III
offender, and the status of the offender's term of incarceration,
probation, or parole must be included on the State Highway Patrol's
website and may be included on the sheriff's website (Sections
43.650.4 and 589.402.2);

(3) Excludes from the website the names and information of
juveniles; witnesses afforded federal protection; and offenders
committing felonious restraint or kidnapping of a nonsexual nature
when the victim is less than 18 years of age and there is no other
offense for which the offender is required to register, the
offender is not a repeat offender of either crime, and no sexual
conduct, attempted sexual conduct, or conspiracy to commit sexual
conduct occurred during the offense (Sections 43.650.5 and
589.402.5);

(4) Specifies that an offender is required to register with the
sheriff in the county he or she resides within five business days
of adjudication, release from incarceration, release from
commitment to the Division of Youth Services within the Department
of Social Services or the Department of Mental Health, or placement

upon probation (Section 589.400.2);

(5) Specifies that the registration requirement is a lifetime requirement, unless all offenses requiring registration are reversed, vacated, or set aside; the offender is pardoned of the offenses in this state or, if not in this state, pardoned in another jurisdiction and the pardon explicitly states that the person is relieved of his or her duty to register; the offender is exempt or is no longer required to register; or the court orders the removal of the offender (Section 589.400.3);

(6) Allows the sheriff to charge the offender a registration fee of up to \$25, a fee of up to \$5 for designating an offender as an Offender Pending Classification, a fee of \$5 for each change in an offender's registration information, and a \$25 reporting fee each time an offender reports in-person (Sections 589.400.4 and 589.400.5);

(7) Exempts an offender from registration and removes an offender currently registered if he or she has been convicted of:

(a) Sexual misconduct in the second and third degree;

(b) Promoting obscenity in the first and second degree;

(c) Furnishing pornographic materials to minors;

(d) Public display of explicit sexual material;

(e) Coercing acceptance of obscene material;

(f) Nonsexual child abuse;

(g) Felonious restraint or kidnapping of a nonsexual nature when the victim was a child and the offender was the parent or guardian; and

(h) A sexual offense involving sexual conduct where no force or threat of force was directed toward the victim and the victim was an adult, unless under the custodial authority of the offender or the victim was 18 years of age or younger and the offender was no more than five years older than the victim at the time of the offense (Sections 589.400.6 and 589.400.7);

(8) Changes the victim's age from 13 to 12 years of age or older for an offender to be eligible after two years to file a petition for removal from the registry. Currently, an offender who was 19 years of age or younger at the time of the offense and the victim was 13 years of age or older at the time of the offense and no

physical force or threat of physical force was used in the commission of the offense, may file a petition after two years for removal from the registry (Section 589.400.8);

(9) Specifies that an offender who must register as a sexual offender and fails to register, within five business days, or refuses to complete and sign the registration form will commit the offense of failure to register (Sections 589.400.12 and 589.407.2);

(10) Specifies that an offender not currently registered due to being adjudicated of a sexual offense prior to the enactment of the registry will only be required to register for his or her original offense if he or she is currently incarcerated or under the supervision of the Department of Corrections for a sexual offense (Section 589.400.13);

(11) Allows the sheriff to give notice to any school or child care facility that an unclassified or Tier I offender is residing, working, or attending school within a five mile radius (Section 589.402.4);

(12) Requires an offender who must register as a sexual offender and is paroled, discharged, or released from any Department of Corrections' facility, mental health institution, or private jail or facility to be informed by the official in charge of the offender's possible duty to register. The official must complete the notification of duty to register form approved by the State Highway Patrol at least seven days prior to release and forward the notification form and the registration form, within three business days of release, to the State Highway Patrol. If the offender resides or plans to reside in the state, the official must also, within three business days, forward a copy of the forms to the sheriff of the county where the offender expects to reside upon release. If the offender does not reside or plan to reside in this state, the State Highway Patrol must, within three business days of receipt of the notification form, forward a copy of the forms to the chief law enforcement official with jurisdiction over the area in the state the offender plans to reside (Section 589.403.1);

(13) Requires the sheriff, for an offender residing or planning to reside in the state, upon receipt of an offender's registration form from a correctional facility or mental health institution to enter the offender's information into the Missouri Uniform Law Enforcement Systems (MULES) and if applicable, the county sexual offender registry. If the offender does not plan to reside in this state, the State Highway Patrol must, within three business days of receipt of the offender's registration form from a correctional facility or mental health institution, enter the offender's information into MULES and on its sexual offender registry (Section

589.403.2);

(14) Requires an offender who must register as a sexual offender and is released on probation, discharged upon payment of a fine, or released after confinement in a county jail, to be informed by the court of the offender's possible duty to register. The court must make it a condition of probation that the offender report, within five business days, to the sheriff where the offender expects to reside to complete the initial registration. If the offender is not placed on probation the court must complete the initial notification of duty to register form approved by the State Judicial Records Committee and the State Highway Patrol and forward the notification form, within three business days, to the State Highway Patrol. If the offender resides in this state, the court must also, within three business days, forward a copy of the notification form to the sheriff of the county where the offender resides. If the offender does not reside in this state, the court must order the offender to proceed, within five business days, to the chief law enforcement official with jurisdiction over the area in the state the offender resides or plans to reside and must order the State Highway Patrol to forward a copy of the notification form to the appropriate official in that state (Section 589.405);

(15) Specifies the information that must be included in the offender registration form developed by the State Highway Patrol (Section 589.407.1);

(16) Requires the fingerprints and palm prints, a current photograph of the offender taken by the registering official, and a DNA sample from the offender to be included with the registration form and changes the required documentation to prove the accuracy of the vehicle information on the form by requiring proof only for vehicles titled in the offender's name (Sections 589.407.3 and 589.407.4);

(17) Requires the State Highway Patrol to maintain the registration information in digitized form and upon receipt of any changes to an offender's registration information to immediately notify all jurisdictions in which the offender is registered or is required to register (Sections 589.407.5 and 589.407.6);

(18) Requires the offender to be responsible for reviewing his or her existing registration information for accuracy at every regular in-person appearance and provide proof of any inaccurate information found. The sheriff must, within three business days of receipt of proof, correct the inaccuracy on its law enforcement registry and public website, enter the corrections into MULES, and notify the State Highway Patrol of the change. The State Highway Patrol must, within three business days of receiving notification,

correct the inaccuracy on its law enforcement registry and public website (Section 589.407.7);

(19) Specifies that the signed offender registration form will serve as proof that the offender understands his or her duty to register as a sexual offender and a statement to this effect must be included on the form (Section 589.407.8);

(20) Requires the sheriff, within three business days, to enter the registration and classification information into MULES where it is available to members of the criminal justice system and other entities as provided by law upon inquiry. The sheriff must also forward the completed forms to the State Highway Patrol within three business days, and the State Highway Patrol must check the information contained in the forms against the information entered into MULES for accuracy, make any necessary corrections, and file the forms. If corrections are made, the State Highway Patrol must, within three business days, notify the sheriff and the sheriff must, within three business days of receipt of the corrections, update their local law enforcement registry and public website (Section 589.410);

(21) Requires an offender who must register to report any change, within five business days, in specified information to the sheriff where he or she resides. The sheriff must, within three business days of receipt of a change, enter it into the local law enforcement registry, the public website, and MULES and notify the State Highway Patrol. The State Highway Patrol must, within three business days of notification of the change, enter the change on its law enforcement registry and public website. If the change was to an address in a different county in the state, the offender must also, within five business days, report to the sheriff of the county with jurisdiction over the new address. If the change was to an address in a different state, the offender must, within five business days, report the change to the chief law enforcement official of the area in the new state with jurisdiction over the new address, and the State Highway Patrol must inform the responsible official, within three business days, of receipt of the change (Sections 589.414.1 and 589.414.2);

(22) Requires all offenders who work or attend school or training in another state to report in-person to the chief law enforcement officer of the area in the state where they work or attend school or training and register in that state (Section 589.414.3);

(23) Requires all offenders to report in-person to the sheriff of the county where he or she resides to verify the information contained in his or her registration and to inform the sheriff of any changes. An unclassified offender, a Tier III offender, and

any person designated as an Offender Pending Classification must report on a quarterly basis; a Tier II offender must report on a semi-annual basis; and a Tier I offender must report on an annual basis. All offenders must allow the sheriff to take a current photograph each year in the month of his or her birth (Sections 589.414.4 and 589.414.5);

(24) Allows a person on the registry to file a petition in the circuit court of the county in which the offense requiring registration was adjudicated for removal from the registry, unless the offense was adjudicated outside of the state. In that case, the person must file the petition in the circuit court of the county in which he or she resides. The court must dismiss the petition if the offender has not been a resident of the state for at least five years, has not filed specified documents prior to the hearing date or if the offender is classified as:

(a) A Tier III offender and at least 25 years have not lapsed since the date he or she registered;

(b) A Tier II offender and at least 10 years have not lapsed since the date he or she registered; or

(c) A Tier I or an unclassified offender and at least five years have not lapsed since the date he or she registered (Sections 589.416.1 - 589.416.4);

(25) Specifies the information that must be included in the petition for removal (Section 589.416.5);

(26) Requires the court to deny the petition for removal if it finds the offender is a high risk to reoffend (Section 589.416.6);

(27) Specifies how the court proceedings for the removal petition will be conducted. The substitute gives the prosecuting or circuit attorney in the court where the petition is filed the opportunity to present evidence in opposition to the facts alleged in the petition and requires access to all applicable records concerning the offender. The prosecuting or circuit attorney is required to make a reasonable effort to notify the victim of the crime requiring registration of any hearings associated with the petition (Sections 589.416.7 - 589.416.11);

(28) Requires the court, unless the petition for removal is dismissed or denied, to enter an order directing the offender's removal from the registry and any corresponding law enforcement registry or website within three business days, unless the court finds that the offender:

(a) Has been adjudicated or has charges pending for the offense of failure to register;

(b) Has been adjudicated of any additional offense that would require registration occurring after the date the offender initially registered;

(c) Has charges pending for any offense requiring registration;

(d) Has not successfully completed any required periods of supervised release, probation, or parole; or

(e) Has not successfully completed all appropriate sexual offender treatment, including that ordered by the court or Department of Corrections (Sections 589.416.12 and 589.416.16);

(29) Prohibits, after a petition is denied, the filing of a successive petition for two years unless the denial is based on a subsequent conviction of a sex offense or failure to register, in which case no successive petition can be filed. If the petition is denied based solely on pending charges and those charges are subsequently dismissed or the offender is acquitted, a new petition may be filed at any time after the dismissal or acquittal (Sections 589.416.14 and 589.416.15);

(30) Allows an unclassified offender to file a joint petition for removal or classification. The joint petition must meet all the requirements for a petition for removal and a petition for classification, and the offender must give notice to the prosecuting or circuit attorney in the court in which the petition is filed of the offender's intent to proceed immediately to a hearing on classification if the petition for removal is dismissed or denied (Section 589.418.1);

(31) Specifies that any offender who is registered as of December 31, 2013, will remain an unclassified offender unless he or she files a petition for classification with the court. Requires that an offender who registered on or after January 1, 2014, is required to be classified and automatically designated on a Sex Offender Classification Form by the registering law enforcement official as an Offender Pending Classification (Sections 589.440.1 and 589.440.2);

(32) Specifies that any unclassified offender or Offender Pending Classification may be classified by the court as a Tier III offender, one which the court determines to be a high risk to reoffend; a Tier II offender, a moderate risk to reoffend; or a Tier I offender, a low risk to reoffend (Sections 589.440.3 - 589.440.6);

(33) Allows any unclassified offender to file a petition for classification with the court in the county where the offense requiring registration was adjudicated at any time, unless the person was adjudicated outside of the state. In that case, he or she must file the petition in the circuit court in the county in which he or she resides. The petition must include a sex offender risk assessment report completed by a mental health provider approved by the Department of Mental Health. The offender must mail a copy of the petition for classification and risk assessment report to the department and file a document with the court prior to the hearing certifying the mailing, or the petition must be dismissed by the court (Sections 589.440.7, 589.446.1 and 589.446.3);

(34) Allows an Offender Pending Classification to file a petition for classification for up to six months from the date of his or her designation as an Offender Pending Classification. The petition must include a sex offender risk assessment report completed by a mental health provider approved by the department, and the offender must, within 10 business days of filing the petition, deliver to the department a copy of the petition for classification and the risk assessment report. If the offender fails to file a petition for classification and the risk assessment report within six months or fails to deliver a copy of the petition and risk assessment report to the department within 10 days, the department must automatically classify the offender as a Tier III offender and must, within three business days, mail a copy of the Sex Offender Classification Form and a Tier III Offender's Packet to the offender and forward a copy of the classification form to the court in which the petition should have been filed and to the sheriff in the county where the offender resides (Sections 589.440.8 - 589.440.9 and 589.446.2);

(35) Requires the sheriff, within three business days of receipt of the Sex Offender Classification Form, to enter the offender's tier level on the local law enforcement registry, their local public website, and MULES. The sheriff must forward the classification form to the State Highway Patrol within three days. The State Highway Patrol must enter the offender's tier level on the sex offender registry and its public website within three days (Sections 589.440.10 and 589.440.11);

(36) Requires the court to hold a hearing on a petition for classification within 30 days of the petition filing. The court must classify the offender as a Tier I, Tier II, or Tier III offender and designate it on the classification form (Section 589.440.13);

(37) Allows an offender classified as a Tier II or Tier III offender to file a petition for reclassification in the court of the county in which the offense requiring registration was adjudicated, unless the offense was adjudicated outside of the state. In that case, the petition must be filed in the county in which he or she resides. The petition must include a risk assessment report completed by a mental health provider approved by the department, and the offender must, within 10 days of filing the petition, deliver a copy of the petition for reclassification and the risk assessment report to the department. If the offender fails to meet these requirements, the court must dismiss the petition for reclassification. Otherwise, the court must hold a hearing within 30 days of the petition filing to classify the offender as a Tier I, Tier II, or Tier III offender. The court must designate the classification on the classification form (Sections 589.440.14 - 589.440.17 and 589.448.1 - 589.448.3);

(38) Requires the State Highway Patrol to develop an Unclassified Offender Packet for the department's use in notifying all offenders registered as sexual offenders as of December 31, 2013, of recent changes in the sexual offender registration laws, his or her new status as an unclassified offender, the possibility that he or she may have new reporting requirements, and his or her right to be classified by the court. The substitute specifies the information that must be contained in the packet (Section 589.442);

(39) Specifies that the sheriff, when registering a sexual offender, must designate the offender as an "Offender Pending Classification" on the classification form and give a copy of the form and the Offender Pending Classification Packet to the offender. The sheriff must, within three business days of the date of designation, enter the offender's designation into MULES and the local sex offender registry, and forward a copy of the classification form to the State Highway Patrol and the department. The State Highway Patrol must, within three business days of receipt of the form, enter the offender's designation on the registry (Section 589.444);

(40) Specifies the information that must be included in the petition for classification and the risk assessment report (Section 589.446.4);

(41) Specifies how the court proceedings for the classification petition will be conducted. The substitute allows the prosecuting or circuit attorney to present evidence at the hearing on the petition and requires the prosecuting or circuit attorney to have access to all applicable records concerning the offender. The prosecuting or circuit attorney must make reasonable efforts to notify the victim of the crime requiring registration of any

hearings associated with the petition (Sections 589.446.5 - 589.446.10);

(42) Requires the court, unless the petition for classification is dismissed under these provisions, to hold a hearing within 30 days of the petition filing to hear evidence regarding the offender's classification. In determining the offender's classification, the court must consider the information contained in the petition, evidence offered at the hearing, and the risk assessment report and must classify an offender as a Tier III offender, one determined to be a high risk to reoffend; a Tier II offender, a moderate risk to reoffend; or a Tier I offender, a low risk to reoffend. Within three business days of classification, the court must give a copy of the completed classification form to the offender and forward a copy to the State Highway Patrol and the registering sheriff in the county where the offender resides (Sections 589.446.11 - 589.446.16);

(43) Requires the State Highway Patrol, within three business days of receipt of the classification form from the court, to update the registry and its public website. If the offender is an unclassified offender who has been classified as a Tier III offender, the State Highway Patrol must enter the classification level on the registry and website; if the offender is an unclassified offender who has been classified as a Tier I or Tier II offender, the State Highway Patrol must enter the classification level on the registry and remove the offender's name and information from the website; if the offender is an Offender Pending Classification who has been classified as a Tier III offender, the State Highway Patrol must enter the classification level on the registry and enter the offender's name, information, and classification level on the website; and if the offender is an Offender Pending Classification who has been classified as Tier I or Tier II offender, the State Highway Patrol must enter the classification level only on the registry. The substitute requires the sheriff in the county where the petition was filed and the sheriff in the county where the offender resides, within three business days of receipt of the classification form from the court, to update MULES, the local registry, and the local website, in the same manner (Sections 589.446.17 and 589.446.18);

(44) Allows an offender classified as a Tier II or Tier III offender to file a petition for reclassification. The petition will be dismissed by the court if it does not include a certificate of the offender that he or she has mailed a copy of the petition and risk assessment report to the department and the return registered mail receipt demonstrating that it was mailed (Sections 589.448.1 and 589.448.2);

(45) Specifies the information that must be included in the petition for reclassification and the risk assessment report and specifies that a person required to submit a risk assessment cannot seek to be or be assessed more than one time for each petition filed with the court (Section 589.448.3);

(46) Specifies how the court proceedings for the reclassification petition will be conducted. The substitute allows the prosecuting or circuit attorney to present evidence at the hearing on the petition and requires the prosecuting or circuit attorney to have access to all applicable records concerning the offender. The prosecuting or circuit attorney must make reasonable efforts to notify the victim of the crime requiring registration of any hearings associated with the petition (Sections 589.448.4 - 589.448.9);

(47) Requires the court, unless the petition for reclassification is dismissed under these provisions, to hold a hearing within 30 days of the petition filing to hear evidence regarding the offender's reclassification to a lower tier level. The court must consider the information contained in the petition, evidence offered at the hearing, and the risk assessment report in making its reclassification decision and must reclassify an offender if it is determined that the offender is a lower risk to reoffend than his or her current tier level. Within three business days of reclassification, the court must give a copy of the completed classification form to the offender and forward a copy to the State Highway Patrol and the registering sheriff in the county where the offender resides (Sections 589.448.10 - 589.448.16);

(48) Requires the State Highway Patrol, within three business days of receipt of the classification form from the court, to update the registry and the public website. If the offender's classification is lowered from a Tier III to a Tier I or Tier II, the State Highway Patrol must replace the classification level on the registry and remove the offender's name and information from the website or if the offender's classification is lowered from a Tier II to a Tier I, the State Highway Patrol must replace the classification level on the registry. The substitute requires the sheriff in the county where the offender resides, within three business days of receipt of the classification form from the court, to update MULES, the local registry, and the local website, in the same manner (Sections 589.448.17 and 589.448.18);

(49) Specifies the information that must be included in the Sex Offender Classification Form used to classify offenders by the State Highway Patrol, the Department of Mental Health, or the courts used to designate an offender as an Offender Pending Classification by the registering sheriff (Section 589.450);

(50) Requires the State Highway Patrol to develop a Tier III Offender's Packet for use by the Department of Mental Health when it automatically classifies an offender as a Tier III offender and an Offender Pending Classification Packet for the registering sheriff to use. The substitute specifies the information that must be contained in the packets (Sections 589.452 and 589.454);

(51) Requires the Department of Mental Health to determine the maximum fee for a sexual offender risk assessment that may be charged by a mental health provider who is included on the department-approved Sexual Offender Mental Health Providers List. The fee will cover the cost of the risk assessment, including a successfully completed sex offender risk assessment report that is required to be included with any petition to the court for classification, reclassification, or removal. The Sexual Offender Mental Health Providers List will be comprised of mental health providers that are willing to conduct risk assessments on an offender for a fee less than or equal to the maximum amount set by the department, willing to use an approved sex offender risk assessment tool, and willing to successfully complete a sex offender risk assessment report. The list must contain, if possible, mental health providers in every county, will include the contact information of each provider on the list, and must be reviewed every year by the department. The department must determine the qualifications necessary for a mental health provider to be included on the list, but at a minimum the provider must be licensed, have a minimum of two years experience in treating or assessing sex offenders, have completed a minimum of 12 hours of continuing education on performing risk assessments and using risk assessment tools, and must continue to complete 12 hours of continuing education every three years. The department must evaluate existing risk assessment tools and approve one or more of the tools for use by a mental health provider in conducting a risk assessment and completing a risk assessment report. Every year, the department must review the usefulness and accuracy of the approved risk assessment tools and may change the tools that are approved for use. The department will determine the necessary requirements for a successfully completed risk assessment report, but at a minimum the report must include a summary of an in-person interview of the offender, a copy of the risk assessment tool used and its outcome, and the provider's opinion as to the offender's risk of reoffense. No sex offender can be risk assessed by or obtain a risk assessment report from a mental health professional more than one time for each petition filed with the court and no mental health professional can risk assess or complete a risk assessment of a sex offender who has previously been risk assessed by or obtained a completed risk assessment (Sections 589.456.1 - 589.456.7); and

(52) Requires the Department of Mental Health to implement a filing system to file and track petitions for classification and the accompanying risk assessment reports to verify that each was filed within the six-month time limit and each was delivered to the department within the 10-day time limit required. The department must review all risk assessment reports it receives annually to determine if the mental health providers are successfully completing the risk assessment reports and, if not, those providers must be removed from the mental health providers list. The department may add any provider that meets the requirements and qualifications specified to the list at any time (Sections 589.456.9 - 589.456.11).

SEXUAL OFFENSES

The substitute changes the laws regarding certain sexual offenses. In its main provisions, the substitute:

(1) Renames the crime of forcible rape to rape in the first degree and specifies that a person commits the crime if he or she has sexual intercourse with an individual who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;

(2) Renames the crime of forcible sodomy to sodomy in the first degree and specifies that a person commits the offense if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;

(3) Renames the crime of sexual assault to rape in the second degree;

(4) Renames the crime of deviate sexual assault to sodomy in the second degree;

(5) Renames the crime of sexual abuse to sexual abuse in the first degree and specifies that a person commits the offense if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;

(6) Renames the crime of sexual misconduct in the second degree to sexual misconduct in the first degree;

(7) Renames the crime of sexual misconduct in the third degree to sexual misconduct in the second degree;

(8) Renames the crime of sexual misconduct to sexual abuse in the second degree;

(9) Specifies that a real estate broker's or salesperson's license must be revoked and an applicant must not be issued a license if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of rape in the first degree, rape in the second degree, sodomy in the first degree, sodomy in the second degree, or sexual abuse in the first or second degree;

(10) Specifies that a prosecution for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree may be commenced at any time;

(11) Defines the term "domestic violence", "family" and "household member" as they apply to certain information that an insurance company cannot disclose to be the same as they are in Section 455.010;

(12) Specifies that a prosecution for an unlawful sexual offense involving a person 18 years old or younger must be commenced within 30 years after the victim reaches the age of 18 unless the prosecution is for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree, in which case the prosecution may be commenced at any time;

(13) Includes being in a drug-induced state or for any other reason being manifestly unable or known by the actor to be unable to make a reasonable judgment to those who are incapable of giving consent to sexual activity; and

(14) Repeals the provision which specifies that a person is not considered incapacitated with respect to an act committed upon a person if he or she became unconscious, unable to appraise the nature of the person's conduct or unable to communicate unwillingness to an act after consenting to the act.

DOMESTIC VIOLENCE

The substitute changes the laws regarding protective orders. In its main provisions, the substitute:

(1) Specifies that a proper venue for a petition alleging domestic violence or stalking is the county in which the alleged incident of domestic violence or stalking occurred;

(2) Specifies that the laws pertaining to orders of protection

apply to both domestic violence and stalking;

(3) Expands the protection of a protective order to any person who has been subject to domestic violence. Currently, any adult who has been subject to domestic violence may seek a protective order;

(4) Requires the court to deny an ex parte order of protection and dismiss the petition request if the petitioner is not authorized to seek relief;

(5) Requires any parent or guardian served in lieu of service on a respondent less than 17 years of age to appear and bring the respondent before the court at the time and place stated in the summons;

(6) Requires notice of an ex parte or full order of protection to be served at the earliest time, and service of the notice must take priority over service in other actions, except for actions of a similar emergency nature;

(7) Gives a court the discretion to inquire of a petitioner or others in private with the judge, rather than in open court, in order to determine whether a dismissal of an order of protection must terminate on a petitioner's motion;

(8) Gives a court the discretion to enter an ex parte order of protection if the allegations in the petition would give rise to juvenile court jurisdiction because the respondent is less than 17 years of age; and

(9) Specifies that any system operated by the judiciary designed to provide public case information electronically must not post notice of a legal change in name if the petitioner is the victim of a crime which includes an act of domestic violence, the victim of child abuse, or the victim of domestic violence.

ABUSE OF A CHILD

Currently, a person commits the offense of abuse or neglect of a child if he or she knowingly causes a child less than 18 years of age to suffer physical or mental injury as a result of abuse or neglect or places the child in a situation in which he or she may suffer physical or mental injury as a result of abuse or neglect. The offense of abuse or neglect of a child is a class C felony, unless the person has previously been found guilty of the offense or the injury inflicted on the child is a serious emotional or physical injury in which case it is a class B felony. The substitute increases the penalty to a class A felony if the child dies as a result of injuries sustained from the abuse or neglect.

The definition of "dangerous felony" is revised to include the felony abuse of a child if the child dies as a result of injuries sustained from the abuse or neglect.

SEXUAL OFFENSES AGAINST A CHILD

The substitute changes the laws regarding certain sexual offenses. In its main provisions, the substitute:

(1) Repeals the requirement that the victim must be a child less than 12 years of age at the time of the commission of statutory rape in the first degree or statutory sodomy in the first degree in order for those crimes to be classified as dangerous felonies;

(2) Requires sentences for statutory rape in the first degree or an attempt to commit statutory rape in the first degree to run consecutively to other specified offenses;

(3) Specifies the authorized penalty for forcible rape or an attempt to commit forcible rape is life imprisonment or a term of at least 15 years imprisonment if the victim is a child and the defendant has pled guilty to or has been convicted of the crime of incest against the victim;

(4) Specifies the authorized penalty for statutory rape in the first degree or an attempt to commit statutory rape in the first degree is life imprisonment or a term of at least 10 years imprisonment if the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(5) Specifies that statutory rape in the second degree is a class B felony if the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(6) Specifies the authorized penalty for forcible sodomy or an attempt to commit forcible sodomy is life imprisonment or a term of at least 10 years imprisonment if the victim is a child and the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(7) Specifies the authorized penalty for statutory sodomy in the first degree or an attempt to commit statutory sodomy in the first degree is life imprisonment or a term of at least 10 years imprisonment if the defendant has pled guilty to or been convicted of incest against the victim;

(8) Specifies that statutory sodomy in the second degree is a class B felony if the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(9) Specifies that child molestation in the first degree is a class A felony if the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(10) Specifies that child molestation in the second degree is a class D felony if the defendant has pled guilty to or been convicted of the crime of incest against the victim;

(11) Specifies that sexual misconduct involving a child or attempted sexual misconduct involving a child is a class C felony if the defendant has pled guilty to or been convicted of the crime of incest against the victim; and

(12) Specifies the authorized penalty for sexual trafficking of a child is life imprisonment without eligibility for probation or parole until the defendant has served at least 25 years of the sentence if the defendant has pled guilty to or been convicted of the crime of incest against the victim.