

SECOND REGULAR SESSION

SENATE BILL NO. 912

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed January 7, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4121S.011

AN ACT

To repeal sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, and to enact in lieu thereof six new sections relating to crimes against criminal justice officials, with penalty provisions.

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

Section A. Sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 556.061, 559.100, 565.015, 565.081, 565.082, and 565.083, to read as follows:

556.061. In this code, unless the context requires a different definition, the following shall apply:

(1) "Affirmative defense" has the meaning specified in section 556.056;

(2) "Burden of injecting the issue" has the meaning specified in section 556.051;

(3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(4) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or

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

17 otherwise; or

18 c. A public servant having the legal power and duty to confine the person
19 authorizes his release without guard and without condition that he return to
20 confinement;

21 (b) A person is not in confinement if:

22 a. The person is on probation or parole, temporary or otherwise; or

23 b. The person is under sentence to serve a term of confinement which is
24 not continuous, or is serving a sentence under a work-release program, and in
25 either such case is not being held in a place of confinement or is not being held
26 under guard by a person having the legal power and duty to transport the person
27 to or from a place of confinement;

28 (5) "Consent": consent or lack of consent may be expressed or
29 implied. Assent does not constitute consent if:

30 (a) It is given by a person who lacks the mental capacity to authorize the
31 conduct charged to constitute the offense and such mental incapacity is manifest
32 or known to the actor; or

33 (b) It is given by a person who by reason of youth, mental disease or
34 defect, or intoxication, is manifestly unable or known by the actor to be unable
35 to make a reasonable judgment as to the nature or harmfulness of the conduct
36 charged to constitute the offense; or

37 (c) It is induced by force, duress or deception;

38 (6) "Criminal negligence" has the meaning specified in section 562.016,
39 RSMo;

40 (7) "Custody", a person is in custody when the person has been arrested
41 but has not been delivered to a place of confinement;

42 (8) "Dangerous felony" means the felonies of arson in the first degree,
43 assault in the first degree, attempted forcible rape if physical injury results,
44 attempted forcible sodomy if physical injury results, forcible rape, forcible
45 sodomy, kidnaping, murder in the second degree, assault of a law enforcement
46 officer, **emergency personnel, or corrections personnel** in the first degree,
47 domestic assault in the first degree, elder abuse in the first degree, robbery in the
48 first degree, statutory rape in the first degree when the victim is a child less than
49 twelve years of age at the time of the commission of the act giving rise to the
50 offense, statutory sodomy in the first degree when the victim is a child less than
51 twelve years of age at the time of the commission of the act giving rise to the
52 offense, and, abuse of a child pursuant to subdivision (2) of subsection 3 of section

53 568.060, RSMo, and child kidnapping;

54 (9) "Dangerous instrument" means any instrument, article or substance,
55 which, under the circumstances in which it is used, is readily capable of causing
56 death or other serious physical injury;

57 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any
58 weapon from which a shot, readily capable of producing death or serious physical
59 injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or
60 metal knuckles;

61 (11) "Felony" has the meaning specified in section 556.016;

62 (12) "Forcible compulsion" means either:

63 (a) Physical force that overcomes reasonable resistance; or

64 (b) A threat, express or implied, that places a person in reasonable fear
65 of death, serious physical injury or kidnapping of such person or another person;

66 (13) "Incapacitated" means that physical or mental condition, temporary
67 or permanent, in which a person is unconscious, unable to appraise the nature of
68 such person's conduct, or unable to communicate unwillingness to an act. A
69 person is not incapacitated with respect to an act committed upon such person if
70 he or she became unconscious, unable to appraise the nature of such person's
71 conduct or unable to communicate unwillingness to an act, after consenting to the
72 act;

73 (14) "Infraction" has the meaning specified in section 556.021;

74 (15) "Inhabitable structure" has the meaning specified in section 569.010,
75 RSMo;

76 (16) "Knowingly" has the meaning specified in section 562.016, RSMo;

77 (17) "Law enforcement officer" means any public servant having both the
78 power and duty to make arrests for violations of the laws of this state, and
79 federal law enforcement officers authorized to carry firearms and to make arrests
80 for violations of the laws of the United States;

81 (18) "Misdemeanor" has the meaning specified in section 556.016;

82 (19) "Offense" means any felony, misdemeanor or infraction;

83 (20) "Physical injury" means physical pain, illness, or any impairment of
84 physical condition;

85 (21) "Place of confinement" means any building or facility and the grounds
86 thereof wherein a court is legally authorized to order that a person charged with
87 or convicted of a crime be held;

88 (22) "Possess" or "possessed" means having actual or constructive

89 possession of an object with knowledge of its presence. A person has actual
90 possession if such person has the object on his or her person or within easy reach
91 and convenient control. A person has constructive possession if such person has
92 the power and the intention at a given time to exercise dominion or control over
93 the object either directly or through another person or persons. Possession may
94 also be sole or joint. If one person alone has possession of an object, possession
95 is sole. If two or more persons share possession of an object, possession is joint;

96 (23) "Public servant" means any person employed in any way by a
97 government of this state who is compensated by the government by reason of such
98 person's employment, any person appointed to a position with any government of
99 this state, or any person elected to a position with any government of this state.
100 It includes, but is not limited to, legislators, jurors, members of the judiciary and
101 law enforcement officers. It does not include witnesses;

102 (24) "Purposely" has the meaning specified in section 562.016, RSMo;

103 (25) "Recklessly" has the meaning specified in section 562.016, RSMo;

104 (26) "Ritual" or "ceremony" means an act or series of acts performed by
105 two or more persons as part of an established or prescribed pattern of activity;

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

112 (28) "Serious physical injury" means physical injury that creates a
113 substantial risk of death or that causes serious disfigurement or protracted loss
114 or impairment of the function of any part of the body;

115 (29) "Sexual conduct" means acts of human masturbation; deviate sexual
116 intercourse; sexual intercourse; or physical contact with a person's clothed or
117 unclothed genitals, pubic area, buttocks, or the breast of a female in an act of
118 apparent sexual stimulation or gratification;

119 (30) "Sexual contact" means any touching of the genitals or anus of any
120 person, or the breast of any female person, or any such touching through the
121 clothing, for the purpose of arousing or gratifying sexual desire of any person;

122 (31) "Sexual performance", any performance, or part thereof, which
123 includes sexual conduct by a child who is less than seventeen years of age;

124 (32) "Voluntary act" has the meaning specified in section 562.011, RSMo.

559.100. 1. The circuit courts of this state shall have power, herein
2 provided, to place on probation or to parole persons convicted of any offense over
3 which they have jurisdiction, except as otherwise provided in sections 195.275 to
4 195.296, RSMo, section 558.018, RSMo, section 559.115, **section 565.015, RSMo,**
5 section 565.020, RSMo, sections 566.030, 566.060, 566.067, 566.151, and 566.213,
6 RSMo, section 571.015, RSMo, and subsection 3 of section 589.425, RSMo.

7 2. The circuit court shall have the power to revoke the probation or parole
8 previously granted and commit the person to the department of corrections. The
9 circuit court shall determine any conditions of probation or parole for the
10 defendant that it deems necessary to ensure the successful completion of the
11 probation or parole term, including the extension of any term of supervision for
12 any person while on probation or parole. The circuit court may require that the
13 defendant pay restitution for his crime. The probation or parole may be revoked
14 for failure to pay restitution or for failure to conform his behavior to the
15 conditions imposed by the circuit court. The circuit court may, in its discretion,
16 credit any period of probation or parole as time served on a sentence.

**565.015. 1. A person commits the crime of murder of a criminal
2 justice official in the first degree if, after deliberation upon the matter,
3 he or she knowingly causes the death of a criminal justice official and:**

4 **(1) The criminal justice official was engaged in the performance
5 of lawful duties; or**

6 **(2) The person knowingly caused the death of the criminal
7 justice official because of his or her status as a criminal justice official.**

8 2. Murder of a criminal justice official in the first degree is a
9 felony which shall be punished by death unless the trier finds that
10 there are mitigating circumstances which are sufficient to justify a
11 sentence of life imprisonment without eligibility for probation, parole,
12 or conditional release except by act of the governor.

13 3. For purposes of this section, "criminal justice official" means
14 any person who is a peace officer as defined in subdivision (3) of
15 section 590.010, RSMo, prosecuting attorney, assistant prosecuting
16 attorney, circuit attorney, assistant circuit attorney, judge, jailer,
17 probation and parole officer, or any employee of a correctional center
18 or anyone assigned to work in a correctional center as defined in
19 section 217.010, RSMo.

20 4. A trial for murder of a criminal justice official in the first

21 **degree shall be conducted according to the laws applicable to murder**
22 **in the first degree unless there is a conflict with the provisions**
23 **contained in this section in which case the provisions of this section**
24 **shall be applied.**

565.081. 1. A person commits the crime of assault of a law enforcement
2 officer, emergency personnel, or [probation and parole officer] **corrections**
3 **personnel** in the first degree if such person attempts to kill or knowingly causes
4 or attempts to cause serious physical injury to a law enforcement officer [or],
5 emergency personnel, **or corrections personnel.**

6 2. As used in this section, "emergency personnel" means any paid or
7 volunteer firefighter, emergency room or trauma center personnel, or emergency
8 medical technician as defined in subdivisions (15), (16), and (17) of section
9 190.100, RSMo.

10 3. As used in this section, "**corrections personnel**" means any
11 **employee of a correctional center or any person assigned to work in a**
12 **correctional center, as defined in section 217.010, RSMo, probation and**
13 **parole officer, or any jailer.**

14 4. Assault of a law enforcement officer, emergency personnel, or
15 [probation and parole officer] **corrections personnel** in the first degree is a
16 class A felony.

17 5. **No person who pleads guilty to or is found guilty of assault of**
18 **a law enforcement officer, emergency personnel, or corrections**
19 **personnel in the first degree may be granted a suspended imposition**
20 **of sentence or suspended execution of sentence or may be sentenced to**
21 **pay a fine.**

565.082. 1. A person commits the crime of assault of a law enforcement
2 officer, emergency personnel, or [probation and parole officer] **corrections**
3 **personnel** in the second degree if such person:

4 (1) Knowingly causes or attempts to cause physical injury to a law
5 enforcement officer, emergency personnel, or [probation and parole officer]
6 **corrections personnel** by means of a deadly weapon or dangerous instrument;

7 (2) Knowingly causes or attempts to cause physical injury to a law
8 enforcement officer, emergency personnel, or [probation and parole officer]
9 **corrections personnel** by means other than a deadly weapon or dangerous
10 instrument;

11 (3) Recklessly causes serious physical injury to a law enforcement officer,

12 emergency personnel, or [probation and parole officer] **corrections personnel**;
13 or

14 (4) While in an intoxicated condition or under the influence of controlled
15 substances or drugs, operates a motor vehicle in this state and when so operating,
16 acts with criminal negligence to cause physical injury to a law enforcement
17 officer, emergency personnel, or [probation and parole officer] **corrections**
18 **personnel**;

19 (5) Acts with criminal negligence to cause physical injury to a law
20 enforcement officer, emergency personnel, or [probation and parole officer]
21 **corrections personnel** by means of a deadly weapon or dangerous instrument;

22 (6) Purposely or recklessly places a law enforcement officer, emergency
23 personnel, or [probation and parole officer] **corrections personnel** in
24 apprehension of immediate serious physical injury; or

25 (7) Acts with criminal negligence to create a substantial risk of death or
26 serious physical injury to a law enforcement officer, emergency personnel, or
27 [probation and parole officer] **corrections personnel**.

28 2. As used in this section, "emergency personnel" means any paid or
29 volunteer firefighter, emergency room or trauma center personnel, or emergency
30 medical technician as defined in subdivisions (15), (16), and (17) of section
31 190.100, RSMo.

32 3. As used in this section, "**corrections personnel**" means any
33 **employee of a correctional center or any person assigned to work in a**
34 **correctional center, as defined in section 217.010, RSMo, probation and**
35 **parole officer, or any jailer.**

36 4. Assault of a law enforcement officer, emergency personnel, or
37 [probation and parole officer] **corrections personnel** in the second degree is a
38 class B felony unless committed pursuant to subdivision (2), (5), (6), or (7) of
39 subsection 1 of this section in which case it is a class C felony.

565.083. 1. A person commits the crime of assault of a law enforcement
2 officer, emergency personnel, or [probation and parole officer] **corrections**
3 **personnel** in the third degree if:

4 (1) Such person recklessly causes physical injury to a law enforcement
5 officer, emergency personnel, or [probation and parole officer] **corrections**
6 **personnel**;

7 (2) Such person purposely places a law enforcement officer, emergency
8 personnel, or [probation and parole officer] **corrections personnel** in

9 apprehension of immediate physical injury;

10 (3) Such person knowingly causes or attempts to cause physical contact
11 with a law enforcement officer, emergency personnel, or [probation and parole
12 officer] **corrections personnel** without the consent of the law enforcement
13 officer [or], emergency personnel, **or corrections personnel**.

14 2. As used in this section, "emergency personnel" means any paid or
15 volunteer firefighter, emergency room or trauma center personnel, or emergency
16 medical technician as defined in subdivisions (15), (16), and (17) of section
17 190.100, RSMo.

18 3. **As used in this section, "corrections personnel" means any**
19 **employee of a correctional center or any person assigned to work in a**
20 **correctional center, as defined in section 217.010, RSMo, probation and**
21 **parole officer, or any jailer.**

22 4. Assault of a law enforcement officer, emergency personnel, or
23 [probation and parole officer] **corrections personnel** in the third degree is a
24 class A misdemeanor.

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