

SECOND REGULAR SESSION

HOUSE BILL NO. 1382

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COX (Sponsor), ONDER, FISHER, ERVIN, SCHAAF, DAVIS,
BROWN (30), RUESTMAN, FUNDERBURK, SANDER, BIVINS AND WELLS (Co-sponsors).

Pre-filed December 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3570L.01I

AN ACT

To repeal sections 566.020, 566.025, 566.032, 566.034, 566.062, 566.064, 566.067, 566.068,
566.100, 566.151, 568.045, 568.065, 568.080, 568.090, 568.100, 573.010, and 573.090,
RSMo, and to enact in lieu thereof seventeen new sections relating to the age of victims
and perpetrators in certain criminal statutes, with penalty provisions.

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

Section A. Sections 566.020, 566.025, 566.032, 566.034, 566.062, 566.064, 566.067,
2 566.068, 566.100, 566.151, 568.045, 568.065, 568.080, 568.090, 568.100, 573.010, and 573.090,
3 RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections
4 566.020, 566.025, 566.032, 566.034, 566.062, 566.064, 566.067, 566.068, 566.100, 566.151,
5 568.045, 568.065, 568.080, 568.090, 568.100, 573.010, and 573.090, to read as follows:

566.020. 1. Whenever in this chapter the criminality of conduct depends upon a victim's
2 being incapacitated, no crime is committed if the actor reasonably believed that the victim was
3 not incapacitated and reasonably believed that the victim consented to the act. The defendant
4 shall have the burden of injecting the issue of belief as to capacity and consent.

5 2. Whenever in this chapter the criminality of conduct depends upon a child being
6 [thirteen] **fifteen** years of age or younger, it is no defense that the defendant believed the child
7 to be older.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended
to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

8 3. Whenever in this chapter the criminality of conduct depends upon a child being under
9 [seventeen] **eighteen** years of age, it is an affirmative defense that the defendant reasonably
10 believed that the child was [seventeen] **eighteen** years of age or older.

11 4. Consent is not an affirmative defense to any offense under chapter 566 if the alleged
12 victim is less than twelve years of age.

566.025. In prosecutions pursuant to this chapter or chapter 568, RSMo, of a sexual
2 nature involving a victim under [fourteen] **eighteen** years of age, whether or not age is an
3 element of the crime for which the defendant is on trial, evidence that the defendant has
4 committed other charged or uncharged crimes of a sexual nature involving victims under
5 [fourteen] **eighteen** years of age shall be admissible for the purpose of showing the propensity
6 of the defendant to commit the crime or crimes with which he or she is charged unless the trial
7 court finds that the probative value of such evidence is outweighed by the prejudicial effect.

566.032. 1. A person commits the crime of statutory rape in the first degree if he **or she**
2 **being eighteen years of age or older** has sexual intercourse with another person who is less than
3 [fourteen] **sixteen** years old.

4 2. Statutory rape in the first degree or an attempt to commit statutory rape in the first
5 degree is a felony for which the authorized term of imprisonment is life imprisonment or a term
6 of years not less than five years, unless in the course thereof the actor inflicts serious physical
7 injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner,
8 subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person,
9 or the victim is less than twelve years of age in which case the authorized term of imprisonment
10 is life imprisonment or a term of years not less than ten years.

566.034. 1. A person commits the crime of statutory rape in the second degree if being
2 [twenty-one years of age or older] **under the age of eighteen**, he **or she** has sexual intercourse
3 with another person who is less than seventeen years of age **and there is more than twenty-four**
4 **months difference in age**.

5 2. Statutory rape in the second degree is a class C felony.

566.062. 1. A person commits the crime of statutory sodomy in the first degree if he **or**
2 **she being eighteen years of age or older** has deviate sexual intercourse with another person
3 who is less than [fourteen] **sixteen** years old.

4 2. Statutory sodomy in the first degree or an attempt to commit statutory sodomy in the
5 first degree is a felony for which the authorized term of imprisonment is life imprisonment or
6 a term of years not less than five years, unless in the course thereof the actor inflicts serious
7 physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening
8 manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than

9 one person, or the victim is less than twelve years of age, in which case the authorized term of
10 imprisonment is life imprisonment or a term of years not less than ten years.

566.064. 1. A person commits the crime of statutory sodomy in the second degree if
2 being [twenty-one years of age or older] **under the age of eighteen**, he **or she** has deviate sexual
3 intercourse with another person who is less than seventeen years of age **and there is more than**
4 **twenty-four months difference in age**.

5 2. Statutory sodomy in the second degree is a class C felony.

566.067. 1. A person commits the crime of child molestation in the first degree if he or
2 she subjects another person who is less than [fourteen] **sixteen** years of age to sexual contact **and**
3 **the victim is at least twenty-four months younger than he or she**.

4 2. Child molestation in the first degree is a class B felony unless:

5 (1) The actor has previously been convicted of an offense under this chapter or in the
6 course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly
7 instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony,
8 in which case the crime is a class A felony; or

9 (2) The victim is a child less than twelve years of age and:

10 (a) The actor has previously been convicted of an offense under this chapter; or

11 (b) In the course thereof the actor inflicts serious physical injury, displays a deadly
12 weapon or deadly instrument in a threatening manner, or if the offense is committed as part of
13 a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his
14 or her term of imprisonment without eligibility for probation or parole.

566.068. 1. A person commits the crime of child molestation in the second degree if he
2 or she subjects another person who is less than [seventeen] **eighteen** years of age to sexual
3 contact.

4 2. Child molestation in the second degree is a class A misdemeanor unless the actor has
5 previously been convicted of an offense under this chapter or in the course thereof the actor
6 inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument
7 in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which
8 case the crime is a class D felony.

566.100. 1. A person commits the crime of sexual abuse if he **or she** subjects another
2 person to sexual contact by the use of forcible compulsion.

3 2. Sexual abuse is a class C felony unless in the course thereof the actor inflicts serious
4 physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or
5 subjects the victim to sexual contact with more than one person or the victim is less than
6 [fourteen] **sixteen** years of age, in which case the crime is a class B felony.

566.151. 1. A person at least [twenty-one] **eighteen** years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than [fifteen] **seventeen** years of age for the purpose of engaging in sexual conduct.

2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.

568.045. 1. A person commits the crime of endangering the welfare of a child in the first degree if:

(1) The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old; or

(2) The person knowingly engages in sexual conduct with a person under the age of [seventeen] **eighteen** years over whom the person is a parent, guardian, or otherwise charged with the care and custody;

(3) The person knowingly encourages, aids or causes a child less than [seventeen] **eighteen** years of age to engage in any conduct which violates the provisions of chapter 195, RSMo;

(4) Such person enlists the aid, either through payment or coercion, of a person less than seventeen years of age to unlawfully manufacture, compound, produce, prepare, sell, transport, test or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues; or

(5) Such person, in the presence of a person less than seventeen years of age or in a residence where a person less than seventeen years of age resides, unlawfully manufactures, or attempts to manufacture compounds, produces, prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.

2. Endangering the welfare of a child in the first degree is a class C felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a class B felony.

568.065. 1. A person commits the crime of genital mutilation if such person:

2 (1) Excises or infibulates, in whole or in part, the labia majora, labia minora, vulva or
3 clitoris of a female child less than [seventeen] **eighteen** years of age; or

4 (2) Is a parent, guardian or other person legally responsible for a female child less than
5 [seventeen] **eighteen** years of age and permits the excision or infibulation, in whole or in part,
6 of the labia majora, labia minora, vulva or clitoris of such female child.

7 2. Genital mutilation is a class B felony.

8 3. Belief that the conduct described in subsection 1 of this section is required as a matter
9 of custom, ritual or standard practice, or consent to the conduct by the child on whom it is
10 performed or by the child's parent or legal guardian, shall not be an affirmative defense to a
11 charge pursuant to this section.

12 4. It is an affirmative defense that the defendant engaged in the conduct charged which
13 constitutes genital mutilation if the conduct was:

14 (1) Necessary to preserve the health of the child on whom it is performed and is
15 performed by a person licensed to practice medicine in this state; or

16 (2) Performed on a child who is in labor or who has just given birth and is performed for
17 medical purposes connected with such labor or birth by a person licensed to practice medicine
18 in this state.

568.080. 1. A person commits the crime of use of a child in a sexual performance if,
2 knowing the character and content thereof, the person employs, authorizes, or induces a child
3 less than [seventeen] **eighteen** years of age to engage in a sexual performance or, being a parent,
4 legal guardian, or custodian of such child, consents to the participation by such child in such
5 sexual performance.

6 2. Use of a child in a sexual performance is a class C felony, unless in the course thereof
7 the person inflicts serious emotional injury on the child, in which case the crime is a class B
8 felony.

568.090. 1. A person commits the crime of promoting a sexual performance if, knowing
2 the character and content thereof, the person promotes a sexual performance by a child less than
3 [seventeen] **eighteen** years of age or produces, directs, or promotes any performance which
4 includes sexual conduct by a child less than [seventeen] **eighteen** years of age.

5 2. Promoting a sexual performance is a class C felony.

568.100. 1. When it becomes necessary for the purposes of section 568.060, 568.080
2 or 568.090 to determine whether a child who participated in a sexual performance was younger
3 than [seventeen] **eighteen** years of age, the court or jury may make this determination by any of
4 the following methods:

5 (1) Personal inspection of the child;

6 (2) Inspection of the photograph or motion picture that shows the child engaging in the
7 sexual performance;

8 (3) Oral testimony by a witness to the sexual performance as to the age of the child based
9 on the child's appearance at the time;

10 (4) Expert medical testimony based on the appearance of the child engaging in the sexual
11 performance; or

12 (5) Any other method authorized by law or by the rules of evidence.

13 2. When it becomes necessary for the purposes of section 568.060, 568.080 or 568.090
14 to determine whether a child who participated in the sexual conduct consented to the conduct,
15 the term "consent" shall have the meaning given it in section 556.061, RSMo.

16 3. Upon request of the prosecuting attorney, the court may order that the child's
17 testimony be videotaped pursuant to section 492.303, RSMo, or as otherwise provided by law.
573.010. As used in this chapter the following terms shall mean:

2 (1) "Child", any person under the age of [fourteen] **eighteen**;

3 (2) "Child pornography":
4

5 (a) Any obscene material or performance depicting sexual conduct, sexual contact, or
6 a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as
7 one of its participants or portrays as an observer of such conduct, contact, or performance a
8 minor under the age of eighteen; or

9 (b) Any visual depiction, including any photograph, film, video, picture, or computer or
10 computer-generated image or picture, whether made or produced by electronic, mechanical, or
11 other means, of sexually explicit conduct where:

12 a. The production of such visual depiction involves the use of a minor engaging in
13 sexually explicit conduct;

14 b. Such visual depiction is a digital image, computer image, or computer-generated
15 image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct;
16 or

17 c. Such visual depiction has been created, adapted, or modified to show that an
18 identifiable minor is engaging in sexually explicit conduct;

19 (3) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion
20 displaying in any location, whether public or private, an item in such a manner that it may be
21 readily seen and its content or character distinguished by normal unaided vision viewing it from
22 a street, highway or public sidewalk, or from the property of others or from any portion of the
23 person's store, or the exhibitor's store or property when items and material other than this
material are offered for sale or rent to the public;

24 (4) "Explicit sexual material", any pictorial or three-dimensional material depicting
25 human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation
26 or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal
27 human genitals; provided, however, that works of art or of anthropological significance shall not
28 be deemed to be within the foregoing definition;

29 (5) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate,
30 disseminate, present, exhibit or otherwise provide;

31 (6) "Graphic", when used with respect to a depiction of sexually explicit conduct, that
32 a viewer can observe any part of the genitals or pubic area of any depicted person or animal
33 during any part of the time that the sexually explicit conduct is being depicted;

34 (7) "Identifiable minor":

35 (a) A person:

36 a. (i) Who was a minor at the time the visual depiction was created, adapted, or
37 modified; or

38 (ii) Whose image as a minor was used in creating, adapting, or modifying the visual
39 depiction; and

40 b. Who is recognizable as an actual person by the person's face, likeness, or other
41 distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

42 (b) The term shall not be construed to require proof of the actual identity of the
43 identifiable minor;

44 (8) "Indistinguishable", when used with respect to a depiction, virtually
45 indistinguishable, in that the depiction is such that an ordinary person viewing the depiction
46 would conclude that the depiction is of an actual minor engaged in sexually explicit conduct.
47 Indistinguishable does not apply to depictions that are drawings, cartoons, sculptures, or
48 paintings depicting minors or adults;

49 (9) "Material", anything printed or written, or any picture, drawing, photograph, motion
50 picture film, videotape or videotape production, or pictorial representation, or any recording or
51 transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data,
52 or anything which is or may be used as a means of communication. Material includes
53 undeveloped photographs, molds, printing plates, stored computer data and other latent
54 representational objects;

55 (10) "Minor", any person under the age of eighteen;

56 (11) "Nudity", the showing of postpubertal human genitals or pubic area, with less than
57 a fully opaque covering;

58 (12) "Obscene", any material or performance is obscene if, taken as a whole:

59 (a) Applying contemporary community standards, its predominant appeal is to prurient
60 interest in sex; and

61 (b) The average person, applying contemporary community standards, would find the
62 material depicts or describes sexual conduct in a patently offensive way; and

63 (c) A reasonable person would find the material lacks serious literary, artistic, political
64 or scientific value;

65 (13) "Performance", any play, motion picture film, videotape, dance or exhibition
66 performed before an audience of one or more;

67 (14) "Pornographic for minors", any material or performance is pornographic for minors
68 if the following apply:

69 (a) The average person, applying contemporary community standards, would find that
70 the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient
71 interest of minors; and

72 (b) The material or performance depicts or describes nudity, sexual conduct, sexual
73 excitement, or sadomasochistic abuse in a way which is patently offensive to the average person
74 applying contemporary adult community standards with respect to what is suitable for minors;
75 and

76 (c) The material or performance, taken as a whole, lacks serious literary, artistic,
77 political, or scientific value for minors;

78 (15) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute,
79 publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to
80 do the same, by any means including a computer;

81 (16) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of
82 sexual stimulation or gratification;

83 (17) "Sexual conduct", actual or simulated, normal or perverted acts of human
84 masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's
85 clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent
86 sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any
87 latent objects in an act of apparent sexual stimulation or gratification;

88 (18) "Sexually explicit conduct", actual or simulated:

89 (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
90 whether between persons of the same or opposite sex;

91 (b) Bestiality;

92 (c) Masturbation;

93 (d) Sadistic or masochistic abuse; or

94 (e) Lascivious exhibition of the genitals or pubic area of any person;

95 (19) "Sexual excitement", the condition of human male or female genitals when in a state
96 of sexual stimulation or arousal;

97 (20) "Visual depiction", includes undeveloped film and videotape, and data stored on
98 computer disk or by electronic means which is capable of conversion into a visual image;

99 (21) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer,
100 transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for
101 purposes of resale or redistribution.

573.090. 1. Video cassettes or other video reproduction devices, or the jackets, cases
2 or coverings of such video reproduction devices shall be displayed or maintained in a separate
3 area if the same are pornographic for minors as defined in section 573.010, or if:

4 (1) Taken as a whole and applying contemporary community standards, the average
5 person would find that it has a tendency to cater or appeal to morbid interest in violence for
6 persons under the age of [seventeen] **eighteen**; and

7 (2) It depicts violence in a way which is patently offensive to the average person
8 applying contemporary adult community standards with respect to what is suitable for persons
9 under the age of [seventeen] **eighteen**; and

10 (3) Taken as a whole, it lacks serious literary, artistic, political, or scientific value for
11 persons under the age of seventeen.

12 2. Any video cassettes or other video reproduction devices meeting the description in
13 subsection 1 of this section shall not be rented or sold to a person under the age of [seventeen]
14 **eighteen** years.

15 3. Any violation of the provisions of subsection 1 or 2 of this section shall be punishable
16 as an infraction, unless such violation constitutes furnishing pornographic materials to minors
17 as defined in section 573.040, in which case it shall be punishable as a class A misdemeanor or
18 class D felony as prescribed in section 573.040, or unless such violation constitutes promoting
19 obscenity in the second degree as defined in section 573.030, in which case it shall be punishable
20 as a class A misdemeanor or class D felony as prescribed in section 573.030.

✓