

FIRST REGULAR SESSION

HOUSE BILL NO. 379

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES VIEBROCK, DIXON, MORRIS, WILSON (119), ROARK, HOLAND, WRIGHT, CUNNINGHAM (145), WOOD, SUTHERLAND (Co-sponsors), TAYLOR, YAEGER, QUINN, SMITH (14), DUSENBERG, KING AND WHORTON.

Read 1st time February 5, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1357L.011

AN ACT

To repeal section 556.061, RSMo, and to enact in lieu thereof one new section relating to the definition of dangerous felony.

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

Section A. Section 556.061, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 556.061, to read as follows: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

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or otherwise; or

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

- 15 c. A public servant having the legal power and duty to confine the person authorizes his
16 release without guard and without condition that he return to confinement;
- 17 (b) A person is not in confinement if:
- 18 a. The person is on probation or parole, temporary or otherwise; or
- 19 b. The person is under sentence to serve a term of confinement which is not continuous,
20 or is serving a sentence under a work-release program, and in either such case is not being held
21 in a place of confinement or is not being held under guard by a person having the legal power
22 and duty to transport the person to or from a place of confinement;
- 23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not
24 constitute consent if:
- 25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
26 to constitute the offense and such mental incapacity is manifest or known to the actor; or
- 27 (b) It is given by a person who by reason of youth, mental disease or defect, or
28 intoxication, is manifestly unable or known by the actor to be unable to make a reasonable
29 judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- 30 (c) It is induced by force, duress or deception;
- 31 (6) "Criminal negligence" has the meaning specified in section 562.016, RSMo;
- 32 (7) "Custody", a person is in custody when the person has been arrested but has not been
33 delivered to a place of confinement;
- 34 (8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first
35 degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical
36 injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree [and],
37 robbery in the first degree, **assault of a law enforcement officer in the first degree, domestic**
38 **assault in the first degree, and elder abuse in the first degree**;
- 39 (9) "Dangerous instrument" means any instrument, article or substance, which, under the
40 circumstances in which it is used, is readily capable of causing death or other serious physical
41 injury;
- 42 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from
43 which a shot, readily capable of producing death or serious physical injury, may be discharged,
44 or a switchblade knife, dagger, billy, blackjack or metal knuckles;
- 45 (11) "Felony" has the meaning specified in section 556.016;
- 46 (12) "Forcible compulsion" means either:
- 47 (a) Physical force that overcomes reasonable resistance; or
- 48 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
49 physical injury or kidnapping of such person or another person;
- 50 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,

51 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
52 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an
53 act committed upon such person if he or she became unconscious, unable to appraise the nature
54 of such person's conduct or unable to communicate unwillingness to an act, after consenting to
55 the act;

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or
86 permanent medical or psychological damage, manifested by impairment of a behavioral,

87 cognitive or physical condition. Serious emotional injury shall be established by testimony of
88 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
89 medical or psychological certainty;

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

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

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

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

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