

FIRST REGULAR SESSION

# HOUSE BILL NO. 818

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TITUS.

1693H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 541.033, 562.071, 563.026, and 565.002, RSMo, and to enact in lieu thereof five new sections relating to the protection of unborn children, with an emergency clause.

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

Section A. Sections 541.033, 562.071, 563.026, and 565.002, RSMo, are repealed  
2 and five new sections enacted in lieu thereof, to be known as sections 1.207, 541.033,  
3 562.071, 563.026, and 565.002, to read as follows:

**1.207. 1. This section shall be known and may be cited as the "Abolition of  
2 Abortion in Missouri Act".**

**3 2. Acknowledging the sanctity of innocent human life, created in the image of  
4 God, it is the intent of the general assembly:**

**5 (1) To follow Article I, Section 2, of the Missouri Constitution, which provides,  
6 "That all constitutional government is intended to promote the general welfare of the  
7 people; that all persons have a natural right to life, liberty, the pursuit of happiness and  
8 the enjoyment of the gains of their own industry; that all persons are created equal and  
9 are entitled to equal rights and opportunity under the law; that to give security to these  
10 things is the principal office of government, and that when government does not confer  
11 this security, it fails in its chief design.";**

**12 (2) Pursuant to section 1.205, to acknowledge on behalf of the unborn child at  
13 every stage of development, all the rights, privileges, and immunities available to other  
14 persons, citizens, and residents of this state;**

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.

15           **(3) To follow the Constitution of the United States, which requires that "no**  
16 **state...shall deny to any person within its jurisdiction the equal protection of the laws";**

17           **(4) To fulfill such constitutional and statutory requirements by protecting the**  
18 **lives of unborn persons with the same criminal and civil laws protecting the lives of born**  
19 **persons by repealing provisions that permit willful prenatal homicide or assault;**

20           **(5) To ensure that all persons potentially subject to such laws are entitled to due**  
21 **process protections; and**

22           **(6) To abolish abortion in this state.**

23           **3. Unless specifically provided otherwise, enforcement is subject to the same**  
24 **presumptions, defenses, justifications, laws of parties, immunities, and clemencies as**  
25 **would apply where the victim is a person who had been born alive.**

          541.033. 1. Persons accused of committing offenses against the laws of this state,  
2 except as may be otherwise provided by law, shall be prosecuted:

3           (1) In the county in which the offense is committed; or

4           (2) If the offense is committed partly in one county and partly in another, or if the  
5 elements of the crime occur in more than one county, then in any of the counties where any  
6 element of the offense occurred.

7           2. Persons accused of committing the offenses of identity theft against the laws of this  
8 state in sections 570.223, 570.224, and 575.120 shall be prosecuted:

9           (1) In the county in which the offense is committed;

10          (2) If the offense is committed partly in one county and partly in another, or if the  
11 elements of the offense occur in more than one county, then in any of the counties where any  
12 element of the offense occurred;

13          (3) In the county in which the victim resides; or

14          (4) In the county in which the property obtained or attempted to be obtained was  
15 located.

16          **3. Persons accused of committing an offense against the laws of this state under**  
17 **chapter 565 where the victim is an unborn child shall be prosecuted:**

18           **(1) In the county in which the offense is committed;**

19           **(2) If the offense is committed partly in one county and partly in another, or if**  
20 **the elements of the offense occur in more than one county, then in any of the counties**  
21 **where any element of the offense occurred;**

22           **(3) In the county in which the accused resides;**

23           **(4) In the county in which the victim resides; or**

24           **(5) In the county in which the accused is apprehended.**

          562.071. 1. It is an affirmative defense that the defendant engaged in the conduct  
2 charged to constitute an offense because he or she was coerced to do so, by the use of, or

3 threatened imminent use of, unlawful physical force upon him or her or a third person, which  
4 force or threatened force a person of reasonable firmness in his situation would have been  
5 unable to resist.

6 2. The defense of "duress" as defined in subsection 1 is not available:

7 (1) As to the ~~[crime]~~ offense of murder, **except where the victim is an unborn child**  
8 **and the defendant is the child's mother;**

9 (2) As to any offense when the defendant recklessly places himself or herself in a  
10 situation in which it is probable that he or she will be subjected to the force or threatened  
11 force described in subsection 1 of this section.

563.026. 1. Unless inconsistent with other provisions of this chapter defining  
2 justifiable use of physical force, or with some other provision of law, conduct which would  
3 otherwise constitute any offense other than a class A felony or murder is justifiable and not  
4 criminal when it is necessary as an emergency measure to avoid an imminent public or private  
5 injury which is about to occur by reason of a situation occasioned or developed through no  
6 fault of the actor, and which is of such gravity that, according to ordinary standards of  
7 intelligence and morality, the desirability of avoiding the injury outweighs the desirability of  
8 avoiding the injury sought to be prevented by the statute defining the offense charged.

9 2. The necessity and justifiability of conduct under subsection 1 of this section may  
10 not rest upon considerations pertaining only to the morality and advisability of the statute,  
11 either in its general application or with respect to its application to a particular class of cases  
12 arising thereunder. Whenever evidence relating to the defense of justification under this  
13 section is offered, the court shall rule as a matter of law whether the claimed facts and  
14 circumstances would, if established, constitute a justification.

15 3. **Conduct which would otherwise constitute any offense is justifiable and not**  
16 **criminal when it is a lawful medical procedure:**

17 (1) **Performed by a licensed physician;**

18 (2) **Performed on a pregnant female to avert the death of the pregnant female;**

19 (3) **That results in the accidental or unintentional death of the unborn child the**  
20 **pregnant female is carrying; and**

21 (4) **Performed when all reasonable alternatives to save the life of the unborn**  
22 **child:**

23 (a) **Are unavailable; or**

24 (b) **Were attempted unsuccessfully before the performance of the medical**  
25 **procedure.**

26 4. The defense of justification under this section is an affirmative defense.

565.002. As used in this chapter, unless a different meaning is otherwise plainly  
2 required the following terms mean:

- 3 (1) "Adequate cause", cause that would reasonably produce a degree of passion in a  
4 person of ordinary temperament sufficient to substantially impair an ordinary person's  
5 capacity for self-control;
- 6 (2) "Child", a person under seventeen years of age;
- 7 (3) "Conduct", includes any act or omission;
- 8 (4) "Course of conduct", a pattern of conduct composed of two or more acts, which  
9 may include communication by any means, over a period of time, however short, evidencing  
10 a continuity of purpose. Constitutionally protected activity is not included within the  
11 meaning of course of conduct. Such constitutionally protected activity includes picketing or  
12 other organized protests;
- 13 (5) "Deliberation", cool reflection for any length of time no matter how brief;
- 14 (6) "Domestic victim", a household or family member as the term "family" or  
15 "household member" is defined in section 455.010, including any child who is a member of  
16 the household or family;
- 17 (7) "Emotional distress", something markedly greater than the level of uneasiness,  
18 nervousness, unhappiness, or the like which are commonly experienced in day-to-day living;
- 19 (8) "Full or partial nudity", the showing of all or any part of the human genitals, pubic  
20 area, buttock, or any part of the nipple of the breast of any female person, with less than a  
21 fully opaque covering;
- 22 (9) "Legal custody", the right to the care, custody and control of a child;
- 23 (10) "Parent", either a biological parent or a parent by adoption;
- 24 (11) **"Person", includes a human being, including an unborn child at every stage**  
25 **of development from the moment of fertilization until birth;**
- 26 (12) "Person having a right of custody", a parent or legal guardian of the child;
- 27 ~~[(12)]~~ (13) "Photographs" or "films", the making of any photograph, motion picture  
28 film, videotape, or any other recording or transmission of the image of a person;
- 29 ~~[(13)]~~ (14) "Place where a person would have a reasonable expectation of privacy",  
30 any place where a reasonable person would believe that a person could disrobe in privacy,  
31 without being concerned that the person's undressing was being viewed, photographed or  
32 filmed by another;
- 33 ~~[(14)]~~ (15) "Special victim", any of the following:
- 34 (a) A law enforcement officer assaulted in the performance of his or her official  
35 duties or as a direct result of such official duties;
- 36 (b) Emergency personnel, any paid or volunteer firefighter, emergency room,  
37 hospital, or trauma center personnel, or emergency medical technician, assaulted in the  
38 performance of his or her official duties or as a direct result of such official duties;

39 (c) A probation and parole officer assaulted in the performance of his or her official  
40 duties or as a direct result of such official duties;

41 (d) An elderly person;

42 (e) A person with a disability;

43 (f) A vulnerable person;

44 (g) Any jailer or corrections officer of the state or one of its political subdivisions  
45 assaulted in the performance of his or her official duties or as a direct result of such official  
46 duties;

47 (h) A highway worker in a construction or work zone as the terms "highway worker",  
48 "construction zone", and "work zone" are defined under section 304.580;

49 (i) Any utility worker, meaning any employee of a utility that provides gas, heat,  
50 electricity, water, steam, telecommunications services, or sewer services, whether privately,  
51 municipally, or cooperatively owned, while in the performance of his or her job duties,  
52 including any person employed under a contract;

53 (j) Any cable worker, meaning any employee of a cable operator, as such term is  
54 defined in section 67.2677, including any person employed under contract, while in the  
55 performance of his or her job duties; and

56 (k) Any employee of a mass transit system, including any employee of public bus or  
57 light rail companies, while in the performance of his or her job duties;

58 ~~[(15)]~~ **(16)** "Sudden passion", passion directly caused by and arising out of  
59 provocation by the victim or another acting with the victim which passion arises at the time of  
60 the offense and is not solely the result of former provocation;

61 ~~[(16)]~~ **(17)** "Trier", the judge or jurors to whom issues of fact, guilt or innocence, or  
62 the assessment and declaration of punishment are submitted for decision;

63 ~~[(17)]~~ **(18)** "Views", the looking upon of another person, with the unaided eye or with  
64 any device designed or intended to improve visual acuity, for the purpose of arousing or  
65 gratifying the sexual desire of any person.

Section B. The provisions of this act apply prospectively only and not retroactively.  
2 It applies only to offenses committed, or causes of action that arise, on or after the effective  
3 date of this act.

Section C. Because immediate action is necessary to protect the unborn children in  
2 the state of Missouri, section A of this act is deemed necessary for the immediate preservation  
3 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act  
4 within the meaning of the constitution, and section A of this act shall be in full force and  
5 effect upon its passage and approval.