

SECOND REGULAR SESSION

# HOUSE BILL NO. 1567

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PARSON.

Pre-filed January 8, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4007L.01I

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### AN ACT

To repeal sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, and to enact in lieu thereof six new sections relating to crimes against criminal justice officials, with penalty provisions.

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

Section A. Sections 556.061, 559.100, 565.081, 565.082, and 565.083, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 556.061, 559.100,  
3 565.015, 565.081, 565.082, and 565.083, to read as follows:

556.061. In this code, unless the context requires a different definition, the following  
2 shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section 556.051;

5 (3) "Commercial film and photographic print processor", any person who develops  
6 exposed photographic film into negatives, slides or prints, or who makes prints from negatives  
7 or slides, for compensation. The term commercial film and photographic print processor shall  
8 include all employees of such persons but shall not include a person who develops film or makes  
9 prints for a public agency;

10 (4) "Confinement":

11 (a) A person is in confinement when such person is held in a place of confinement  
12 pursuant to arrest or order of a court, and remains in confinement until:

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

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.

- 14           b. The person is released on bail, bond, or recognizance, personal or otherwise; or  
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, kidnaping, murder in the second degree, assault  
37 of a law enforcement officer, **emergency personnel, or corrections personnel** in the first  
38 degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first  
39 degree, statutory rape in the first degree when the victim is a child less than twelve years of age  
40 at the time of the commission of the act giving rise to the offense, statutory sodomy in the first  
41 degree when the victim is a child less than twelve years of age at the time of the commission of  
42 the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection  
43 3 of section 568.060, RSMo, and child kidnapping;
- 44           (9) "Dangerous instrument" means any instrument, article or substance, which, under the  
45 circumstances in which it is used, is readily capable of causing death or other serious physical  
46 injury;
- 47           (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from  
48 which a shot, readily capable of producing death or serious physical injury, may be discharged,  
49 or a switchblade knife, dagger, billy, blackjack or metal knuckles;

- 50 (11) "Felony" has the meaning specified in section 556.016;
- 51 (12) "Forcible compulsion" means either:
- 52 (a) Physical force that overcomes reasonable resistance; or
- 53 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
- 54 physical injury or kidnapping of such person or another person;
- 55 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
- 56 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
- 57 unable to communicate unwillingness to an act. A person is not incapacitated with respect to an
- 58 act committed upon such person if he or she became unconscious, unable to appraise the nature
- 59 of such person's conduct or unable to communicate unwillingness to an act, after consenting to
- 60 the act;
- 61 (14) "Infraction" has the meaning specified in section 556.021;
- 62 (15) "Inhabitable structure" has the meaning specified in section 569.010, RSMo;
- 63 (16) "Knowingly" has the meaning specified in section 562.016, RSMo;
- 64 (17) "Law enforcement officer" means any public servant having both the power and
- 65 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
- 66 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 67 (18) "Misdemeanor" has the meaning specified in section 556.016;
- 68 (19) "Offense" means any felony, misdemeanor or infraction;
- 69 (20) "Physical injury" means physical pain, illness, or any impairment of physical
- 70 condition;
- 71 (21) "Place of confinement" means any building or facility and the grounds thereof
- 72 wherein a court is legally authorized to order that a person charged with or convicted of a crime
- 73 be held;
- 74 (22) "Possess" or "possessed" means having actual or constructive possession of an
- 75 object with knowledge of its presence. A person has actual possession if such person has the
- 76 object on his or her person or within easy reach and convenient control. A person has
- 77 constructive possession if such person has the power and the intention at a given time to exercise
- 78 dominion or control over the object either directly or through another person or persons.
- 79 Possession may also be sole or joint. If one person alone has possession of an object, possession
- 80 is sole. If two or more persons share possession of an object, possession is joint;
- 81 (23) "Public servant" means any person employed in any way by a government of this
- 82 state who is compensated by the government by reason of such person's employment, any person
- 83 appointed to a position with any government of this state, or any person elected to a position with
- 84 any government of this state. It includes, but is not limited to, legislators, jurors, members of the
- 85 judiciary and law enforcement officers. It does not include witnesses;

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

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

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

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

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

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

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

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

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

559.100. 1. The circuit courts of this state shall have power, herein provided, to place  
2 on probation or to parole persons convicted of any offense over which they have jurisdiction,  
3 except as otherwise provided in sections 195.275 to 195.296, RSMo, section 558.018, RSMo,  
4 section 559.115, section 565.020, RSMo, sections 566.030, 566.060, 566.067, 566.151, and  
5 566.213, RSMo, **section 565.081, RSMo**, section 571.015, RSMo, and subsection 3 of section  
6 589.425, RSMo.

7 2. The circuit court shall have the power to revoke the probation or parole previously  
8 granted and commit the person to the department of corrections. The circuit court shall  
9 determine any conditions of probation or parole for the defendant that it deems necessary to  
10 ensure the successful completion of the probation or parole term, including the extension of any  
11 term of supervision for any person while on probation or parole. The circuit court may require  
12 that the defendant pay restitution for his crime. The probation or parole may be revoked for  
13 failure to pay restitution or for failure to conform his behavior to the conditions imposed by the  
14 circuit court. The circuit court may, in its discretion, credit any period of probation or parole as  
15 time served on a sentence.

565.015. 1. A person commits the crime of murder of a criminal justice official in the first degree if, after deliberation upon the matter, he or she knowingly causes the death of a criminal justice official and:

(1) The criminal justice official was engaged in the performance of lawful duties; or

(2) The person knowingly caused the death of the criminal justice official because of his or her status as a criminal justice official.

2. Murder of a criminal justice official in the first degree is a felony which shall be punished by death unless the trier finds that there are mitigating circumstances which are sufficient to justify a sentence of life imprisonment without eligibility for probation, parole, or conditional release except by act of the governor.

3. For purposes of this section, "criminal justice official" means any person who is a peace officer as defined in subdivision (3) of section 590.010, RSMo, prosecuting attorney, assistant prosecuting attorney, circuit attorney, assistant circuit attorney, judge, jailer, probation and parole officer, or any employee of a correctional center or anyone assigned to work in a correctional center as defined in section 217.010, RSMo.

4. A trial for murder of a criminal justice official in the first degree shall be conducted according to the laws applicable to murder in the first degree unless there is a conflict with the provisions contained in this section in which case the provisions of this section shall be applied.

565.081. 1. A person commits the crime of assault of a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** in the first degree if such person attempts to kill or knowingly causes or attempts to cause serious physical injury to a law enforcement officer [or] , emergency personnel, **or corrections personnel**.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

3. As used in this section, "corrections personnel" means any employee of a correctional center or any person assigned to work in a correctional center, as defined in section 217.010, RSMo, probation and parole officer, or any jailer.

4. Assault of a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** in the first degree is a class A felony.

5. No person who pleads guilty to or is found guilty of assault of a law enforcement officer, emergency personnel, or corrections personnel in the first degree may be granted a suspended imposition of sentence or suspended execution of sentence or may be sentenced to pay a fine.

565.082. 1. A person commits the crime of assault of a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** in the second degree if such person:

(1) Knowingly causes or attempts to cause physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** by means of a deadly weapon or dangerous instrument;

(2) Knowingly causes or attempts to cause physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** by means other than a deadly weapon or dangerous instrument;

(3) Recklessly causes serious physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel**; or

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and when so operating, acts with criminal negligence to cause physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel**;

(5) Acts with criminal negligence to cause physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** by means of a deadly weapon or dangerous instrument;

(6) Purposely or recklessly places a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** in apprehension of immediate serious physical injury; or

(7) Acts with criminal negligence to create a substantial risk of death or serious physical injury to a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel**.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

3. As used in this section, "corrections personnel" means any employee of a correctional center or any person assigned to work in a correctional center, as defined in section 217.010, RSMo, probation and parole officer, or any jailer.

4. Assault of a law enforcement officer, emergency personnel, or [probation and parole officer] **corrections personnel** in the second degree is a class B felony unless committed pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a class C felony.

565.083. 1. A person commits the crime of assault of a law enforcement officer,  
2 emergency personnel, or [probation and parole officer] **corrections personnel** in the third degree  
3 if:

4 (1) Such person recklessly causes physical injury to a law enforcement officer,  
5 emergency personnel, or [probation and parole officer] **corrections personnel**;

6 (2) Such person purposely places a law enforcement officer, emergency personnel, or  
7 [probation and parole officer] **corrections personnel** in apprehension of immediate physical  
8 injury;

9 (3) Such person knowingly causes or attempts to cause physical contact with a law  
10 enforcement officer, emergency personnel, or [probation and parole officer] **corrections**  
11 **personnel** without the consent of the law enforcement officer [or] , emergency personnel, **or**  
12 **corrections personnel**.

13 2. As used in this section, "emergency personnel" means any paid or volunteer  
14 firefighter, emergency room or trauma center personnel, or emergency medical technician as  
15 defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

16 3. As used in this section, "corrections personnel" means any employee of a  
17 correctional center or any person assigned to work in a correctional center, as defined in  
18 section 217.010, RSMo, probation and parole officer, or any jailer.

19 4. Assault of a law enforcement officer, emergency personnel, or [probation and parole  
20 officer] **corrections personnel** in the third degree is a class A misdemeanor.

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