

FIRST REGULAR SESSION

# HOUSE BILL NO. 781

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POGUE.

1051H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 568.060, RSMo, and to enact in lieu thereof one new section relating to child neglect, with penalty provisions.

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

Section A. Section 568.060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 568.060, to read as follows:

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

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

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

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

(4) "Neglect"<sup>[5]</sup> :

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

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.

18           **(b) Causing a child to be born with a controlled substance, as defined in section**  
19 **195.010, present in the child's bodily fluids or bodily substances as a result of the pregnant**  
20 **mother knowingly using a controlled substance before the birth of the child;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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