

No. SC90807

---

*In the  
Supreme Court of Missouri*

---

**RICKY C. ROSS,**

**Appellant,**

**v.**

**STATE OF MISSOURI,**

**Respondent.**

---

**Appeal from Greene County Circuit Court  
Thirty-First Judicial Circuit  
The Honorable Michael J. Cordonnier, Judge**

---

**RESPONDENT'S BRIEF**

---

**CHRIS KOSTER  
Attorney General**

**DANIEL N. McPHERSON  
Assistant Attorney General  
Missouri Bar No. 47182**

**P.O. Box 899  
Jefferson City, MO 65102  
Phone: (573) 751-3321  
Fax: (573) 751-5391  
Dan.McPherson@ago.mo.gov**

**ATTORNEYS FOR RESPONDENT  
STATE OF MISSOURI**

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
JURISDICTIONAL STATEMENT .....	4
STATEMENT OF FACTS .....	5
ARGUMENT.....	9
The motion court did not clearly err in rejecting the constitutional challenge raised in the amended Rule 24.035 motion.....	9
CONCLUSION .....	24
CERTIFICATE OF COMPLIANCE .....	25
APPENDIX (Separately Bound)	

## TABLE OF AUTHORITIES

### Cases

<i>Carmack v. Director, Missouri Dept. of Agric.</i> , 945 S.W.2d 956 (Mo. banc 1997)...	11, 22
<i>Feldhaus v. State</i> , 311 S.W.3d 802 (Mo. banc 2010).....	11
<i>Hammerschmidt v. Boone County</i> , 877 S.W.2d 98 (Mo. banc 1994) .....	14, 17, 20, 21
<i>Harmelin v. Michigan</i> , 501 U.S. 957 (1991).....	20
<i>J.C.W. ex rel. Webb v. Wyciskalla</i> , 275 S.W.3d 249 (Mo. banc 2009).....	12
<i>Missouri Ass’n of Club Executives v. State</i> , 208 S.W.3d 885 (Mo. banc 2006) .....	23
<i>Rentchsler v. Nixon</i> , 311 S.W.3d 783 (Mo. banc 2010).....	13
<i>Rizzo v. State</i> , 189 S.W.3d 576 (Mo. banc 2006).....	23
<i>Roberts v. State</i> , 276 S.W.3d 833 (Mo. banc 2009).....	10
<i>State ex rel. Transport Manuf. &amp; Equip. Co. v. Bates</i> , 359 Mo. 1002, 224 S.W.2d 996 (1949).....	14
<i>State v. Bradley</i> , 811 S.W.2d 379 (Mo. banc 1991).....	10
<i>State ex rel. Williams v. Marsh</i> , 626 S.W.2d 223 (Mo. banc 1982).....	18, 19
<i>State v. McGee</i> , 361 Mo. 309, 234 S.W.2d 587 (1950) .....	10, 13
<i>State v. Salter</i> , 250 S.W.3d 75 (Mo. banc 2008).....	10, 11
<i>State v. Williams</i> , 652 S.W.2d 102 (Mo. banc 1983) .....	16, 17, 18

### Statutes and Constitution

Section 1.140, RSMo 2000.....	21
-------------------------------	----

Section 516.500, RSMo 2000.....	13
Section 566.034, RSMo 2000.....	4, 5, 15
Mo. Const. art. III, § 23 .....	14
Mo. Const. art. V, § 3 .....	4

### **Court Rules**

Supreme Court Rule 24.035 .....	4
---------------------------------	---

### **Legislative Enactments**

S.B. 693 (Introduced), 87th Gen. Assem., 2d Reg. Sess. (1994) .....	22
S.B. 693 (Perfected), 87th Gen. Assem., 2d Reg. Sess. (1994) .....	22
1994 Mo. Laws 1131-39.....	15, 21

### **Journal and Law Review Articles**

Donald F. Judges, <i>When Silence Speaks Louder than Words: Authoritarianism &amp; the Feminist Antipornography Movement</i> , 1 Psychol. Pub. Pol’y & L. 643 (1995) .....	19
<i>Legislation for the Treatment of Alcoholics</i> , 2 Stan. L. Rev. 515 (1950) .....	19

## **JURISDICTIONAL STATEMENT**

This appeal is from the denial, after an evidentiary hearing, of a motion to vacate judgment and sentence under Supreme Court Rule 24.035 in the Circuit Court of Greene County. The conviction sought to be vacated was for statutory rape in the second degree, section 566.034, RSMo,<sup>1</sup> for which Appellant was sentenced as a prior and persistent felony offender to ten years imprisonment. This appeal involves the validity of a state statute, section 566.034, RSMo, which is being challenged on the grounds that the enacting legislation violated the single subject requirement set forth in article III, section 23 of the Missouri Constitution. Therefore, the Supreme Court of Missouri has exclusive appellate jurisdiction. Mo. Const. art. V, § 3.

---

<sup>1</sup> All statutory references are to RSMo 2000 unless otherwise indicated.

## **STATEMENT OF FACTS**

Appellant was charged by information as a prior and persistent felony offender with one count of statutory rape in the second degree, section 566.034, RSMo. (L.F. 10). On June 10, 2008, Appellant appeared for a bench trial before Judge Michael J. Cordonnier. (L.F. 13). As the court was preparing to begin the trial, Appellant announced that he wished to plead guilty in order to spare the victim and her family from having to go through a trial. (L.F. 16). The court discussed with Appellant the charges against him and the range of punishment, and also went through the rights attendant to trial. (L.F. 17-18). Appellant told the court that he understood all those things and that he understood that he was giving up his trial rights by pleading guilty. (L.F. 17-18).

The prosecutor outlined the factual basis for the charges, saying that the State would prove that Appellant, who was 33-years-old at the time, had sexual intercourse with the sixteen-year-old victim between April 1, 2007, and May 27, 2007, and that he did so with the knowledge that the victim was sixteen. (L.F. 18-19). The prosecutor said that the State would also introduce evidence of Appellant's statements to the police where Appellant admitted to knowing that the victim was sixteen and admitted to having sexual intercourse with her. (L.F. 19). The prosecutor said that the State would also prove Appellant's prior and persistent offender status through evidence that he pled guilty in 1999 to assault in the second degree in the Circuit Court of Christian County, and pled guilty in 1998 to statutory rape in the second degree in the Circuit Court of Greene County. (L.F. 19). Appellant admitted to the court that he had sexual intercourse with the victim knowing that she was sixteen-years-old. (L.F. 19). He also admitted to the

prior convictions recited by the prosecutor. (L.F. 20). Appellant then entered his guilty plea and the court accepted it. (L.F. 20-21). Appellant was sentenced on September 5, 2008, to ten years imprisonment in the Department of Corrections. (L.F. 5).

On December 22, 2008, Appellant filed a pro se Motion to Vacate, Set Aside or Correct the Judgment or Sentence. (L.F. 7, 36-45). Counsel was appointed, and an amended motion was filed on April 27, 2009. (L.F. 7, 47-104). The amended motion alleged, in pertinent part, that the statute creating the offense of statutory rape in the second degree was unconstitutional because it was adopted in violation of article III, section 23 of the Missouri Constitution. (L.F. 47). The amended motion went on to allege that the applicable version of section 566.034, RSMo was passed by the General Assembly in 1994 as part of Senate Bill 693. (L.F. 59). The amended motion alleged that the title of the bill was to repeal certain sections relating to sexual offenses and to enact in lieu thereof twenty-six new sections relating to the same topic. (L.F. 59). The amended motion alleged that the bill contained four provisions that did not relate to the bill's subject of sexual offenses. (L.F. 59-60). Those provisions dealt with: (1) investigative subpoena powers of prosecuting attorneys; (2) the criminal offense of purchase or possession of intoxicating liquor by minors; (3) the criminal offense of purchase or possession of non-intoxicating beer by minors; and (4) authorization for depositions by prosecuting attorneys. (L.F. 59-60). The amended motion alleged that the inclusion of those provisions violated the single subject requirement of article III, section 23 of the Missouri Constitution. (L.F. 60).

An evidentiary hearing on the amended motion was held on December 22, 2009. (L.F. 8; Tr. 2). The motion court took judicial notice at the hearing of Senate Bill 693 as passed in 1994. (Tr. 46). Appellant testified at the hearing and again admitted that he had sexual intercourse with the victim on one occasion. (Tr. 44-45).

On March 1, 2010, the motion court entered findings of fact and conclusions of law, denying the claims raised in the amended Rule 24.035 motion. (L.F. 9, 105-22). The court found that the statute being challenged, section 566.034, RSMo, created the sexual offense of statutory sodomy in the second degree and thus clearly related to the subject matter of Senate Bill 693. (L.F. 106). The court declined to make a finding as to the constitutionality of the four statutory provisions that the amended motion alleged were outside the scope of the bill's title. (L.F. 107). But the court did conclude that even if those provisions were invalid they would have no impact on section 566.034, RSMo because invalid provisions are severed from a bill. (L.F. 107).



## **ARGUMENT**

**The motion court did not clearly err in rejecting the constitutional challenge raised in the amended Rule 24.035 motion.**

Appellant claims that the motion court clearly erred in denying the amended Rule 24.035 motion because the legislation that enacted section 566.034, RSMo, the statute to which he pled guilty, violated the single subject requirement of article III, section 23 of the Missouri Constitution. While Appellant admits that section 566.034, RSMo is not itself unconstitutional, he argues that the unconstitutional provisions of the bill cannot be severed from the valid provisions, requiring the invalidation of the entire bill. That claim fails for multiple reasons.

First, Appellant waived his constitutional claim by pleading guilty. Second, the equitable doctrine of laches should be applied to bar the claim since the statute being challenged has been in force for fifteen years with no previous challenge to the procedure by which it was enacted. Third, all provisions of the bill, including those being challenged, fall within a single, controlling purpose of crime and punishment. Fourth, even if the bill's subject is narrowly construed to relate only to sexual offenses, all provisions of the bill fairly relate to that subject and promote the bill's purpose of deterring future sexual offenses. Finally, any unconstitutional provisions that are found to be contained in the legislation can be severed from the remaining provisions, leaving in effect the valid provisions, including section 566.034, RSMo.

### **A. Standard of Review.**

Appellate review of the denial of a Rule 24.035 motion is limited to a determination of whether the motion court's findings of fact and conclusions of law are clearly erroneous. *Roberts v. State*, 276 S.W.3d 833, 835 (Mo. banc 2009). The motion court's findings are clearly erroneous only if, after reviewing the entire record, the appellate court is left with the definite and firm impression that a mistake has been made. *Id.* Appellant has the burden to show by a preponderance of the evidence that the motion court clearly erred in its ruling. *Id.* The motion court's findings should be upheld if they are sustainable on any grounds. *State v. Bradley*, 811 S.W.2d 379, 383 (Mo. banc 1991).

In reviewing claims challenging the validity of a statute, this Court applies the strong presumption that laws enacted by the legislature and approved by the governor are constitutional. *State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008). That presumption of validity is generally fortified by acquiescence to the statute through a number of years. *State v. McGee*, 361 Mo. 309, 314, 234 S.W.2d 587, 590 (1950). Attacks against a statute's constitutionality based on procedural limitations are not favored. *Salter*, 250 S.W.3d at 709. The person challenging the statute bears the burden of proving that the act clearly and undoubtedly violates the constitutional limitations. *Id.* This Court resolves all doubts in favor of the procedural and substantive validity of legislative acts. *Carmack v. Director, Missouri Dept. of Agric.*, 945 S.W.2d 956, 959 (Mo. banc 1997). This Court also attempts to avoid an interpretation of the Constitution that will limit or cripple legislative enactments any further than what is necessary by the absolute requirements of the law. *Id.*

**B. Claim is Procedurally and Equitably Barred.**

This Court need not reach the merits of Appellant’s argument. His claim can and should be rejected on both procedural and equitable grounds.

1. Appellant waived his constitutional claim by pleading guilty.

A plea of guilty that is voluntarily and understandably made waives all non-jurisdictional defects and defenses. *Feldhaus v. State*, 311 S.W.3d 802, 805 (Mo. banc 2010). In *Feldhaus*, a Rule 24.035 movant claimed that the statute under which he pled guilty was invalid under the “void for vagueness” doctrine. *Id.* at 804. The movant had not raised his constitutional claim during the guilty plea or sentencing hearing, but instead raised it for the first time in his postconviction motion. *Id.* This Court concluded that, with the exception of certain double jeopardy claims, constitutional claims raised after a guilty plea are non-jurisdictional and are waived if not raised at the earliest opportunity and before the plea of guilty is entered. *Id.* at 804-05 (citing *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009)).<sup>2</sup>

The earliest mention in the record of Appellant’s constitutional claim is in the amended Rule 24.035 motion. (L.F. 47). Like the movant in *Feldhaus*, Appellant waived his constitutional claim by failing to raise it before his guilty plea and by instead raising it for the first time in his post-conviction motion. *Feldhaus*, 311 S.W.3d at 805. This Court should thus deny the claim on the basis of waiver.

2. Appellant’s claim should be equitably barred.

---

<sup>2</sup> Appellant’s argument that his conviction is void is based on pre-*Webb* cases that applied jurisdictional concepts that are no longer valid in light of *Webb*.

In addition to waiver, there are equitable principles that support rejection of the claim. Section 566.034, RSMo became effective on January 1, 1995. § 566.034, RSMo 2000. Appellant's attack on the statute thus falls outside of the statute of limitations, which states, in pertinent part: "In no event shall an action alleging a procedural defect in the enactment of a bill into law be allowed later than five years after the bill or the pertinent section of the bill which is challenged becomes effective." § 516.500, RSMo 2000. The State did not raise the statute of limitations before the motion court, and that failure prevents the statute from being raised procedurally, since it is an affirmative defense. *Rentschler v. Nixon*, 311 S.W.3d 783, 787 n.3 (Mo. banc 2010). But this Court can still apply the doctrine of laches to bar Appellant's claim as unreasonably tardy. *Id.* This Court has noted with approval that numerous jurisdictions have supported the use of laches to bar untimely constitutional challenges to an enactment's procedure. *Id.* at 787 n.4.

Laches is especially appropriate in this case since the statute being challenged has been in effect for fifteen years and has been widely applied during that time. The defense bar has had numerous chances over the years to challenge the constitutionality of the statute by raising the procedural defect that Appellant now brings. As noted above, acquiescence to a statute over a number of years fortifies the general presumption that statutes are valid. *McGee*, 316 Mo. At 314, 234 S.W.2d at 590. This Court should apply that principle of acquiescence along with both the equitable doctrine of laches and Appellant's failure to raise an available constitutional claim before pleading guilty, and decline to consider the claim on the grounds that it was not timely raised.



### **C. Claim Fails on the Merits.**

Appellant's claim fails even if this Court chooses to consider it on the merits. Article III, section 23 of the Missouri Constitution states, in pertinent part, "No bill shall contain more than one subject which shall be clearly expressed in its title . . . ." Mo. Const. art. III, § 23. That provision imposes two, separate procedural limitations on the legislature. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101 n.2 (Mo. banc 1994). The first prohibits a bill from containing more than one subject, and the second requires that the title to the bill clearly express that single subject. *Id.* Appellant only claims a violation of the single subject requirement and does not allege a clear title violation.

This Court gives a broad and reasonable construction to the single subject requirement of article III, section 23. *Id.* at 102; *State ex rel. Transport Manuf. & Equip. Co. v. Bates*, 359 Mo. 1002, 1005, 224 S.W.2d 996, 998 (1949). "Subject," within the meaning of article III, section 23, includes all matters that fall within or reasonably relate to the general core purpose of the legislation. *Hammerschmidt*, 877 S.W.2d at 102. If the subjects covered by an act are naturally and reasonably related, and have a natural connection with each other, then the subject is single. *Bates*, 359 Mo. at 1007, 224 S.W.2d at 999.

Appellant pled guilty to, and was sentenced for, committing statutory rape in the second degree in violation of section 566.034, RSMo. (L.F. 32-35). That statute was enacted in 1994 as part of Senate Bill 693. § 566.034, RSMo 2000. Appellant claims that the bill's subject is sexual offenses, based on the bill's title, which read:

AN ACT to repeal sections 311.325, 312.407, 566.020, 566.040, 566.050, 566.070, 566.080, 566.090 and 566.130, RSMo 1986, and sections 43.450, 542.424, 558.018, 566.010, 566.030, 566.060, 566.085, 566.100, 566.120 and 568.045, RSMo Supp. 1993, relating to sexual offenses, and to enact in lieu thereof twenty-six new sections relating to the same subject, with penalty provisions and an effective date.

1994 Mo. Laws 1131. (App. at A25).

Appellant concedes that section 566.034, RSMo relates to the subject of sexual offenses. (Appellant's Brf., p. 17). But he argues that the entire bill, including section 566.034, RSMo, must be invalidated because it contains provisions that are unrelated to the subject of sexual offenses. He points to four provisions in particular: (1) section 56.085, RSMo, which authorized prosecutors or circuit attorneys to obtain investigative subpoenas; (2) section 311.325, RSMo, which created the misdemeanor offense of purchase or possession of intoxicating liquor by a minor; (3) section 312.407, RSMo, which created the misdemeanor offense of purchase or possession of non-intoxicating beer by a minor; and (4) section 545.415, RSMo, which authorized prosecutors or circuit attorneys to take depositions in criminal cases. (L.F. 59-60; Appellant's Brf., p. 13).

There are multiples reasons for rejecting that argument.

1. All provisions of the bill relate to the single central purpose of crime and punishment.

This Court has not limited itself in conducting a single subject analysis to considering only the bill's title in determining a bill's core purpose, and thus its subject.

*State v. Williams* involved a challenge to a bill whose title, similar to the title of the bill being challenged here, was to repeal and enact certain sections “relating to sexual assaults and the prevention of such assaults, with penalty provisions.” *State v. Williams*, 652 S.W.2d 102, 108 (Mo. banc 1983). The defendant’s single subject challenge was to the inclusion of a provision that created the following aggravating circumstance for capital murder cases: “The capital murder was committed by the defendant for the purpose of preventing the person killed from testifying in any judicial proceeding.” *Id.* The defendant in *Williams*, like Appellant here, claimed that the bill’s subject was sexual assaults or the prevention thereof. *Id.* This Court found that reading of the act to be too narrow. *Id.* It concluded that the act dealt with the broader subject of crime and punishment, and that the challenged provision fit within that subject. *Id.*

In this case, all of the provisions contained in Senate Bill 693 either create criminal offenses and penalties, or contain provisions designed to help enforce the criminal law. *See Hammerschmidt*, 877 S.W.2d at 102 (stating that provisions that provide a means to accomplishing the bill’s purpose fall within the single subject requirement). The controlling purpose of Senate Bill 693, like the bill challenged in *Williams*, is to enact provisions dealing with the subject of crime and punishment. All the provisions of the bill relate to that subject. The bill thus does not violate article III, section 23’s single subject requirement.

2. Even if bill’s subject is sexual offenses, all provisions of the bill relate to that subject.



Senate Bill 693 is constitutional even if this Court accepts Appellant's argument that the bill's subject is limited to sexual offenses.

A statutory provision that provides a means to accomplishing the bill's purpose falls within the single subject requirement. *Id.* The challenged provisions authorizing investigative subpoenas for prosecutors (section 56.085, RSMo), and depositions by prosecutors (section 545.415, RSMo), provide tools that prosecutors can use in investigating and prosecuting sexual offenses. In *Williams*, where the bill's title related to sexual assaults, the Court found that an aggravating circumstance for killing a witness was constitutional because there is nothing unique about committing murder to prevent a witness from testifying in a sexual assault case. *Williams*, 652 S.W.2d at 102. The fact that the statute was not limited to murders committed to prevent testimony in sexual assault cases did not prevent the statute from passing constitutional muster. *Id.* By the same token, there is nothing unique about prosecutors using investigative subpoenas or taking depositions in sexual assault cases. The subpoena power and deposition authority does not have to be limited to sexual offenses to be constitutional.

The provisions creating the offenses of minor in possession of intoxicating liquor (section 311.325, RSMo), and minor in possession of non-intoxicating beer (section 312.407, RSMo), also meet the single subject requirement because they further the purpose of the legislation. In *State ex rel. Williams v. Marsh*, this Court rejected a single subject challenge to a bill entitled, "an Act relating to the abuse of adults by an adult household member, with penalty provisions." *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 228 (Mo. banc 1982). The challenged provisions of the bill related to child

custody and support. *Id.* The Court concluded that the purpose of the Act was to protect household members by preventing further violence, and that the child custody provisions promoted that purpose. *Id.* at 229. The Court noted that most victims of adult abuse were women, and that children were often present to witness the abuse or to suffer abuse themselves. *Id.* The Court also noted that persons who grow up in a home where abuse occurs are more likely to either abuse others as an adult or to become adult victims of abuse themselves. *Id.* The Court concluded that the child custody, support, and maintenance provisions included in the bill were fairly related to and served the purpose of aiding victims of domestic violence and preventing future incidents of adult abuse. *Id.*

Those principles can be applied to the minor in possession statutes contained in Senate Bill 693. It has long been recognized that alcohol consumption is a contributing cause of sexual offenses. *Legislation for the Treatment of Alcoholics*, 2 Stan. L. Rev. 515, 517 (1950). A 1949 study showed that twenty-two percent of the sex crimes reported in California were committed by intoxicated persons and that alcohol consumption was the main, if not the sole, cause for commission of the crime. *Id.* at 517 n.24. There is no reason to doubt that alcohol continues to this day to be a significant contributing factor in sex offenses. Research has also shown that alcohol consumption is strongly related to the extent of sexual offending by adolescent males. Donald F. Judges, *When Silence Speaks Louder than Words: Authoritarianism & the Feminist Antipornography Movement*, 1 Psychol. Pub. Pol'y & L. 643, 698 (1995).

One of the purposes behind the criminal law is to deter future crimes. *Harmelin v. Michigan*, 501 U.S. 957, 1008 (1991) (Kennedy, J., concurring). By enacting criminal

provisions relating to sexual offenses, Senate Bill 693 seeks to deter and reduce the number of such crimes committed in the future. The alcohol-related provisions in the bill promote that purpose by targeting behavior that often leads to the commission of sexual offenses. In particular, by criminalizing the possession of intoxicating liquor by minors (and the possession of non-intoxicating beer that can serve as a gateway to the consumption of alcohol) the legislature sought to deter alcohol consumption by adolescent males – behavior that has been shown to increase the risk that those young men will eventually commit sexual offenses. Deterring alcohol consumption by minors – both male and female – also decreases the risk that those minors will become victims of sexual offenses, since alcohol impairment leaves persons more vulnerable to sexual attacks. The alcohol-related provisions thus further the purpose behind Senate Bill 693 and fall within article III, section 23’s single subject requirement.

3. Any unconstitutional provisions that do exist can be severed.

Appellant is not entitled to relief even if this Court were to adopt his argument that the subject of the bill is sexual offenses, and determine that some provisions of the bill fall outside that subject. Whenever the Court concludes that a bill contains more than one subject, it will determine whether one of the bill’s multiple subjects is its original and controlling purpose. *Hammerschmidt*, 877 S.W.2d at 103. In making that determination, the Court considers whether the additional subject is essential to the efficacy of the bill, whether it is a provision without which the bill would be unworkable, and whether the provision is one without which the legislature would not have adopted the bill. *Id.* If the Court is convinced that the bill contains a single central remaining purpose, it will sever

that portion of the bill containing the additional subjects and permit the bill to stand with its primary, core subject intact. *Id.*, *see also*, § 1.140, RSMo 2000 (setting forth standards for the severability of statutes). In determining the original, controlling purpose of the bill for purposes of a severance analysis, a title that clearly expresses the bill's single subject is exceedingly important. *Hammerschmidt*, 877 S.W.2d at 103.

In *Hammerschmidt*, the Court determined the primary subject of the challenged legislation by looking at the bill's title, which related to elections. *Id.* at 104. The title of Senate Bill 693 relates to sexual offenses. 1994 Mo. Laws 1131. And Appellant's own argument in this appeal is that the bill's title reflects its subject.

This Court has also determined primary subject by looking at the content of the bill as originally filed and its passage through the legislature prior to the addition of amendments. *Hammerschmidt*, 877 S.W.2d at 104; *Carmack*, 945 S.W.2d at 960. As originally introduced, Senate Bill 693's title read as follows:

AN ACT to repeal sections 566.020, 566.040, 566.050, 566.070, 566.080, 566.090, 566.130 and 568.020, RSMo 1986, and sections 558.018, 566.010, 566.030, 566.060, 566.085, 566.100, 566.110, and 566.120, RSMo Supp. 1993, relating to sexual offenses, and to enact in lieu thereof twenty new sections relating to the same subject with penalty provisions and an effective date.

S.B. 693 (Introduced), 87th Gen. Assem., 2d Reg. Sess. (1994). (App. at A3). The bill that gained final passage in the Senate and was sent to the House had a nearly identical title:

AN ACT to repeal sections 566.020, 566.040, 566.050, 566.070, 566.080, 566.090 and 566.130, RSMo 1986, and sections 558.018, 566.010, 566.030, 566.060, 566.085, 566.100, 566.110, 566.120 and 568.045 RSMo Supp. 1993, relating to sexual offenses, and to enact in lieu thereof twenty new sections relating to the same subject with penalty provisions and an effective date.

S.B. 693 (Perfected), 87th Gen. Assem., 2d Reg. Sess. (1994). (App. at A14). The bill's content as originally introduced and as passed by the Senate clearly demonstrates that the bill's original core purpose was to enact provisions relating to sexual offenses. By Appellant's own admission, section 566.034, RSMo, creating the offense of statutory rape in the second degree, falls within that core purpose. Section 566.034, RSMo, along with all the other provisions falling within the core purpose of sexual offenses, should be allowed to stand.

Severance is also appropriate where removing the unconstitutional provisions of a bill would not impact those remaining provisions. *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 889 (Mo. banc 2006). Invalidating the provisions that Appellant claims are unconstitutional would not prevent the State from being able to enforce the remaining provisions, including the law against statutory rape in the second degree. And because those remaining provisions are not dependant on the sections being challenged, there is no presumption that the challenged provisions were necessary to secure the bill's passage by the legislature. *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. banc 2006).

The motion court did not clearly err in determining that any unconstitutional provisions contained in Senate Bill 693 could be severed from the remaining provisions in the bill, and in denying Appellant's claim for post-conviction relief. This Court should uphold the motion court's ruling and deny Appellant's claim for relief.

## **CONCLUSION**

In view of the foregoing, Respondent submits that the denial of Appellant's Rule 24.035 motion should be affirmed.

Respectfully submitted,

CHRIS KOSTER  
Attorney General

---

DANIEL N. McPHERSON  
Assistant Attorney General  
Missouri Bar No. 47182

P. O. Box 899  
Jefferson City, MO 65102  
Phone: (573) 751-3321  
Fax: (573) 751-5391

ATTORNEYS FOR RESPONDENT  
STATE OF MISSOURI

## **CERTIFICATE OF COMPLIANCE**

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06, and contains 4,590 words as calculated pursuant to the requirements of Missouri Supreme Court Rule 84.06, as determined by Microsoft Word 2007 software; and
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 14th day of December, 2010, to:

Craig A. Johnston  
Office of the State Public Defender  
Woodrail Centre, 1000 W. Nifong  
Building 7, Suite 100  
Columbia, MO 65203

---

DANIEL N. McPHERSON  
Assistant Attorney General  
Missouri Bar No. 47182

P.O. Box 899  
Jefferson City, Missouri 65102  
Phone: (573) 751-3321  
Fax (573) 751-5391

ATTORNEYS FOR RESPONDENT  
STATE OF MISSOURI