

FIRST REGULAR SESSION

SENATE BILL NO. 185

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time January 22, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0485S.01I

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Section A. Sections 210.125, 568.050, and 568.060, RSMo, are repealed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

6 **2. If a person pleads guilty to or is found guilty of violating**
7 **subdivision (6) of subsection 1 of section 568.050 or subsection 4 of**
8 **section 568.060, the court shall order the juvenile officer to take the**
9 **child victim of the offense into protective custody under chapter 211**
10 **immediately or as soon as reasonably possible after the birth of the**
11 **child if the child is unborn at the time of the plea or finding of guilt.**

12 **3. A police officer, law enforcement official, or a physician who has**
13 **reasonable cause to believe that a child is in imminent danger of suffering serious**
14 **physical harm or a threat to life as a result of abuse or neglect and such person**
15 **has reasonable cause to believe the harm or threat to life may occur before a**
16 **juvenile court could issue a temporary protective custody order or before a**
17 **juvenile officer could take the child into protective custody, the police officer, law**
18 **enforcement official or physician may take or retain temporary protective custody**

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

19 of the child without the consent of the child's parents, guardian or others legally
20 responsible for his care.

21 [3.] 4. Any person taking a child in protective custody under this section
22 shall immediately notify the juvenile officer of the court of the county in which
23 the child is located of his actions and notify the division and make a reasonable
24 attempt to advise the parents, guardians or others legally responsible for the
25 child's care. The jurisdiction of the juvenile court attaches from the time the
26 juvenile is taken into protective custody. Such person shall file, as soon as
27 practicable but no later than twelve hours, a written statement with the juvenile
28 officer which sets forth the identity of the child and the facts and circumstances
29 which gave such person reasonable cause to believe that there was imminent
30 danger of serious physical harm or threat to the life of the child. Upon
31 notification that a child has been taken into protective custody, the juvenile
32 officer shall either return the child to his parents, guardian, or others responsible
33 for his care or shall initiate child protective proceedings under chapter 211. In
34 no event shall an employee of the division, acting upon his own, remove a child
35 under the provisions of this act.

36 [4.] 5. Temporary protective custody for purposes of this section shall not
37 exceed twenty-four hours. Temporary protective custody for a period beyond
38 twenty-four hours may be authorized only by an order of the juvenile court.

39 [5.] 6. For the purposes of this section, "temporary protective custody"
40 shall mean temporary placement within a hospital or medical facility or
41 emergency foster care facility or such other suitable custody placement as the
42 court may direct; provided, however, that an abused or neglected child may not
43 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; 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; 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; [or]

19 (5) He or she operates a vehicle in violation of subdivision (2) or (3) of
20 subsection 1 of section 565.024, subdivision (4) of subsection 1 of section 565.060,
21 section 577.010, or section 577.012 while a child less than seventeen years old is
22 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 **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. As used in this section, the following terms shall mean:

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

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

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

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

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

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

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

32 2. A person commits the offense of abuse or neglect of a child if such
33 person knowingly 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
36 mental injury as the result of abuse or neglect.

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

40 4. **A person commits the offense of abuse or neglect of a child if**
41 **such person, knowing that she is pregnant and willfully with the**
42 **knowledge of the danger to her unborn child, chronically and severely**
43 **exposes an unborn child at twenty-eight weeks of gestational age or**
44 **more to alcohol or a controlled substance, as defined in section 195.010,**
45 **during pregnancy and such child, at birth, is demonstrably adversely**

46 **affected by such exposure. It shall be an absolute defense to**
47 **prosecution under this subsection if such person's alleged violation of**
48 **the provision was discovered due to her seeking alcohol or substance**
49 **treatment.**

50 **5.** A person does not commit the offense of abuse or neglect of a child by
51 virtue of the sole fact that the person delivers or allows the delivery of child to
52 a provider of emergency services.

53 **[5.] 6.** The offense of abuse or neglect of a child is a class C felony,
54 without eligibility for probation or parole until the defendant has served no less
55 than one year of such sentence, unless the person has previously been found
56 guilty of a violation of this section or of a violation of the law of any other
57 jurisdiction that prohibits the same or similar conduct or the injury inflicted on
58 the child is a serious emotional injury or a serious physical injury, in which case
59 abuse or neglect of a child is a class B felony, without eligibility for probation or
60 parole until the defendant has served not less than five years of such sentence.

61 **[6.] 7.** Notwithstanding subsection **[5] 6** of this section to the contrary,
62 the offense of abuse or neglect of a child is a class A felony, without eligibility for
63 probation or parole until the defendant has served not less than fifteen years of
64 such sentence, if:

- 65 (1) The injury is a serious emotional injury or a serious physical injury;
66 (2) The child is less than fourteen years of age; and
67 (3) The injury is the result of sexual abuse as defined under section
68 566.100 or sexual exploitation of a minor as defined under section 573.023.

69 **[7.] 8.** The circuit or prosecuting attorney may refer a person who is
70 suspected of abuse or neglect of a child to an appropriate public or private agency
71 for treatment or counseling so long as the agency has consented to taking such
72 referrals. Nothing in this subsection shall limit the discretion of the circuit or
73 prosecuting attorney to prosecute a person who has been referred for treatment
74 or counseling pursuant to this subsection.

75 **[8.] 9.** Nothing in this section shall be construed to alter the requirement
76 that every element of any crime referred to herein must be proven beyond a
77 reasonable doubt.

78 **[9.] 10.** Discipline, including spanking administered in a reasonable
79 manner, shall not be construed to be abuse under this section.