

SECOND REGULAR SESSION

# SENATE BILL NO. 557

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3664S.03I

## AN ACT

To repeal sections 566.032, 566.062, 566.067, and 589.414, RSMo, and to enact in lieu thereof ten new sections relating to sexual offenders, with penalty provisions.

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

Section A. Sections 566.032, 566.062, 566.067, and 589.414, RSMo, are  
2 repealed and ten new sections enacted in lieu thereof, to be known as sections  
3 105.003, 285.028, 351.609, 488.5362, 566.032, 566.062, 566.067, 589.414, 589.575,  
4 and 589.576, to read as follows:

**105.003. 1. Prior to allowing any person to be hired for a full-  
2 time, part-time, or temporary position with substantial direct contact  
3 with children under the age of sixteen, a state department, agency,  
4 board, or commission shall request a criminal background check as  
5 provided in section 43.540, RSMo. If an applicant has not resided in  
6 this state for five consecutive years prior to the date of his or her  
7 application for employment, the state department, agency, board, or  
8 commission shall request a nationwide check for the purpose of  
9 determining if the applicant has a prior criminal history in other  
10 states. The fingerprint cards and any required fees shall be sent to the  
11 highway patrol's criminal records division. The first set of fingerprints  
12 shall be used for searching the state repository of criminal history  
13 information. If no identification is made, the second set of fingerprints  
14 shall be forwarded to the Federal Bureau of Investigation,  
15 Identification Division, for the searching of the federal criminal history  
16 files. The patrol shall notify the submitting state department, agency,  
17 board, or commission of any criminal history information or lack of**

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

18 criminal history information discovered on the  
19 individual. Notwithstanding the provisions of section 610.120, RSMo,  
20 all records related to any criminal history information discovered shall  
21 be accessible and available to the state department, agency, board, or  
22 commission making the record request. In the case of temporary  
23 employees hired through or contracted for an employment agency, the  
24 employment agency shall be subject to the provisions of this section  
25 prior to sending the employee to a state department, agency, board, or  
26 commission.

27         2. When a state department, agency, board, or commission  
28 requests a criminal background check under section 43.540, RSMo, it  
29 may require the applicant to reimburse the state department, agency,  
30 board, or commission for the cost of such record check. When a state  
31 department, agency, board, or commission requests a nationwide  
32 criminal background check under subsection 1 of this section, the total  
33 cost shall be paid by the state department, agency, board, or  
34 commission. The obligation of a state department, agency, board, or  
35 commission to obtain a nationwide criminal background check shall be  
36 subject to the availability of appropriations.

37         3. An applicant for a position with substantial direct contact  
38 with children less than sixteen years of age shall:

39             (1) Sign a consent form as required by section 43.540, RSMo, so  
40 the state department, agency, board, or commission may request a  
41 criminal records review; and

42             (2) Disclose the applicant's criminal history. For the purposes  
43 of this subdivision, "criminal history" includes any conviction or a plea  
44 of guilty to a misdemeanor or felony charge and shall include any  
45 suspended imposition of sentence, any suspended execution of sentence  
46 or any period of probation or parole.

47         4. Any state department, agency, board, or commission shall not  
48 hire any individual for a position with substantial direct contact with  
49 children less than sixteen years of age, who has pleaded guilty to or  
50 been found guilty of any offense for which a person is required to  
51 register as a sexual offender under sections 589.400 to 589.425, RSMo,  
52 or any offense of a similar nature established under the laws of any  
53 other state or of the United States, or any other country, whether or  
54 not the sentence is imposed.

55           5. Any state department, agency, board, or commission shall be  
56 prohibited from hiring an applicant who fails to disclose his or her  
57 criminal history as required by subsection 3 of this section.

          285.028. 1. Prior to allowing any person to be hired for a full-  
2 time, part-time or temporary position with substantial direct contact  
3 with children under the age of sixteen, an employer with more than ten  
4 full- or part-time employees may request a criminal background check  
5 as provided in section 43.540, RSMo. If an applicant has not resided in  
6 this state for five consecutive years prior to the date of his or her  
7 application for employment, the employer may request a nationwide  
8 check for the purpose of determining if the applicant has a prior  
9 criminal history in other states. The fingerprint cards and any  
10 required fees shall be sent to the highway patrol's criminal records  
11 division. The first set of fingerprints shall be used for searching the  
12 state repository of criminal history information. If no identification is  
13 made, the second set of fingerprints shall be forwarded to the Federal  
14 Bureau of Investigation, Identification Division, for the searching of  
15 the federal criminal history files. The patrol shall notify the submitting  
16 employer of any criminal history information or lack of criminal  
17 history information discovered on the individual. Notwithstanding the  
18 provisions of section 610.120, RSMo, all records related to any criminal  
19 history information discovered shall be accessible and available to the  
20 employer making the record request. In the case of temporary  
21 employees hired through or contracted for an employment agency, the  
22 employment agency shall be subject to the provisions of this section  
23 prior to sending the employee to the employer.

24           2. When an employer with more than ten employees requests a  
25 criminal background check under section 43.540, RSMo, or a  
26 nationwide criminal background check, it may require the applicant to  
27 reimburse the employer for the cost of such record check.

28           3. An applicant for a position with substantial direct contact  
29 with children less than sixteen years of age shall:

30           (1) Sign a consent form as required by section 43.540, RSMo, so  
31 the employer may request a criminal records review; and

32           (2) Disclose the applicant's criminal history. For the purposes  
33 of this subdivision "criminal history" includes any conviction or a plea  
34 of guilty to a misdemeanor or felony charge and shall include any

35 suspended imposition of sentence, any suspended execution of sentence  
36 or any period of probation or parole.

37 4. If an employer subject to this section hires any individual for  
38 a position with substantial direct contact with children less than  
39 sixteen years of age, the employer shall be held civilly liable for  
40 damages resulting from any sexual offense committed by the employee  
41 that occurred because the employee had contact with the child through  
42 his or her employment and he or she is a person who has pleaded guilty  
43 to or been found guilty of any offense for which a person is required to  
44 register as a sexual offender under sections 589.400 to 589.425, RSMo,  
45 or any offense of a similar nature established under the laws of any  
46 other state or of the United States, or any other country, whether or  
47 not the sentence is imposed.

351.609. 1. For the purposes of this section, the following terms  
2 shall mean:

3 (1) "Adverse result", danger to the life or physical safety of an  
4 individual, a flight from prosecution, the destruction of or tampering  
5 with evidence, the intimidation of potential witnesses, or serious  
6 jeopardy to an investigation or undue delay of a trial that occurs as a  
7 result of the notification of a search warrant.

8 (2) "Electronic communication services" and "remote computing  
9 services", the same meaning as provided by the Electronic  
10 Communications Private Act in Chapter 121 (commencing with Section  
11 2701) of Part I of Title 18 of the United States Code Annotated, as  
12 amended. This section shall not apply to corporations that do not  
13 provide electronic communication services or remote computing  
14 services to the general public.

15 (3) "Foreign corporation", the same meaning as defined in section  
16 351.015, and in addition, those corporations organized under the laws  
17 of the United States government.

18 (4) "Missouri corporation", any corporation governed by the  
19 general and business corporation law of Missouri under the provisions  
20 of this chapter that files its articles of incorporation with the Missouri  
21 secretary of state and is issued a certificate of incorporation under  
22 section 351.060, RSMo.

23 (5) "Properly served", a search warrant that has been delivered  
24 by hand, or in a manner reasonably allowing for proof of delivery by

25 United States mail, overnight delivery service, or facsimile to any  
26 officer of a foreign corporation or its general manager in this state, or  
27 if the corporation is a bank to a cashier or an assistant cashier, or to  
28 any natural person designated by the foreign corporation as an agent  
29 for the service of process, or any person named in the latest certificate  
30 of the corporate agent if the corporation has designated such a  
31 corporate agent. A copy of the statement and designation, or a copy of  
32 the latest statement filed and certified by the secretary of state is  
33 sufficient evidence of the appointment of an agent for the service of  
34 process.

35 2. The provisions of this section shall apply to any search  
36 warrant issued to search for records that are in the actual or  
37 constructive possession of a foreign corporation that provides  
38 electronic communication services or remote computing services to the  
39 general public, where those records would reveal the identity of the  
40 customers using the service, data stored by, or on behalf of, the  
41 customer, the customer's usage of those services, the recipient or  
42 destination of communications sent to or from those customers, or the  
43 content of those communications.

44 3. When properly served with a search warrant issued by a  
45 Missouri court, a foreign corporation shall provide to the peace officer  
46 to whom the search warrant was issued, all records sought under the  
47 warrant within five business days of receipt, including any records  
48 maintained or located outside the state.

49 4. Where the peace officer to whom a search warrant was issued  
50 makes a showing and the issuing judge finds that failure to produce  
51 records within five business days will cause an adverse result, the  
52 warrant may require production of records within less than five  
53 business days. A court may reasonably extend the time required for  
54 production of the records upon finding that the foreign corporation has  
55 shown good cause for that extension and that an extension of time  
56 would not cause an adverse result.

57 5. A foreign corporation seeking to quash the warrant must seek  
58 relief from the court that issued the warrant within the time required  
59 for production of records under this section. The issuing court shall  
60 hear and decide that motion no later than five court days after the  
61 motion is filed.

62           6. The foreign corporation shall verify the authenticity of  
63 records that it produces by providing a verified affidavit. Such records  
64 shall be admissible as evidence.

65           7. A Missouri corporation that provides electronic  
66 communication services or remote computing services to the general  
67 public, when served with a warrant issued by another state to produce  
68 records that reveal the identity of the customers using those services,  
69 data stored by, or on behalf of, the customer, the customer's usage of  
70 those services, the recipient or destination of communications sent to  
71 or from those customers, or the content of those communications, shall  
72 produce those records as if the warrant was issued by a court of this  
73 state.

74           8. No cause of action shall lie against any foreign corporation or  
75 Missouri corporation subject to this section, its officers, employees,  
76 agents, or other specified persons for providing records, information,  
77 facilities, or assistance in accordance with the terms of a warrant  
78 subject to this section.

          488.5362. 1. In addition to any other surcharges authorized by  
2 statute, the clerk of each court of this state shall collect the surcharge  
3 provided for in subsection 2 of this section.

4           2. A surcharge of five dollars shall be assessed as costs in each  
5 circuit court proceeding filed within this state in all criminal cases in  
6 which the defendant pleads guilty or nolo contendere to or is convicted  
7 of a felony or misdemeanor.

8           3. Notwithstanding any other provisions of law, the moneys  
9 collected by clerks of the courts under the provisions of subsection 1  
10 of this section shall be collected and disbursed in accordance with  
11 section 488.010 to 488.020, and shall be payable to the county treasurer,  
12 who shall hold the moneys collected from the surcharge in a separate  
13 fund. Moneys in this fund shall be expended solely to provide funding  
14 for the chief law enforcement officer of the county to review and verify  
15 the addresses of registered sexual offenders residing in the county, as  
16 required under section 589.575.

          566.032. 1. A person commits the crime of statutory rape in the first  
2 degree if he has sexual intercourse with another person who is less than fourteen  
3 years old.

4           2. Statutory rape in the first degree is a **class A** felony [for which the

5 authorized term of imprisonment is life imprisonment or a term of years not less  
6 than five years, unless in the course thereof the actor inflicts serious physical  
7 injury on any person, displays a deadly weapon or dangerous instrument in a  
8 threatening manner, subjects the victim to sexual intercourse or deviate sexual  
9 intercourse with more than one person, or the victim is less than twelve years of  
10 age in which case the authorized term of imprisonment is life imprisonment or  
11 a term of years not less than ten years].

566.062. 1. A person commits the crime of statutory sodomy in the first  
2 degree if he has deviate sexual intercourse with another person who is less than  
3 fourteen years old.

4 2. Statutory sodomy in the first degree is a **class A** felony [for which the  
5 authorized term of imprisonment is life imprisonment or a term of years not less  
6 than five years, unless in the course thereof the actor inflicts serious physical  
7 injury on any person, displays a deadly weapon or dangerous instrument in a  
8 threatening manner, subjects the victim to sexual intercourse or deviate sexual  
9 intercourse with more than one person, or the victim is less than twelve years of  
10 age, in which case the authorized term of imprisonment is life imprisonment or  
11 a term of years not less than ten years].

566.067. 1. A person commits the crime of child molestation in the first  
2 degree if he or she subjects another person who is less than fourteen years of age  
3 to sexual contact.

4 2. Child molestation in the first degree is a class [B] **A** felony [unless the  
5 actor has previously been convicted of an offense under this chapter or in the  
6 course thereof the actor inflicts serious physical injury, displays a deadly weapon  
7 or deadly instrument in a threatening manner, or the offense is committed as  
8 part of a ritual or ceremony, in which case the crime is a class A felony].

589.414. 1. If any person required by sections 589.400 to 589.425 to  
2 register changes residence or address within the same county as such person's  
3 previous address, the person shall inform the chief law enforcement official in  
4 writing within ten days of such new address and phone number, if the phone  
5 number is also changed.

6 2. If any person required by sections 589.400 to 589.425 to register  
7 changes such person's residence or address to a different county, the person shall  
8 appear in person and shall inform both the chief law enforcement official with  
9 whom the person last registered and the chief law enforcement official of the  
10 county having jurisdiction over the new residence or address in writing within ten

11 days of such new address and phone number, if the phone number is also  
12 changed. If any person required by sections 589.400 to 589.425 to register  
13 changes their state of residence, the person shall appear in person and shall  
14 inform both the chief law enforcement official with whom the person was last  
15 registered and the chief law enforcement official of the area in the new state  
16 having jurisdiction over the new residence or address within ten days of such new  
17 address. Whenever a registrant changes residence, the chief law enforcement  
18 official of the county where the person was previously registered shall promptly  
19 inform the Missouri state highway patrol of the change. When the registrant is  
20 changing the residence to a new state, the Missouri state highway patrol shall  
21 promptly inform the responsible official in the new state of residence.

22 3. Any person required by sections 589.400 to 589.425 to register who  
23 changes his or her enrollment or employment status with any institution of  
24 higher education within this state, by either beginning or ending such enrollment  
25 or employment, shall inform the chief law enforcement officer of such change  
26 within seven days after such change is made.

27 4. Any person required by sections 589.400 to 589.425 to register who  
28 officially changes such person's name shall inform the chief law enforcement  
29 officer of such name change within seven days after such change is made.

30 5. In addition to the requirements of subsections 1 and 2 of this section,  
31 the following offenders shall report in person to the county law enforcement  
32 agency every ninety days to verify the information contained in their statement  
33 made pursuant to section 589.407:

34 (1) Any offender registered as a predatory or persistent sexual offender  
35 under the definitions found in section 558.018, RSMo;

36 (2) Any offender who is registered for a crime where the victim was less  
37 than eighteen years of age at the time of the offense; and

38 (3) Any offender who has pled guilty or been found guilty pursuant to  
39 section 589.425 of failing to register or submitting false information when  
40 registering.

41 6. In addition to the requirements of subsections 1 and 2 of this section,  
42 all registrants shall report annually in person in the month of their birth to the  
43 county law enforcement agency to verify the information contained in their  
44 statement made pursuant to section 589.407. **All registrants shall provide an**  
45 **updated photograph of himself or herself when reporting annually to**  
46 **the county law enforcement agency.**



47           7. In addition to the requirements of subsections 1 and 2 of this section,  
48 all Missouri registrants who work or attend school or training on a full-time or  
49 part-time basis in any other state shall be required to report in person to the  
50 chief law enforcement officer in the area of the state where they work or attend  
51 school or training and register in that state. "Part-time" in this subsection means  
52 for more than fourteen days in any twelve-month period.

**589.575. 1. The chief law enforcement officer of the county shall**  
2 **review semiannually the address of each offender required to register**  
3 **under sections 589.400 to 589.425 who resides in said county and verify**  
4 **whether or not the offender is residing at the address provided under**  
5 **section 589.400.**

6           2. Upon verification of the addresses of the county's sexual  
7 offenders under subsection 1 of this section, the chief law enforcement  
8 officer shall forward a list of the names and addresses of offenders  
9 residing at his or her provided address and a list of offenders who are  
10 no longer residing at his or her provided address to the highway patrol.

**589.576. Upon receiving the verified sexual offender addresses**  
2 **from the chief law enforcement officer of each county semiannually**  
3 **under section 589.575, the highway patrol shall compile and provide the**  
4 **names of such offenders who are no longer residing at the address**  
5 **provided to law enforcement to the attorney general or the head law**  
6 **enforcement agency of Tennessee, Kentucky, Illinois, Iowa, Nebraska,**  
7 **Kansas, Oklahoma, and Arkansas.**

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