

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for  
2 Senate Bill No. 834, Page 12, Section 548.241, Line 10, by inserting after said section and line the  
3 following:  
4

5 "556.046. 1. A person may be convicted of an offense included in an offense charged in the  
6 indictment or information. An offense is so included when:

7 (1) It is established by proof of the same or less than all the facts required to establish the  
8 commission of the offense charged; or

9 (2) It is specifically denominated by statute as a lesser degree of the offense charged; or

10 (3) It consists of an attempt to commit the offense charged or to commit an offense  
11 otherwise included therein.

12 2. The court shall not be obligated to charge the jury with respect to an included offense  
13 unless there is a rational basis for a verdict acquitting the person of the offense charged and  
14 convicting him or her of the included offense. An offense is charged for purposes of this section if:

15 (1) It is in an indictment or information; or

16 (2) It is an offense submitted to the jury because there is a rational basis for a verdict  
17 acquitting the person of the offense charged and convicting the person of the included offense.

18 3. The court shall be obligated to instruct the jury with respect to a particular included  
19 offense only if the instruction is requested and there is a rational basis in the evidence for acquitting  
20 the person of the immediately higher included offense and ~~[there is a basis in the evidence for]~~  
21 convicting the person of that particular included offense."; and  
22

23 Further amend said bill, Page 18, Section 559.115, Line 77, by inserting after said section and line  
24 the following:  
25

26 "566.010. As used in this chapter and chapter 568, the following terms mean:

27 (1) "Aggravated sexual offense", any sexual offense, in the course of which, the actor:

28 (a) Inflicts serious physical injury on the victim;

29 (b) Displays a deadly weapon or dangerous instrument in a threatening manner;

30 (c) Subjects the victim to sexual intercourse or deviate sexual intercourse with more than

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 one person;

2 (d) Had previously been found guilty of an offense under this chapter or under section  
3 573.200, child used in sexual performance; section 573.205, promoting sexual performance by a  
4 child; section 573.023, sexual exploitation of a minor; section 573.025, promoting child  
5 pornography in the first degree; section 573.035, promoting child pornography in the second degree;  
6 section 573.037, possession of child pornography; or section 573.040, furnishing pornographic  
7 materials to minors; or has previously been found guilty of an offense in another jurisdiction which  
8 would constitute an offense under this chapter or said sections;

9 (e) Commits the offense as part of an act or series of acts performed by two or more persons  
10 as part of an established or prescribed pattern of activity; or

11 (f) Engages in the act that constitutes the offense with a person the actor knows to be,  
12 without regard to legitimacy, the actor's:

13 a. Ancestor or descendant by blood or adoption;

14 b. Stepchild while the marriage creating that relationship exists;

15 c. Brother or sister of the whole or half blood; or

16 d. Uncle, aunt, nephew, or niece of the whole blood;

17 (2) "Commercial sex act", any sex act on account of which anything of value is given to or  
18 received by any person;

19 (3) "Deviate sexual intercourse", any act involving the genitals of one person and the hand,  
20 mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight,  
21 of the penis, female genitalia, or the anus by a finger, instrument or object done for the purpose of  
22 arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;

23 (4) "Forced labor", a condition of servitude induced by means of:

24 (a) Any scheme, plan, or pattern of behavior intended to cause a person to believe that, if the  
25 person does not enter into or continue the servitude, such person or another person will suffer  
26 substantial bodily harm or physical restraint; or

27 (b) The abuse or threatened abuse of the legal process;

28 (5) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;

29 (6) "Sexual contact", any touching of another person with the genitals or any touching of the  
30 genitals or anus of another person, or the breast of a female person, or such touching through the  
31 clothing, or causing semen, seminal fluid, or other ejaculate to come into contact with another  
32 person, for the purpose of arousing or gratifying the sexual desire of any person or for the purpose  
33 of terrorizing the victim;

34 (7) "Sexual intercourse", any penetration, however slight, of the female genitalia by the  
35 penis.

36 566.086. 1. A person commits the offense of sexual contact with a student if he or she has  
37 sexual contact with a student of the school and is:

38 (1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104;

39 (2) A student teacher; [Ø]

(3) An employee of the school; ~~or~~

(4) A volunteer of the school or of an organization working with the school on a project or program who is not a student at the school; ~~or~~

(5) An elected or appointed official of the school district; ~~or~~

(6) A person employed by an entity that contracts with the school or school district to provide services; or

(7) A coach, assistant coach, director, or other adult with a school-aged team, club, or ensemble, regardless of whether such team, club, or ensemble is connected to a school or scholastic association. For purposes of this subdivision, "school-aged team, club, or ensemble" means any group organized for individual or group competition for the performance of sports activities or any group organized for individual or group presentation for fine or performing arts, by any child under eighteen years of age.

2. For the purposes of this section, "school" shall mean any public or private school in this state serving kindergarten through grade twelve or any school bus used by the school district.

3. The offense of sexual contact with a student is a class E felony.

4. It is not a defense to prosecution for a violation of this section that the student consented to the sexual contact."; and

Further amend said bill, Page 19, Section 589.565, Line 19, by inserting after said section and line the following:

"600.042. 1. The director shall:

(1) Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and he or she and the deputy director or directors may participate in the trial and appeal of criminal actions at the request of the defender;

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as he deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

(4) Administer and coordinate the operations of defender services and be responsible for the overall supervision of all personnel, offices, divisions and facilities of the state public defender system, except that the director shall have no authority to direct or control the legal defense

1 provided by a defender to any person served by the state public defender system;

2 (5) Develop programs and administer activities to achieve the purposes of this chapter;

3 (6) Keep and maintain proper financial records with respect to the provision of all public  
4 defender services for use in the calculating of direct and indirect costs of any or all aspects of the  
5 operation of the state public defender system;

6 (7) Supervise the training of all public defenders and other personnel and establish such  
7 training courses as shall be appropriate;

8 (8) With approval of the commission, promulgate necessary rules, regulations and  
9 instructions consistent with this chapter defining the organization of the state public defender system  
10 and the responsibilities of division directors, district defenders, deputy district defenders, assistant  
11 public defenders and other personnel;

12 (9) With the approval of the commission, apply for and accept on behalf of the public  
13 defender system any funds which may be offered or which may become available from government  
14 grants, private gifts, donations or bequests or from any other source. Such moneys shall be  
15 deposited in the ~~[state general revenue]~~ public defender-federal and other fund;

16 (10) Contract for legal services with private attorneys on a case-by-case basis and with  
17 assigned counsel as the commission deems necessary considering the needs of the area, for fees  
18 approved and established by the commission;

19 (11) With the approval and on behalf of the commission, contract with private attorneys for  
20 the collection and enforcement of liens and other judgments owed to the state for services rendered  
21 by the state public defender system.

22 2. No rule or portion of a rule promulgated under the authority of this chapter shall become  
23 effective unless it has been promulgated pursuant to the provisions of section 536.024.

24 3. The director and defenders shall, within guidelines as established by the commission and  
25 as set forth in subsection 4 of this section, accept requests for legal services from eligible persons  
26 entitled to counsel under this chapter or otherwise so entitled under the constitution or laws of the  
27 United States or of the state of Missouri and provide such persons with legal services when, in the  
28 discretion of the director or the defenders, such provision of legal services is appropriate.

29 4. The director and defenders shall provide legal services to an eligible person:

30 (1) Who is detained or charged with a felony, including appeals from a conviction in such a  
31 case;

32 (2) Who is detained or charged with a misdemeanor which will probably result in  
33 confinement in the county jail upon conviction, including appeals from a conviction in such a case,  
34 unless the prosecuting or circuit attorney has waived a jail sentence;

35 (3) Who is charged with a violation of probation when it has been determined by a judge  
36 that the appointment of counsel is necessary to protect the person's due process rights under section  
37 559.036;

38 (4) Who has been taken into custody pursuant to section 632.489, including appeals from a  
39 determination that the person is a sexually violent predator and petitions for release, notwithstanding

1 any provisions of law to the contrary;

2 (5) For whom the federal constitution or the state constitution requires the appointment of  
3 counsel; and

4 (6) Who is charged in a case in which he or she faces a loss or deprivation of liberty, and in  
5 which the federal or the state constitution or any law of this state requires the appointment of  
6 counsel; however, the director and the defenders shall not be required to provide legal services to  
7 persons charged with violations of county or municipal ordinances, or misdemeanor offenses except  
8 as provided in this section.

9 5. The director may:

10 (1) Delegate the legal representation of an eligible person to any member of the state bar of  
11 Missouri;

12 (2) Designate persons as representatives of the director for the purpose of making indigency  
13 determinations and assigning counsel.

14 6. There is hereby created within the state treasury the "Public Defender-Federal and Other  
15 Fund", which shall be funded annually by appropriation and which shall contain moneys received  
16 from any other funds from government grants, private gifts, donations, bequests, or any other source  
17 to be used for the purpose of funding local offices of the office of state public defender. The state  
18 treasurer shall be the custodian of the fund and shall approve disbursements from the fund upon the  
19 request of the director of the office of state public defender. Any interest or other earnings with  
20 respect to amounts transferred to the fund shall be credited to the fund. Notwithstanding the  
21 provisions of section 33.080 to the contrary, any unexpended balances in the fund at the end of any  
22 fiscal year shall not be transferred to the general revenue fund or any other fund."; and

23  
24 Further amend said bill by amending the title, enacting clause, and intersectional references  
25 accordingly.