

SECOND REGULAR SESSION

# SENATE BILL NO. 857

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 28, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 556.061, RSMo, and to enact in lieu thereof one new section relating to dangerous felonies.

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

Section A. Section 556.061, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 556.061, to read as follows:

556.061. In this code, unless the context requires a different definition,  
2 the following 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  
5 556.051;

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

11 (4) "Confinement":

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

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

16 b. The person is released on bail, bond, or recognizance, personal or  
17 otherwise; or

18 c. A public servant having the legal power and duty to confine the person  
19 authorizes his release without guard and without condition that he return to

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 confinement;

21 (b) A person is not in confinement if:

22 a. The person is on probation or parole, temporary or otherwise; or

23 b. The person is under sentence to serve a term of confinement which is  
24 not continuous, or is serving a sentence under a work-release program, and in  
25 either such case is not being held in a place of confinement or is not being held  
26 under guard by a person having the legal power and duty to transport the person  
27 to or from a place of confinement;

28 (5) "Consent": consent or lack of consent may be expressed or  
29 implied. Assent does not constitute consent if:

30 (a) It is given by a person who lacks the mental capacity to authorize the  
31 conduct charged to constitute the offense and such mental incapacity is manifest  
32 or known to the actor; or

33 (b) It is given by a person who by reason of youth, mental disease or  
34 defect, or intoxication, is manifestly unable or known by the actor to be unable  
35 to make a reasonable judgment as to the nature or harmfulness of the conduct  
36 charged to constitute the offense; or

37 (c) It is induced by force, duress or deception;

38 (6) "Criminal negligence" has the meaning specified in section 562.016,  
39 RSMo;

40 (7) "Custody", a person is in custody when the person has been arrested  
41 but has not been delivered to a place of confinement;

42 (8) "Dangerous felony" means the felonies of arson in the first degree,  
43 assault in the first degree, attempted forcible rape [if physical injury results],  
44 attempted forcible sodomy [if physical injury results], forcible rape, forcible  
45 sodomy, kidnapping, murder in the second degree, assault of a law enforcement  
46 officer in the first degree, domestic assault in the first degree, elder abuse in the  
47 first degree, robbery in the first degree, statutory rape in the first degree [when  
48 the victim is a child less than twelve years of age at the time of the commission  
49 of the act giving rise to the offense], statutory sodomy in the first degree [when  
50 the victim is a child less than twelve years of age at the time of the commission  
51 of the act giving rise to the offense, and], **statutory rape in the second**  
52 **degree, statutory sodomy in the second degree, sexual assault, child**  
53 **molestation in the first degree, sexual misconduct involving a child,**  
54 **sexual abuse,** abuse of a child pursuant to subdivision (2) of subsection 3 of  
55 section 568.060, RSMo, child kidnapping, and parental kidnapping committed by

56 detaining or concealing the whereabouts of the child for not less than one  
57 hundred twenty days under section 565.153, RSMo;

58 (9) "Dangerous instrument" means any instrument, article or substance,  
59 which, under the circumstances in which it is used, is readily capable of causing  
60 death or other serious physical injury;

61 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any  
62 weapon from which a shot, readily capable of producing death or serious physical  
63 injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or  
64 metal knuckles;

65 (11) "Felony" has the meaning specified in section 556.016;

66 (12) "Forcible compulsion" means either:

67 (a) Physical force that overcomes reasonable resistance; or

68 (b) A threat, express or implied, that places a person in reasonable fear  
69 of death, serious physical injury or kidnapping of such person or another person;

70 (13) "Incapacitated" means that physical or mental condition, temporary  
71 or permanent, in which a person is unconscious, unable to appraise the nature of  
72 such person's conduct, or unable to communicate unwillingness to an act. A  
73 person is not incapacitated with respect to an act committed upon such person if  
74 he or she became unconscious, unable to appraise the nature of such person's  
75 conduct or unable to communicate unwillingness to an act, after consenting to the  
76 act;

77 (14) "Infraction" has the meaning specified in section 556.021;

78 (15) "Inhabitable structure" has the meaning specified in section 569.010,  
79 RSMo;

80 (16) "Knowingly" has the meaning specified in section 562.016, RSMo;

81 (17) "Law enforcement officer" means any public servant having both the  
82 power and duty to make arrests for violations of the laws of this state, and  
83 federal law enforcement officers authorized to carry firearms and to make arrests  
84 for violations of the laws of the United States;

85 (18) "Misdemeanor" has the meaning specified in section 556.016;

86 (19) "Offense" means any felony, misdemeanor or infraction;

87 (20) "Physical injury" means physical pain, illness, or any impairment of  
88 physical condition;

89 (21) "Place of confinement" means any building or facility and the grounds  
90 thereof wherein a court is legally authorized to order that a person charged with  
91 or convicted of a crime be held;

92           (22) "Possess" or "possessed" means having actual or constructive  
93 possession of an object with knowledge of its presence. A person has actual  
94 possession if such person has the object on his or her person or within easy reach  
95 and convenient control. A person has constructive possession if such person has  
96 the power and the intention at a given time to exercise dominion or control over  
97 the object either directly or through another person or persons. Possession may  
98 also be sole or joint. If one person alone has possession of an object, possession  
99 is sole. If two or more persons share possession of an object, possession is joint;

100           (23) "Public servant" means any person employed in any way by a  
101 government of this state who is compensated by the government by reason of such  
102 person's employment, any person appointed to a position with any government of  
103 this state, or any person elected to a position with any government of this state.  
104 It includes, but is not limited to, legislators, jurors, members of the judiciary and  
105 law enforcement officers. It does not include witnesses;

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

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

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

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

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

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

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

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

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

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Unofficial

Bill

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