FIRST REGULAR SESSION

SENATE BILL NO. 356

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

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Section A. Sections 541.033, 562.071, 563.026, and 565.002, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 1.207, 541.033, 562.071, 563.026, and 565.002, to read as follows: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

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

(1) To follow Article I, Section 2, of the Missouri Constitution, which provides, "That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.";
(2) Pursuant to section 1.205, to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state;

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

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

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

(6) To abolish abortion in this state.

3. Unless specifically provided otherwise, enforcement is subject to the same presumptions, defenses, justifications, laws of parties, immunities, and clemencies as 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, except as may be otherwise provided by law, shall be prosecuted:

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

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

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

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

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

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

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

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

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

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

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

(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 charged to constitute an offense because he or she was coerced to do so, by the use of, or threatened imminent use of, unlawful physical force upon him or her or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.

2. The defense of “duress” as defined in subsection 1 is not available:

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

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

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

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

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

(1) Performed by a licensed physician;

(2) Performed on a pregnant female to avert the death of the pregnant female;
(3) That results in the accidental or unintentional
death of the unborn child the pregnant female is carrying;
and

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

(a) Are unavailable; or

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

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 required the following terms
mean:

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

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

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

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

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

(6) "Domestic victim", a household or family member as
the term "family" or "household member" is defined in
section 455.010, including any child who is a member of the
household or family;
(7) "Emotional distress", something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living;

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

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

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

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

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

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

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

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

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

(b) Emergency personnel, any paid or volunteer firefighter, emergency room, hospital, or trauma center personnel, or emergency medical technician, assaulted in the
performance of his or her official duties or as a direct result of such official duties;

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

(d) An elderly person;

(e) A person with a disability;

(f) A vulnerable person;

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

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

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

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

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

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

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

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

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

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