

FIRST REGULAR SESSION

SENATE BILL NO. 529

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2107S.011

AN ACT

To repeal sections 210.125, 568.050, and 568.060, RSMo, and to enact in lieu thereof three new sections relating to substance abuse during pregnancy, with penalty provisions.

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

Section A. Sections 210.125, 568.050, and 568.060, RSMo, are repealed

2 and three new sections enacted in lieu thereof, to be known as sections 210.125,

3 568.050, and 568.060, to read as follows:

210.125. 1. A police officer, law enforcement official, or a physician who

2 has reasonable cause to suspect that a child is suffering from illness or injury or

3 is in danger of personal harm by reason of his surroundings and that a case of

4 child abuse or neglect exists, may request that the juvenile officer take the child

5 into protective custody under chapter 211, RSMo.

6 2. If a person pleads guilty to or is found guilty of violating

7 subdivision (6) of subsection 1 of section 568.050, RSMo, or subdivision

8 (3) of subsection 1 of section 568.060, RSMo, the court shall order the

9 juvenile office to take the child victim of the offense into protective

10 custody under chapter 211, RSMo, immediately or as soon as reasonably

11 possible after the birth of the child if the child is unborn at the time of

12 the plea or finding of guilt.

13 3. A police officer, law enforcement official, or a physician who has

14 reasonable cause to believe that a child is in imminent danger of suffering serious

15 physical harm or a threat to life as a result of abuse or neglect and such person

16 has reasonable cause to believe the harm or threat to life may occur before a

17 juvenile court could issue a temporary protective custody order or before a

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

18 juvenile officer could take the child into protective custody, the police officer, law
19 enforcement official or physician may take or retain temporary protective custody
20 of the child without the consent of the child's parents, guardian or others legally
21 responsible for his care.

22 **[3.] 4.** Any person taking a child in protective custody under this section
23 shall immediately notify the juvenile officer of the court of the county in which
24 the child is located of his actions and notify the division and make a reasonable
25 attempt to advise the parents, guardians or others legally responsible for the
26 child's care. The jurisdiction of the juvenile court attaches from the time the
27 juvenile is taken into protective custody. Such person shall file, as soon as
28 practicable but no later than twelve hours, a written statement with the juvenile
29 officer which sets forth the identity of the child and the facts and circumstances
30 which gave such person reasonable cause to believe that there was imminent
31 danger of serious physical harm or threat to the life of the child. Upon
32 notification that a child has been taken into protective custody, the juvenile
33 officer shall either return the child to his parents, guardian, or others responsible
34 for his care or shall initiate child protective proceedings under chapter 211,
35 RSMo. In no event shall an employee of the division, acting upon his own,
36 remove a child under the provisions of this act.

37 **[4.] 5.** Temporary protective custody for purposes of this section shall not
38 exceed twenty-four hours. Temporary protective custody for a period beyond
39 twenty-four hours may be authorized only by an order of the juvenile court.

40 **[5.] 6.** For the purposes of this section, "temporary protective custody"
41 shall mean temporary placement within a hospital or medical facility or
42 emergency foster care facility or such other suitable custody placement as the
43 court may direct; provided, however, that an abused or neglected child may not
44 be detained in temporary custody in a secure detention facility.

568.050. 1. A person commits the crime of endangering the welfare of a
2 child in the second degree if:

3 (1) He or she with criminal negligence acts in a manner that creates a
4 substantial risk to the life, body or health of a child less than seventeen years old;
5 or

6 (2) He or she knowingly encourages, aids or causes a child less than
7 seventeen years old to engage in any conduct which causes or tends to cause the
8 child to come within the provisions of paragraph (d) of subdivision (2) of
9 subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

10 (3) Being a parent, guardian or other person legally charged with the care
11 or custody of a child less than seventeen years old, he or she recklessly fails or
12 refuses to exercise reasonable diligence in the care or control of such child to
13 prevent him from coming within the provisions of paragraph (c) of subdivision (1)
14 of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision
15 (3) of subsection 1 of section 211.031, RSMo; or

16 (4) He or she knowingly encourages, aids or causes a child less than
17 seventeen years of age to enter into any room, building or other structure which
18 is a public nuisance as defined in section 195.130, RSMo; [or]

19 (5) He or she operates a vehicle in violation of subdivision (2) or (3) of
20 subsection 1 of section 565.024, RSMo, subdivision (4) of subsection 1 of section
21 565.060, RSMo, section 577.010, RSMo, or section 577.012, RSMo, while a child
22 less than seventeen years old is present in the vehicle; or

23 **(6) Knowing that she is pregnant and willfully with the**
24 **knowledge of the danger to her unborn child, such person chronically**
25 **and severely exposes an unborn child at twenty-eight weeks gestational**
26 **age or more to a controlled substance, as defined in section 195.010,**
27 **RSMo, during pregnancy.**

28 2. Nothing in this section shall be construed to mean the welfare of a
29 child is endangered for the sole reason that he or she is being provided
30 nonmedical remedial treatment recognized and permitted under the laws of this
31 state.

32 3. Endangering the welfare of a child in the second degree is a class A
33 misdemeanor unless the offense is committed as part of a ritual or ceremony, in
34 which case the crime is a class D felony.

35 **4. It shall be an absolute defense to prosecution under**
36 **subdivision (6) of subsection 1 of this section if such person's alleged**
37 **violation of the provision was discovered due to her seeking alcohol or**
38 **substance treatment.**

568.060. 1. A person commits the crime of abuse of a child if such person:

2 (1) Knowingly inflicts cruel and inhuman punishment upon a child less
3 than seventeen years old; or

4 (2) Photographs or films a child less than eighteen years old engaging in
5 a prohibited sexual act or in the simulation of such an act or who causes or
6 knowingly permits a child to engage in a prohibited sexual act or in the
7 simulation of such an act for the purpose of photographing or filming the act; or

8 **(3) Knowing that she is pregnant and willfully with the**
9 **knowledge of the danger to her unborn child, chronically and severely**
10 **exposes an unborn child at twenty-eight weeks of gestational age or**
11 **more to alcohol or a controlled substance, as defined in section 195.010,**
12 **RSMo, during pregnancy and such child, at birth, is demonstrably**
13 **adversely affected by such exposure.**

14 2. As used in this section "prohibited sexual act" means any of the
15 following, whether performed or engaged in either with any other person or alone:
16 sexual or anal intercourse, masturbation, bestiality, sadism, masochism,
17 fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity
18 is to be depicted for the purpose of sexual stimulation or gratification of any
19 individual who may view such depiction.

20 3. Abuse of a child is a class C felony, unless:

21 (1) In the course thereof the person inflicts serious emotional injury on
22 the child, or the offense is committed as part of a ritual or ceremony in which
23 case the crime is a class B felony; or

24 (2) A child dies as a result of injuries sustained from conduct chargeable
25 pursuant to the provisions of this section, in which case the crime is a class A
26 felony.

27 4. As used in this section, the word "fetishism" means a condition in
28 which erotic feelings are excited by an object or body part whose presence is
29 psychologically necessary for sexual stimulation or gratification.

30 **5. It shall be an absolute defense to prosecution under**
31 **subdivision (3) of subsection 1 of this section if such person's alleged**
32 **violation of the provision was discovered due to her seeking alcohol or**
33 **substance treatment.**

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