

FIRST REGULAR SESSION

# SENATE BILL NO. 356

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

1092S.02I

KRISTINA MARTIN, Secretary

## 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.

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

Section A. Sections 541.033, 562.071, 563.026, and  
2 565.002, RSMo, are repealed and five new sections enacted in  
3 lieu thereof, to be known as sections 1.207, 541.033, 562.071,  
4 563.026, and 565.002, to read as follows:

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

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

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

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

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

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

24           (4) To fulfill such constitutional and statutory  
25 requirements by protecting the lives of unborn persons with  
26 the same criminal and civil laws protecting the lives of  
27 born persons by repealing provisions that permit willful  
28 prenatal homicide or assault;

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

31           (6) To abolish abortion in this state.

32           3. Unless specifically provided otherwise, enforcement  
33 is subject to the same presumptions, defenses,  
34 justifications, laws of parties, immunities, and clemencies  
35 as would apply where the victim is a person who had been  
36 born alive.

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

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

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

9           2. Persons accused of committing the offenses of  
10 identity theft against the laws of this state in sections  
11 570.223, 570.224, and 575.120 shall be prosecuted:

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

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

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

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

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

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

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

28           (3) In the county in which the accused resides;

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

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

562.071. 1. It is an affirmative defense that the  
2 defendant engaged in the conduct charged to constitute an  
3 offense because he or she was coerced to do so, by the use  
4 of, or threatened imminent use of, unlawful physical force  
5 upon him or her or a third person, which force or threatened  
6 force a person of reasonable firmness in his situation would  
7 have been unable to resist.

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

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

13           (2) As to any offense when the defendant recklessly  
14 places himself or herself in a situation in which it is

15 probable that he or she will be subjected to the force or  
16 threatened force described in subsection 1 of this section.

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

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

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

- 27 (1) **Performed by a licensed physician;**  
28 (2) **Performed on a pregnant female to avert the death**  
29 **of the pregnant female;**

30           (3) That results in the accidental or unintentional  
31 death of the unborn child the pregnant female is carrying;  
32 and

33           (4) Performed when all reasonable alternatives to save  
34 the life of the unborn child:

35           (a) Are unavailable; or

36           (b) Were attempted unsuccessfully before the  
37 performance of the medical procedure.

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

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

4           (1) "Adequate cause", cause that would reasonably  
5 produce a degree of passion in a person of ordinary  
6 temperament sufficient to substantially impair an ordinary  
7 person's capacity for self-control;

8           (2) "Child", a person under seventeen years of age;

9           (3) "Conduct", includes any act or omission;

10          (4) "Course of conduct", a pattern of conduct composed  
11 of two or more acts, which may include communication by any  
12 means, over a period of time, however short, evidencing a  
13 continuity of purpose. Constitutionally protected activity  
14 is not included within the meaning of course of conduct.  
15 Such constitutionally protected activity includes picketing  
16 or other organized protests;

17          (5) "Deliberation", cool reflection for any length of  
18 time no matter how brief;

19          (6) "Domestic victim", a household or family member as  
20 the term "family" or "household member" is defined in  
21 section 455.010, including any child who is a member of the  
22 household or family;

23 (7) "Emotional distress", something markedly greater  
24 than the level of uneasiness, nervousness, unhappiness, or  
25 the like which are commonly experienced in day-to-day living;

26 (8) "Full or partial nudity", the showing of all or  
27 any part of the human genitals, pubic area, buttock, or any  
28 part of the nipple of the breast of any female person, with  
29 less than a fully opaque covering;

30 (9) "Legal custody", the right to the care, custody  
31 and control of a child;

32 (10) "Parent", either a biological parent or a parent  
33 by adoption;

34 (11) **"Person", includes a human being, including an**  
35 **unborn child at every stage of development from the moment**  
36 **of fertilization until birth;**

37 (12) "Person having a right of custody", a parent or  
38 legal guardian of the child;

39 [(12)] (13) "Photographs" or "films", the making of  
40 any photograph, motion picture film, videotape, or any other  
41 recording or transmission of the image of a person;

42 [(13)] (14) "Place where a person would have a  
43 reasonable expectation of privacy", any place where a  
44 reasonable person would believe that a person could disrobe  
45 in privacy, without being concerned that the person's  
46 undressing was being viewed, photographed or filmed by  
47 another;

48 [(14)] (15) "Special victim", any of the following:

49 (a) A law enforcement officer assaulted in the  
50 performance of his or her official duties or as a direct  
51 result of such official duties;

52 (b) Emergency personnel, any paid or volunteer  
53 firefighter, emergency room, hospital, or trauma center  
54 personnel, or emergency medical technician, assaulted in the

55 performance of his or her official duties or as a direct  
56 result of such official duties;

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

60 (d) An elderly person;

61 (e) A person with a disability;

62 (f) A vulnerable person;

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

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

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

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

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

83 [(15)] (16) "Sudden passion", passion directly caused  
84 by and arising out of provocation by the victim or another  
85 acting with the victim which passion arises at the time of

86 the offense and is not solely the result of former  
87 provocation;

88 [(16)] (17) "Trier", the judge or jurors to whom  
89 issues of fact, guilt or innocence, or the assessment and  
90 declaration of punishment are submitted for decision;

91 [(17)] (18) "Views", the looking upon of another  
92 person, with the unaided eye or with any device designed or  
93 intended to improve visual acuity, for the purpose of  
94 arousing or gratifying the sexual desire of any person.

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

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

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