

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 177

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DePASCO.

Pre-filed December 17, 1998, and 1,000 copies ordered printed.

Read 2nd time January 18, 1999, and referred to the Committee on Civil and Criminal Jurisprudence.

Reported from the Committee March 1, 1999, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 10, 1999. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

S0659.02P

AN ACT

To repeal section 556.061, RSMo 1994, relating to crimes and punishment, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 556.061, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 556.061, to read as follows: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 he is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

- a. A court orders his release; or

- b. He is released on bail, bond, or recognizance, personal or otherwise; or
- c. A public servant having the legal power and duty to confine him authorizes his release without guard and without condition that he return to confinement;

(b) A person is not in confinement if:

- a. He is on probation or parole, temporary or otherwise; or
- b. He is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport him to or from a place of confinement;

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

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

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

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

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

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

(8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first degree, forcible rape, forcible sodomy, kidnapping, murder in the second degree and robbery in the first degree;

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

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

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

(12) "Forcible compulsion" means either:

- (a) Physical force that overcomes reasonable resistance; or
- (b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of himself or another person;

(13) "Incapacitated" means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of his conduct, or unable to communicate unwillingness to an act. A person is not "incapacitated" with respect to an act

committed upon him if he became unconscious, unable to appraise the nature of his conduct or unable to communicate unwillingness to an act, after consenting to the act;

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

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

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

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

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

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

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

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

(22) "Possess" or "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if he has the object on his person or within easy reach and convenient control. A person has constructive possession if he has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

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

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

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

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

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

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

part of the body;

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

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

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

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

Unofficial

Bill

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