

SECOND REGULAR SESSION

# HOUSE BILL NO. 1904

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HURLBERT.

4061H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 568.060 and 578.421, RSMo, and to enact in lieu thereof two new sections relating to the offense of abuse or neglect of a child, with penalty provisions.

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

Section A. Sections 568.060 and 578.421, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 568.060 and 578.421, to read as follows:

568.060. 1. As used in this section, the following terms shall mean:

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

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

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

13 (4) "Neglect", the failure to provide, by those responsible for the care, custody, and  
14 control of a child under the age of eighteen years, the care reasonable and necessary to  
15 maintain the physical and mental health of the child, when such failure presents a substantial  
16 probability that death or physical injury or sexual injury would result;

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.

17 (5) "Physical injury", physical pain, illness, or any impairment of physical condition,  
18 including but not limited to bruising, lacerations, hematomas, welts, or permanent or  
19 temporary disfigurement and impairment of any bodily function or organ;

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

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

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

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

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

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

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

39 **5. (1) A person does not commit the offense of abuse or neglect of a child by**  
40 **virtue of the sole fact that the person allows the child to engage in independent activities**  
41 **without adult supervision and the person is a parent to the child or is responsible for the**  
42 **child's care, provided that the:**

43 **(a) Independent activities are appropriate based on the child's age, maturity,**  
44 **and physical and mental abilities; and**

45 **(b) Lack of adult supervision does not constitute conduct that is so grossly**  
46 **negligent as to endanger the health or safety of the child.**

47 **(2) As used in this subsection, "independent activities" shall include traveling to**  
48 **or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining**  
49 **at home for a reasonable period of time without adult supervision.**

50 ~~5.]~~ 6. The offense of abuse or neglect of a child is:

51 (1) A class D felony, without eligibility for probation, parole, or conditional release  
52 until the defendant has served no less than one year of such sentence, unless the person has  
53 previously been found guilty of a violation of this section or of a violation of the law of any

54 other jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child  
55 is a serious emotional injury or a serious physical injury, in which case abuse or neglect of a  
56 child is a class B felony, without eligibility for probation or parole until the defendant has  
57 served not less than five years of such sentence; or

58 (2) A class A felony if the child dies as a result of injuries sustained from conduct  
59 chargeable under the provisions of this section.

60 ~~[6-]~~ 7. Notwithstanding subsection ~~[5]~~ 6 of this section to the contrary, the offense of  
61 abuse or neglect of a child is a class A felony, without eligibility for probation, parole, or  
62 conditional release until the defendant has served not less than fifteen years of such sentence,  
63 if:

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

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

66 (3) The injury is the result of sexual abuse or sexual abuse in the first degree as  
67 defined under section 566.100 or sexual exploitation of a minor as defined under section  
68 573.023.

69 ~~[7-]~~ 8. The circuit or prosecuting attorney may refer a person who is suspected of  
70 abuse or neglect of a child to an appropriate public or private agency for treatment or  
71 counseling so long as the agency has consented to taking such referrals. Nothing in this  
72 subsection shall limit the discretion of the circuit or prosecuting attorney to prosecute a  
73 person who has been referred for treatment or counseling pursuant to this subsection.

74 ~~[8-]~~ 9. Nothing in this section shall be construed to alter the requirement that every  
75 element of any crime referred to herein must be proven beyond a reasonable doubt.

76 ~~[9-]~~ 10. Discipline, including spanking administered in a reasonable manner, shall not  
77 be construed to be abuse under this section.

578.421. 1. Sections 578.421 to 578.437 shall be known and may be cited as the  
2 "Missouri Criminal Street Gangs Prevention Act".

3 2. As used in sections 578.421 to 578.437, the following terms mean:

4 (1) "Criminal street gang", any ongoing organization, association, or group of three or  
5 more persons, whether formal or informal, having as one of its motivating activities the  
6 commission of one or more of the criminal acts enumerated in subdivision (2) of this  
7 subsection, whose members individually or collectively engage in or have engaged in a  
8 pattern of criminal gang activity;

9 (2) "Pattern of criminal street gang activity", the commission, attempted commission,  
10 or solicitation of two or more of the following offenses, provided at least one of those  
11 offenses occurred after August 28, 1993, and the last of those offenses occurred within three  
12 years after a prior offense, and the offenses are committed on separate occasions, or by two or  
13 more persons:

- 14 (a) Assault with a deadly weapon or by means of force likely to cause serious  
15 physical injury, as provided in sections 565.050 and 565.052;
- 16 (b) Robbery, arson and those offenses under chapter 569 which are related to robbery  
17 and arson;
- 18 (c) Murder or manslaughter, as provided in sections 565.020 to 565.024;
- 19 (d) Any violation of the provisions of chapter 579 which involves the distribution,  
20 delivery or manufacture of a substance prohibited by chapter 579;
- 21 (e) Unlawful use of a weapon which is a felony pursuant to section 571.030;
- 22 (f) Tampering with witnesses and victims, as provided in section 575.270;
- 23 (g) Promoting online sexual solicitation, as provided in section 566.103;
- 24 (h) Sexual trafficking of a child in the first degree, as provided in section 566.210;
- 25 (i) Sexual trafficking of a child in the second degree, as provided in section 566.211;
- 26 (j) Patronizing prostitution, as provided in subsection 4 of section 567.030;
- 27 (k) Promoting prostitution in the first degree, as provided in section 567.050;
- 28 (l) Promoting prostitution in the second degree, as provided in section 567.060;
- 29 (m) Abuse or neglect of a child, as provided in subsection ~~[6]~~ 7 of section 568.060;
- 30 (n) Sexual exploitation of a minor, as provided in section 573.023;
- 31 (o) Child used in sexual performance, as provided in section 573.200;
- 32 (p) Promoting sexual performance by a child, as provided in section 573.205; or
- 33 (q) Any dangerous felony, as defined in section 556.061.

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