

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 397

AN ACT

To repeal sections 567.020, 578.421, 578.423, and 610.131, RSMo, and to enact in lieu thereof four new sections relating to the protection of children from sex trafficking, with penalty provisions.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Sections 567.020, 578.421, 578.423, and 610.131, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 567.020, 578.421, 578.423, and 610.131, to read as follows:

567.020. 1. A person commits the offense of prostitution if he or she engages in or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by any person.

2. The offense of prostitution is a class B misdemeanor unless the person knew prior to performing the act of prostitution that he or she was infected with HIV in which case prostitution is a class B felony. The use of condoms is not a defense to this offense.

3. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

4. The judge may order a drug and alcohol abuse treatment program for any person found guilty of prostitution, either after trial or upon a plea of guilty, before sentencing. For the class B misdemeanor offense, upon the successful completion of such program by the defendant, the court may at its discretion allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a judgment of not guilty. For the class B felony offense, the court shall not allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a judgment of not guilty. The judge, however, has discretion to take into consideration successful completion of a drug or alcohol treatment program in determining the defendant's sentence.

5. In addition to the affirmative defense provided in subsection 2 of section 566.223, it shall be an affirmative defense to prosecution pursuant to this section that the defendant was under the age of eighteen [and] or was acting under the coercion, as defined in section 566.200, of an agent at the time of the offense charged. In such cases where the defendant was under the age of eighteen and found not guilty of any violation under this section, the defendant shall be classified as a victim of abuse, as defined under section 210.110, and such abuse shall be reported, as required under section 210.115.

578.421. As used in sections 578.421 to 578.437, the following terms mean:

(1) "Criminal street gang", any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission

of one or more of the criminal acts enumerated in subdivision (2) of this section, which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity;

(2) "Pattern of criminal street gang activity", the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after August 28, 1993, and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(a) Assault with a deadly weapon or by means of force likely to cause serious physical injury, as provided in sections 565.050 and 565.052;

(b) Robbery, arson and those offenses under chapter 569 which are related to robbery and arson;

(c) Murder or manslaughter, as provided in sections 565.020 to 565.024;

(d) Any violation of the provisions of chapter 579 which involves the distribution, delivery or manufacture of a substance prohibited by chapter 579;

(e) Unlawful use of a weapon which is a felony pursuant to section 571.030; [or]

(f) Tampering with witnesses and victims, as provided in section 575.270;

(g) Promoting online sexual solicitation, as provided in section 566.103;

(h) Sexual trafficking of a child in the first degree, as

provided in section 566.210;

(i) Sexual trafficking of a child in the second degree, as provided in section 566.211;

(j) Patronizing prostitution, as provided in subsection 4 of section 567.030;

(k) Promoting prostitution in the first degree, as provided in section 567.050;

(l) Promoting prostitution in the second degree, as provided in section 567.060;

(m) Abuse or neglect of a child, as provided in subsection 6 of section 568.060;

(n) Sexual exploitation of a minor, as provided in section 573.023;

(o) Child used in sexual performance, as provided in section 573.200; or

(p) Promoting sexual performance by a child, as provided in section 573.205.

578.423. Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal street gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years. [For any person between the ages of fourteen and seventeen who is alleged to have violated the provisions of sections 578.421 to 578.437 the prosecuting attorney or circuit attorney may move for dismissal of a petition

and transfer to a court of general jurisdiction.]

610.131. 1. Notwithstanding the provisions of section 610.140 to the contrary, [an individual] a person who at the time of the offense was under the age of eighteen, and has pleaded guilty or has been convicted for the offense of prostitution under section 567.020 may apply to the court in which he or she pled guilty or was sentenced for an order to expunge from all official records all recordations of his or her arrest, plea, trial, or conviction. If the court determines[, after a hearing,] that such person was under the age of eighteen or was acting under the coercion, as defined in section 566.200, of an agent when committing the offense that resulted in a plea of guilty or conviction under section 567.020, the court shall enter an order of expungement.

2. Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea, or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction, or expungement in response to any inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for information

relating to an expungement under this section.