

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
**SENATE BILLS NOS. 214, 124,
209 & 322**

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

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TERRY L. SPIELER, Secretary.

0623S.05P

AN ACT

To repeal sections 556.036, 566.093, 573.037, 589.400 and 589.417, RSMo 2000, relating to sex offenders, and to enact in lieu thereof six new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 556.036, 566.093, 573.037, 589.400 and 589.417, RSMo 2000, is repealed and six new sections enacted in lieu thereof, to be known as sections 556.036, 566.093, 573.037, 589.400, 589.417 and 589.430, to read as follows:

556.036. 1. A prosecution for murder or any class A felony, **or a prosecution pursuant to section 566.030, RSMo, or section 566.060, RSMo,** may be commenced at any time.

2. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods of limitation:

- (1) For any felony, three years;
- (2) For any misdemeanor, one year;

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

(3) For any infraction, six months.

3. If the period prescribed in subsection 2 has expired, a prosecution may nevertheless be commenced for:

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation by more than three years. As used in this subdivision, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses committed pursuant to sections 407.511 to 407.556, RSMo; and

(2) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years; and

(3) Any offense based upon an intentional and willful fraudulent claim of child support arrearage to a public servant in the performance of his or her duties within one year after discovery of the offense, but in no case shall this provision extend the period of limitation by more than three years.

4. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

5. A prosecution is commenced either when an indictment is found or an information filed.

6. The period of limitation does not run:

(1) During any time when the accused is absent from the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when the accused is concealing himself from justice either within or without this state; or

(3) During any time when a prosecution against the accused for the offense is pending in this state; or

(4) During any time when the accused is found to lack mental fitness to proceed pursuant to section 552.020, RSMo.

7. Notwithstanding subsection 1 of this section, no prosecution pursuant to section 566.030, RSMo, or section 566.060, RSMo, shall be commenced in any instance when the right of the accused to be free from prosecution vested on or prior to August 29, 2001, pursuant to the law then in effect.

566.093. 1. A person commits the crime of sexual misconduct in the second degree if [he]

such person:

(1) Exposes [his] **such person's** genitals under circumstances in which [he] **such person** knows that [his] **such** conduct is likely to cause affront or alarm; or

(2) Has sexual contact in the presence of a third person or persons under circumstances in which [he] **such person** knows that such conduct is likely to cause affront or alarm.

2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously **pled guilty to or** been convicted of an offense [under] **pursuant to** this chapter, in which case it is a class A misdemeanor, **or unless the actor has twice previously pled guilty to or been convicted pursuant to this section, in which case it is a class D felony.**

573.037. 1. A person commits the crime of possession of child pornography if, knowing of its content and character, such person possesses any obscene material that has a child as one of its participants or portrays what appears to be a child as an observer or participant of sexual conduct.

2. Possession of child pornography is a class ~~[A misdemeanor]~~ **D felony** unless the person has pleaded guilty to or has been found guilty of an offense [under] **pursuant to chapter 566, RSMo, or this section committed at a different time**, in which case it is a class ~~[D]~~ **C felony.**

589.400. 1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, an offense of chapter 566, RSMo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnapping; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; incest; abuse of a child; used a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or

(3) Any person who, since July 1, 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state and has been or is required to register in another state or has been or is required to register under federal or military law; or

(6) Any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis in Missouri. Part-time in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person **who resides in any county of the state and** to whom sections 589.400

to 589.425 apply shall **register by September 10, 2001, with the chief law enforcement official of the county in which such person resides. Any person who is released from custody and who then or thereafter resides in any county of the state and to whom sections 589.400 to 589.425 apply shall**, within ten days of [coming into any] **such release or becoming such a resident of any** county, register with the chief law enforcement official of the county in which such person resides. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town or village law enforcement agency located within the county of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town or village law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offenses requiring registration.

589.417. 1. Except for the specific information listed in subsection 2 of this section, the complete statements, photographs and fingerprints required by sections 589.400 to 589.425 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall be available only to courts, prosecutors and law enforcement agencies, **and to members of the public pursuant to section 589.430.**

2. Notwithstanding any provision of law to the contrary, the chief law enforcement official of the county shall maintain, for all offenders registered in such county, a complete list of the names, addresses and crimes for which such offenders are registered. Any person may request such list from the chief law enforcement official of the county.

3. Law enforcement agencies and their employees, state officials, the departments of public safety, corrections, social services and their employees, independent contractors and staff acting at the direction of these agencies shall be immune from liability in carrying out the provisions of this section and section 589.430, except in instances of gross negligence or willful misconduct.

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

(1) "Director", the director of the department of corrections;

(2) "Local law enforcement agencies", all law enforcement agencies that have jurisdiction in the location where the sex offender resides, is employed, carries on a vocation or is a student;

(3) "Sex offender", any person required to register pursuant to the provisions of section 589.400.

2. A sex offender shall be assessed on the basis of the offender's risk to commit any act that would require an offender to comply with the provisions of sections 589.400

to 589.425. An assessment of a sex offender shall be conducted in each of the following circumstances:

(1) The department of corrections releases the offender for supervision in the community;

(2) The department of corrections releases the offender from confinement due to completion of sentence or at the direction of a court;

(3) The department of corrections accepts the offender for supervision in the community upon court order;

(4) The department of corrections is advised by the department of another state that the offender is residing, employed, carrying on a vocation or is a student in this state.

3. The risk assessment shall be conducted at least ninety days prior to the offender being released into the community by the department of corrections, or as soon as practicable after the department is aware that the offender should be assessed pursuant to subsection 1 of this section.

4. In making a risk assessment, the department of corrections shall use a risk assessment instrument that considers at a minimum the following factors: the number and nature of sexual offenses committed by the offender; the age of the offender and the victim at the time of the offense; the relationship between the offender and the victim and the degree of vulnerability of the victim; whether force or any weapon was used by the offender in committing the offense; the degree and nature of injury to the victim; and the offender's response to any treatment program that addressed the offender's sexually deviant behavior.

5. Depending on the level of risk determined by the department of corrections, notice shall be provided in accordance with this section and any notice guidelines developed by a notice guideline committee appointed by the director. The notice guideline committee shall be comprised of at least twelve members representing the departments of corrections, public safety, mental health, elementary and secondary education and social services as well as persons with experience in victim's issues, treatment of sex offenders and law enforcement. The committee members shall serve at the discretion of the director and shall receive no compensation but shall be reimbursed by the department of corrections for actual and necessary expenses incurred in the performance of their duties. In developing notice guidelines, the committee shall have access to records of the department of corrections. Any records reviewed by the committee shall remain confidential, and any meeting of the committee at which such confidential records are reviewed shall be a closed meeting, as defined in chapter 610, RSMo.

6. If the sex offender is determined to be low risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department of corrections shall also forward the results of the risk assessment to all local law enforcement agencies. In response to a question by any member of the public regarding whether or not a particular low risk person is registered with the registry of offenders maintained pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall verbally disclose whether or not the subject of the inquiry is registered, the offense for which the offender was convicted, and the location and telephone number of the local office of the department of corrections providing supervision.

7. If the sex offender is determined to be a moderate risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department of corrections shall also forward the results of the risk assessment to all local law enforcement agencies. The local law enforcement agencies are authorized to provide notice to local schools and day care centers in the area of the offender's residence, employment or place of study in accordance with notice guidelines developed by the notice committee. In response to a question by any member of the public regarding moderate risk sex offenders required to register pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall disclose verbally or through written notice the names of offenders and any known aliases, descriptions of the offenders, the offenders' addresses, the nature of the offenders' convictions, and the location and telephone number of the local office of the department of corrections providing supervision over the offenders.

8. If the sex offender is determined to be high risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department shall also forward the results of the risk assessment to all local law enforcement agencies. The local law enforcement agencies are authorized to provide notice to local schools, day care centers and neighbors in the area of the offender's residence, employment or place of study in accordance with notice guidelines developed by the notice committee. In response to a question by any member of the public regarding high risk sex offenders required to register pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall disclose verbally or through written notice the names of offenders and any known aliases, a description of the offenders, the offenders' addresses, the nature of the

offenders' convictions, a copy or access to recent photographs of the offenders, and a description of any motor vehicles owned or operated by the offenders along with license numbers and the locations and telephone numbers at the local office of the department of corrections providing supervision over the offenders.

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