

FIRST REGULAR SESSION

SENATE BILL NO. 98

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BENTLEY.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0574S.011

AN ACT

To repeal sections 491.075, 565.024, 566.010, 566.040, 566.070 and 568.060, RSMo 2000, relating to crimes and punishment, 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Section A. Sections 491.075, 565.024, 566.010, 566.040, 566.070 and 568.060, RSMo 2000, are repealed and six new sections enacted in lieu thereof, to be known as sections 491.075, 565.024, 566.010, 566.040, 566.070 and 568.060, to read as follows:

491.075. 1. A statement made by a child under the age of twelve **or by a person with a developmental disability as that term is defined in section 630.010, RSMo**, relating to an offense under chapter 565, 566 or 568, RSMo, performed with or on a child by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) (a) The child **or developmentally disabled person** testifies at the proceedings; or

(b) The child **or developmentally disabled person** is unavailable as a witness; or

(c) The child **or developmentally disabled person** is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child **or developmentally disabled person** unavailable as a witness at the time of the criminal proceeding.

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

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of twelve **or by a developmentally disabled person** who is alleged to be victim of an offense under chapter 565, 566 or 568, RSMo, is sufficient corroboration of a statement, admission or confession regardless of whether or not the child **or developmentally disabled person** is available to testify regarding the offense.

3. A statement may not be admitted under this section unless the prosecuting attorney makes known to the accused or his counsel his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or his counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

565.024. 1. A person commits the crime of involuntary manslaughter in the first degree if he:

- (1) Recklessly causes the death of another person; or
- (2) While in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person.

2. Involuntary manslaughter in the first degree is a class **[C] B** felony.

3. A person commits the crime of involuntary manslaughter in the second degree if he acts with criminal negligence to cause the death of any person.

4. Involuntary manslaughter in the second degree is a class **[D] C** felony.

566.010. As used in this chapter and chapter 568, RSMo, the following terms mean:

(1) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object [done for the purpose of arousing or gratifying the sexual desire of any person];

(2) "**Forcible compulsion**", **includes, but is not limited to, the use of any substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent;**

(3) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;

[(3)] (4) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person[, for the purpose of arousing or gratifying sexual desire of any person];

[(4)] (5) "Sexual intercourse", any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.

566.040. 1. A person commits the crime of sexual assault if he has sexual intercourse with

another person knowing that he does so **by forcible compulsion or** without that person's consent.

2. Sexual assault is a class C felony.

566.070. 1. A person commits the crime of deviate sexual assault if he has deviate sexual intercourse with another person knowing that he does so **by forcible compulsion or** without that person's consent.

2. Deviate sexual assault is a class C felony.

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

(1) [Knowingly] Inflicts cruel and inhuman [punishment] **treatment** upon a child less than seventeen years old; or

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

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

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

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

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

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