

FIRST REGULAR SESSION

HOUSE BILL NO. 167

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

0683L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 516.371, 537.046, and 556.037, RSMo, section 568.060 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 568.060 as enacted by house bill no. 505, ninety-seventh general assembly, first regular session, and to enact in lieu thereof four new sections relating to statute of limitations for certain offenses against a child, with a penalty provision.

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

Section A. Sections 516.371, 537.046, and 556.037, RSMo, section 568.060 as enacted
2 by senate bill no. 491, ninety-seventh general assembly, second regular session, and section
3 568.060 as enacted by house bill no. 505, ninety-seventh general assembly, first regular session,
4 are repealed and four new sections enacted in lieu thereof, to be known as sections 516.371,
5 537.046, 556.037, and 568.060, to read as follows:

516.371. Notwithstanding any provision of law to the contrary, there shall be [a ten-year]
2 **no** statute of limitation on any action for damages for personal injury caused to an individual by
3 a person within the third degree of affinity or consanguinity who subjects such individual to
4 sexual contact, as defined in section 566.010.

537.046. 1. As used in this section, the following terms mean:

2 (1) "Childhood sexual abuse", any act committed by the defendant against the plaintiff
3 which act occurred when the plaintiff was under the age of eighteen years and which act would
4 have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090,
5 566.100, 566.110, or 566.120, or section 568.020;

6 (2) "Injury" or "illness", either a physical injury or illness or a psychological injury or
7 illness. A psychological injury or illness need not be accompanied by physical injury or illness.

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.

8 2. Any action to recover damages from injury or illness caused by childhood sexual
9 abuse in an action brought pursuant to this section [shall be commenced within ten years of the
10 plaintiff attaining the age of twenty-one or within three years of the date the plaintiff discovers,
11 or reasonably should have discovered, that the injury or illness was caused by childhood sexual
12 abuse, whichever later occurs] **may be commenced at any time.**

13 3. This section shall apply to any action commenced on or after August 28, [2004] **2012**,
14 including any action which would have been barred by the application of the statute of limitation
15 applicable prior to that date.

 556.037. Notwithstanding the provisions of section 556.036, prosecutions for unlawful
2 sexual offenses involving a person eighteen years of age or under [must be commenced within
3 thirty years after the victim reaches the age of eighteen unless the prosecutions are for forcible
4 rape, attempted forcible rape, forcible sodomy, kidnapping, or attempted forcible sodomy in
5 which case such prosecutions] may be commenced at any time.

 568.060. 1. As used in this section, the following terms shall mean:

2 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any
3 person eighteen years of age or older. For purposes of this section, abuse shall not include injury
4 inflicted on a child by accidental means by a person with care, custody, or control of the child,
5 or discipline of a child by a person with care, custody, or control of the child, including spanking,
6 in a reasonable manner;

7 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any
8 means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or
9 kicking;

10 (3) "Mental injury", an injury to the intellectual or psychological capacity or the
11 emotional condition of a child as evidenced by an observable and substantial impairment of the
12 ability of the child to function within his or her normal range of performance or behavior;

13 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and
14 control of a child under the age of eighteen years, the care reasonable and necessary to maintain
15 the physical and mental health of the child, when such failure presents a substantial probability
16 that death or physical injury or sexual injury would result;

17 (5) "Physical injury", physical pain, illness, or any impairment of physical condition,
18 including but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary
19 disfigurement and impairment of any bodily function or organ;

20 (6) "Serious emotional injury", an injury that creates a substantial risk of temporary or
21 permanent medical or psychological damage, manifested by impairment of a behavioral,
22 cognitive, or physical condition. Serious emotional injury shall be established by testimony of

23 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
24 medical or psychological certainty;

25 (7) "Serious physical injury", a physical injury that creates a substantial risk of death or
26 that causes serious disfigurement or protracted loss or impairment of the function of any part of
27 the body.

28 2. A person commits the offense of abuse or neglect of a child if such person knowingly
29 causes a child who is less than eighteen years of age:

30 (1) To suffer physical or mental injury as a result of abuse or neglect; or

31 (2) To be placed in a situation in which the child may suffer physical or mental injury
32 as the result of abuse or neglect.

33 3. A person commits the offense of abuse or neglect of a child if such person recklessly
34 causes a child who is less than eighteen years of age to suffer from abusive head trauma.

35 4. A person does not commit the offense of abuse or neglect of a child by virtue of the
36 sole fact that the person delivers or allows the delivery of a child to a provider of emergency
37 services.

38 5. The offense of abuse or neglect of a child is:

39 (1) A class D felony, without eligibility for probation, parole, or conditional release until
40 the defendant has served no less than one year of such sentence, unless the person has previously
41 been found guilty of a violation of this section or of a violation of the law of any other
42 jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child is a
43 serious emotional injury or a serious physical injury, in which case abuse or neglect of a child
44 is a class B felony, without eligibility for probation or parole until the defendant has served not
45 less than five years of such sentence; or

46 (2) A class A felony if the child dies as a result of injuries sustained from conduct
47 chargeable under the provisions of this section.

48 6. Notwithstanding subsection 5 of this section to the contrary, the offense of abuse or
49 neglect of a child is a class A felony, without eligibility for probation, parole, or conditional
50 release until the defendant has served not less than fifteen years of such sentence, if:

51 (1) The injury is a serious emotional injury or a serious physical injury;

52 (2) The child is less than fourteen years of age; and

53 (3) The injury is the result of sexual abuse or sexual abuse in the first degree as defined
54 under section 566.100 or sexual exploitation of a minor as defined under section 573.023.

55 7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or
56 neglect of a child to an appropriate public or private agency for treatment or counseling so long
57 as the agency has consented to taking such referrals. Nothing in this subsection shall limit the

58 discretion of the circuit or prosecuting attorney to prosecute a person who has been referred for
59 treatment or counseling pursuant to this subsection.

60 8. Nothing in this section shall be construed to alter the requirement that every element
61 of any crime referred to herein must be proven beyond a reasonable doubt.

62 9. Discipline, including spanking administered in a reasonable manner, shall not be
63 construed to be abuse under this section.

64 **10. Notwithstanding the provisions of section 556.036, prosecutions for child abuse**
65 **may be commenced at any time.**

568.060. 1. As used in this section, the following terms shall mean:

2 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any
3 person eighteen years of age or older. For purposes of this section, abuse shall not include injury
4 inflicted on a child by accidental means by a person with care, custody, or control of the child,
5 or discipline of a child by a person with care, custody, or control of the child, including spanking,
6 in a reasonable manner;

7 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any
8 means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or
9 kicking;

10 (3) "Mental injury", an injury to the intellectual or psychological capacity or the
11 emotional condition of a child as evidenced by an observable and substantial impairment of the
12 ability of the child to function within his or her normal range of performance or behavior;

13 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and
14 control of a child under the age of eighteen years, the care reasonable and necessary to maintain
15 the physical and mental health of the child, when such failure presents a substantial probability
16 that death or physical injury or sexual injury would result;

17 (5) "Physical injury", physical pain, illness, or any impairment of physical condition,
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31 (2) To be placed in a situation in which the child may suffer physical or mental injury
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33 3. A person commits the offense of abuse or neglect of a child if such person recklessly
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35 4. A person does not commit the offense of abuse or neglect of a child by virtue of the
36 sole fact that the person delivers or allows the delivery of a child to a provider of emergency
37 services.

38 5. The offense of abuse or neglect of a child is:

39 (1) A class C felony, without eligibility for probation or parole until the defendant has
40 served no less than one year of such sentence, unless the person has previously been found guilty
41 of a violation of this section or of a violation of the law of any other jurisdiction that prohibits
42 the same or similar conduct or the injury inflicted on the child is a serious emotional injury or
43 a serious physical injury, in which case abuse or neglect of a child is a class B felony, without
44 eligibility for probation or parole until the defendant has served not less than five years of such
45 sentence; or

46 (2) A class A felony if the child dies as a result of injuries sustained from conduct
47 chargeable under the provisions of this section.

48 6. Notwithstanding subsection 5 of this section to the contrary, the offense of abuse or
49 neglect of a child is a class A felony, without eligibility for probation or parole until the
50 defendant has served not less than fifteen years of such sentence, if:

51 (1) The injury is a serious emotional injury or a serious physical injury;

52 (2) The child is less than fourteen years of age; and

53 (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual
54 exploitation of a minor as defined under section 573.023.

55 7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or
56 neglect of a child to an appropriate public or private agency for treatment or counseling so long
57 as the agency has consented to taking such referrals. Nothing in this subsection shall limit the
58 discretion of the circuit or prosecuting attorney to prosecute a person who has been referred for
59 treatment or counseling pursuant to this subsection.

60 8. Nothing in this section shall be construed to alter the requirement that every element
61 of any crime referred to herein must be proven beyond a reasonable doubt.

62 9. Discipline, including spanking administered in a reasonable manner, shall not be
63 construed to be abuse under this section.

64 **10. Notwithstanding the provisions of section 556.036, prosecutions for child abuse**
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