

HOUSE _____ AMENDMENT NO. _____

Offered By _____

AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 699, Page 9, Section 221.105, Line 42, by inserting after all of said section and line, the following:

“491.075. 1. A statement made by a child under the age of fourteen or a vulnerable person relating to an offense under chapter 565, 566, 568 or 573, performed [with or on a child] by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) (a) The child or vulnerable person testifies at the proceedings; or

(b) The child or vulnerable person is unavailable as a witness; or

(c) The child or vulnerable person is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child or vulnerable person unavailable as a witness at the time of the criminal proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of fourteen, or a vulnerable person, who is alleged to be victim of an offense under chapter 565, 566, 568 or 573 is sufficient corroboration of a statement, admission or confession regardless of whether or not the child or vulnerable person is available to testify regarding the offense.

3. A statement may not be admitted under this section unless the prosecuting attorney makes known to the accused or the accused's counsel his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or the accused's counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

5. For the purposes of this section, "vulnerable person" shall mean a person who, as a result of an inadequately developed or impaired intelligence or a psychiatric disorder that materially affects ability to function, lacks the mental capacity to consent, or whose developmental level does not exceed that of an ordinary child of fourteen years of age.”; and

Further amend said bill, Page 15, Section 559.115, Line 82, by inserting after all of said section and line, the following:

“565.072. 1. A person commits the crime of domestic assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010.

2. Domestic assault in the first degree is a class B felony unless in the course thereof the actor inflicts serious physical injury on the victim or has previously pleaded guilty to or been found guilty of committing this crime, in which case it is a class A felony.

565.073. 1. A person commits the crime of domestic assault in the second degree if the act involves a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, and he or she:

(1) Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or

(2) Recklessly causes serious physical injury to such family or household member; or

(3) Recklessly causes physical injury to such family or household member by means of any deadly weapon.

2. Domestic assault in the second degree is a class C felony.

565.074. 1. A person commits the crime of domestic assault in the third degree if the act involves a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010 and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member; or

(2) With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or

(3) The person purposely places such family or household member in apprehension of immediate physical injury by any means; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or

(5) The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or

(6) The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

2. Except as provided in subsection 3 of this section, domestic assault in the third degree is a

1 class A misdemeanor.

2 3. A person who has pleaded guilty to or been found guilty of the crime of domestic assault in the
3 third degree more than two times against any family or household member as defined in section 455.010,
4 or of any offense committed in violation of any county or municipal ordinance in any state, any state law,
5 any federal law, or any military law which, if committed in this state, would be a violation of this section,
6 is guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault.
7 The offenses described in this subsection may be against the same family or household member or against
8 different family or household members.

9 568.060. 1. [A person commits the crime of abuse of a child if such person:

10 (1) Knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old;
11 or

12 (2) Photographs or films a child less than eighteen years old engaging in a prohibited sexual act
13 or in the simulation of such an act or who causes or knowingly permits a child to engage in a prohibited
14 sexual act or in the simulation of such an act for the purpose of photographing or filming the act.

15 2. As used in this section "prohibited sexual act" means any of the following, whether performed
16 or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality,
17 sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to
18 be depicted for the purpose of sexual stimulation or gratification of any individual who may view such
19 depiction.

20 3. Abuse of a child is a class C felony, unless:

21 (1) In the course thereof the person inflicts serious emotional injury on the child, or the offense is
22 committed as part of a ritual or ceremony in which case the crime is a class B felony; or

23 (2) A child dies as a result of injuries sustained from conduct chargeable pursuant to the
24 provisions of this section, in which case the crime is a class A felony.

25 4. As used in this section, the word "fetishism" means a condition in which erotic feelings are
26 excited by an object or body part whose presence is psychologically necessary for sexual stimulation or
27 gratification] As used in this section, the following terms shall mean:

28 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any person
29 eighteen years of age or older. For purposes of this section, abuse shall not include injury inflicted on a
30 child by accidental means by a person with care, custody, or control of the child, or discipline of a child
31 by a person with care, custody, or control of the child, including spanking, in a reasonable manner;

32 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any means,
33 including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or kicking;

34 (3) "Mental injury", an injury to the intellectual or psychological capacity or the emotional
35 condition of a child as evidenced by an observable and substantial impairment of the ability of the child to
36 function within his or her normal range of performance or behavior;

37 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and control of a
38 child under the age of eighteen years or when such failure presents a substantial probability that death or
39 physical injury or sexual injury would result;

40 (5) "Physical injury", physical pain, illness, or any impairment of physical condition, including

1 but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and
2 impairment of any bodily function or organ;

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

7 (7) "Serious physical injury", a physical injury that creates a substantial risk of death or that
8 causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

9 2. A person commits the offense of abuse or neglect of a child if such person knowingly causes a
10 child who is less than eighteen years of age:

11 (1) To suffer physical or mental injury as a result of abuse or neglect; or

12 (2) To be placed in a situation in which the child may suffer physical or mental injury as the
13 result of abuse or neglect.

14 3. A person commits the offense of abuse or neglect of a child if such person recklessly causes a
15 child who is less than eighteen years of age to suffer from abusive head trauma.

16 4. A person does not commit abuse or neglect of a child by virtue of the sole fact that the person
17 delivers or allows the delivery of a child to a provider of emergency services.

18 5. Abuse or neglect of a child is a class C felony, without eligibility for probation or parole until
19 the defendant has served no less than one year of such sentence, unless the person has previously been
20 found guilty of a violation of this section or of a violation of the law of any other jurisdiction that
21 prohibits the same or similar conduct or the injury inflicted on the child is a serious emotional injury or a
22 serious physical injury, in which case abuse or neglect of a child is a class B felony, without eligibility for
23 probation or parole until the defendant has served no less than five years of such sentence.

24 6. Notwithstanding subsection 5 of this section to the contrary, abuse or neglect of a child is a
25 class A felony, without eligibility for probation or parole until the defendant has served not less than
26 fifteen years of such sentence, if:

27 (1) The injury is a serious emotional injury or a serious physical injury;

28 (2) The child is less than fourteen years of age; and

29 (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual
30 exploitation of a minor as defined under section 573.023.

31 7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or neglect of
32 a child to an appropriate public or private agency for treatment or counseling so long as the agency has
33 consented to taking such referrals. Nothing in this subsection shall limit the discretion of the circuit or
34 prosecuting attorney to prosecute a person who has been referred for treatment or counseling pursuant to
35 this subsection.

36 573.010. As used in this chapter the following terms shall mean:

37 (1) "Child", any person under the age of fourteen;

38 (2) "Child pornography":

39 (a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual
40 performance, as these terms are defined in section 556.061, and which has as one of its participants or

1 portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or

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

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

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

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

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

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

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

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

26 (7) "Identifiable minor":

27 (a) A person:

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

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

30 and

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

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

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

39 (9) "Material", anything printed or written, or any picture, drawing, photograph, motion picture
40 film, videotape or videotape production, or pictorial representation, or any recording or transcription, or

any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

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

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

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

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

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct [in a patently offensive way] and was made for sexual gratification; and

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

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

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

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

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

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

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

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

(17) "Sexual conduct", actual or simulated, normal or perverted 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 or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

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

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

(b) Bestiality;

1 (c) Masturbation;
2 (d) Sadistic or masochistic abuse; or
3 (e) Lascivious exhibition of the genitals or pubic area of any person;
4 (19) "Sexual excitement", the condition of human male or female genitals when in a state of
5 sexual stimulation or arousal;
6 (20) "Visual depiction", includes undeveloped film and videotape, and data stored on computer
7 disk or by electronic means which is capable of conversion into a visual image;
8 (21) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute,
9 publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or
10 redistribution.”; and
11
12 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.