

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 818 & 795
94TH GENERAL ASSEMBLY

Reported from the Committee on Crime Prevention and Public Safety April 22, 2008 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 818 & 795 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3614L.08C

AN ACT

To repeal sections 160.261, 565.090, and 565.225, RSMo, and to enact in lieu thereof three new sections relating to crimes of harassment, with penalty provisions.

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

Section A. Sections 160.261, 565.090, and 565.225, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 160.261, 565.090, and 565.225, to read
3 as follows:

160.261. 1. The local board of education of each school district shall clearly establish
2 a written policy of discipline, including the district's determination on the use of corporal
3 punishment and the procedures in which punishment will be applied. A written copy of the
4 district's discipline policy and corporal punishment procedures, if applicable, shall be provided
5 to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning
6 of each school year and also made available in the office of the superintendent of such district,
7 during normal business hours, for public inspection. All employees of the district shall annually
8 receive instruction related to the specific contents of the policy of discipline and any
9 interpretations necessary to implement the provisions of the policy in the course of their duties,
10 including but not limited to approved methods of dealing with acts of school violence,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 disciplining students with disabilities and instruction in the necessity and requirements for
12 confidentiality.

13 2. The policy shall require school administrators to report acts of school violence to
14 teachers and other school district employees with a need to know. For the purposes of this
15 chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly
16 responsible for the student's education or who otherwise interact with the student on a
17 professional basis while acting within the scope of their assigned duties. As used in this section,
18 the phrase "act of school violence" or "violent behavior" means the exertion of physical force
19 by a student with the intent to do serious physical injury as defined in subdivision (6) of section
20 565.002, RSMo, to another person while on school property, including a school bus in service
21 on behalf of the district, or while involved in school activities. The policy shall at a minimum
22 require school administrators to report, as soon as reasonably practical, to the appropriate law
23 enforcement agency any of the following [felonies] **crimes**, or any act which if committed by
24 an adult would be one of the following [felonies] **crimes**:

- 25 (1) First degree murder under section 565.020, RSMo;
- 26 (2) Second degree murder under section 565.021, RSMo;
- 27 (3) Kidnapping under section 565.110, RSMo;
- 28 (4) First degree assault under section 565.050, RSMo;
- 29 (5) Forcible rape under section 566.030, RSMo;
- 30 (6) Forcible sodomy under section 566.060, RSMo;
- 31 (7) Burglary in the first degree under section 569.160, RSMo;
- 32 (8) Burglary in the second degree under section 569.170, RSMo;
- 33 (9) Robbery in the first degree under section 569.020, RSMo;
- 34 (10) Distribution of drugs under section 195.211, RSMo;
- 35 (11) Distribution of drugs to a minor under section 195.212, RSMo;
- 36 (12) Arson in the first degree under section 569.040, RSMo;
- 37 (13) Voluntary manslaughter under section 565.023, RSMo;
- 38 (14) Involuntary manslaughter under section 565.024, RSMo;
- 39 (15) Second degree assault under section 565.060, RSMo;
- 40 (16) Sexual assault under section 566.040, RSMo;
- 41 (17) Felonious restraint under section 565.120, RSMo;
- 42 (18) Property damage in the first degree under section 569.100, RSMo;
- 43 (19) The possession of a weapon under chapter 571, RSMo;
- 44 (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- 45 (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- 46 (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; [or]
- 47 (23) Sexual abuse pursuant to section 566.100, RSMo;

48 **(24) Harassment under section 565.090, RSMo; or**

49 **(25) Stalking under section 565.225, RSMo;**

50 committed on school property, including but not limited to actions on any school bus in service
51 on behalf of the district or while involved in school activities. The policy shall require that any
52 portion of a student's individualized education program that is related to demonstrated or
53 potentially violent behavior shall be provided to any teacher and other school district employees
54 who are directly responsible for the student's education or who otherwise interact with the
55 student on an educational basis while acting within the scope of their assigned duties. The
56 policy shall also contain the consequences of failure to obey standards of conduct set by the local
57 board of education, and the importance of the standards to the maintenance of an atmosphere
58 where orderly learning is possible and encouraged.

59 3. The policy shall provide that any student who is on suspension for any of the offenses
60 listed in subsection 2 of this section or any act of violence or drug-related activity defined by
61 school district policy as a serious violation of school discipline pursuant to subsection 9 of this
62 section shall have as a condition of his or her suspension the requirement that such student is not
63 allowed, while on such suspension, to be within one thousand feet of any public school in the
64 school district where such student attended school unless:

65 (1) Such student is under the direct supervision of the student's parent, legal guardian,
66 or custodian;

67 (2) Such student is under the direct supervision of another adult designated by the
68 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the
69 school which suspended the student;

70 (3) Such student is in an alternative school that is located within one thousand feet of
71 a public school in the school district where such student attended school; or

72 (4) Such student resides within one thousand feet of any public school in the school
73 district where such student attended school in which case such student may be on the property
74 of his or her residence without direct adult supervision.

75 4. Any student who violates the condition of suspension required pursuant to subsection
76 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of
77 sections 167.161, 167.164, and 167.171, RSMo. In making this determination consideration
78 shall be given to whether the student poses a threat to the safety of any child or school employee
79 and whether such student's unsupervised presence within one thousand feet of the school is
80 disruptive to the educational process or undermines the effectiveness of the school's disciplinary
81 policy. Removal of any pupil who is a student with a disability is subject to state and federal
82 procedural rights.

83 5. The policy shall provide for a suspension for a period of not less than one year, or
84 expulsion, for a student who is determined to have brought a weapon to school, including but

85 not limited to the school playground or the school parking lot, brought a weapon on a school bus
86 or brought a weapon to a school activity whether on or off of the school property in violation of
87 district policy, except that:

88 (1) The superintendent or, in a school district with no high school, the principal of the
89 school which such child attends may modify such suspension on a case-by-case basis; and

90 (2) This section shall not prevent the school district from providing educational services
91 in an alternative setting to a student suspended under the provisions of this section.

92 6. For the purpose of this section, the term "weapon" shall mean a firearm as defined
93 under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack,
94 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,
95 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade
96 knife; except that this section shall not be construed to prohibit a school board from adopting a
97 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for
98 educational purposes so long as the firearm is unloaded. The local board of education shall
99 define weapon in the discipline policy. Such definition shall include the weapons defined in this
100 subsection but may also include other weapons.

101 7. All school district personnel responsible for the care and supervision of students are
102 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any
103 property of the school, on any school bus going to or returning from school, during
104 school-sponsored activities, or during intermission or recess periods.

105 8. Teachers and other authorized district personnel in public schools responsible for the
106 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable
107 care by the school district, shall not be civilly liable when acting in conformity with the
108 established policy of discipline developed by each board under this section, or when reporting
109 to his or her supervisor or other person as mandated by state law acts of school violence or
110 threatened acts of school violence, within the course and scope of the duties of the teacher,
111 authorized district personnel or volunteer, when such individual is acting in conformity with the
112 established policies developed by the board. Nothing in this section shall be construed to create
113 a new cause of action against such school district, or to relieve the school district from liability
114 for the negligent acts of such persons.

115 9. Each school board shall define in its discipline policy acts of violence and any other
116 acts that constitute a serious violation of that policy. Acts of violence as defined by school
117 boards shall include but not be limited to exertion of physical force by a student with the intent
118 to do serious bodily harm to another person while on school property, including a school bus in
119 service on behalf of the district, or while involved in school activities. School districts shall for
120 each student enrolled in the school district compile and maintain records of any serious violation
121 of the district's discipline policy. Such records shall be made available to teachers and other

122 school district employees with a need to know while acting within the scope of their assigned
123 duties, and shall be provided as required in section 167.020, RSMo, to any school district in
124 which the student subsequently attempts to enroll.

125 10. Spanking, when administered by certificated personnel of a school district in a
126 reasonable manner in accordance with the local board of education's written policy of discipline,
127 is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to
128 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over
129 or investigate any report of alleged child abuse arising out of or related to any spanking
130 administered in a reasonable manner by any certificated school personnel pursuant to a written
131 policy of discipline established by the board of education of the school district. Upon receipt
132 of any reports of child abuse by the division of family services pursuant to sections 210.110 to
133 210.165, RSMo, which allegedly involves personnel of a school district, the division of family
134 services shall notify the superintendent of schools of the district or, if the person named in the
135 alleged incident is the superintendent of schools, the president of the school board of the school
136 district where the alleged incident occurred. If, after an initial investigation, the superintendent
137 of schools or the president of the school board finds that the report involves an alleged incident
138 of child abuse other than the administration of a spanking by certificated school personnel
139 pursuant to a written policy of discipline or a report made for the sole purpose of harassing a
140 public school employee, the superintendent of schools or the president of the school board shall
141 immediately refer the matter back to the division of family services and take no further action.
142 In all matters referred back to the division of family services, the division of family services
143 shall treat the report in the same manner as other reports of alleged child abuse received by the
144 division. If the report pertains to an alleged incident which arose out of or is related to a
145 spanking administered by certificated personnel of a school district pursuant to a written policy
146 of discipline or a report made for the sole purpose of harassing a public school employee, a
147 notification of the reported child abuse shall be sent by the superintendent of schools or the
148 president of the school board to the juvenile officer of the county in which the alleged incident
149 occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement
150 officer designated by the juvenile officer and the superintendent of schools or, if the subject of
151 the report is the superintendent of schools, by the juvenile officer or a law enforcement officer
152 designated by the juvenile officer and the president of the school board or such president's
153 designee. The investigation shall begin no later than forty-eight hours after notification from
154 the division of family services is received, and shall consist of, but need not be limited to,
155 interviewing and recording statements of the child and the child's parents or guardian within two
156 working days after the start of the investigation, of the school district personnel allegedly
157 involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law
158 enforcement officer designated by the juvenile officer and the investigating school district

159 personnel shall issue separate reports of their findings and recommendations after the conclusion
160 of the investigation to the school board of the school district within seven days after receiving
161 notice from the division of family services. The reports shall contain a statement of conclusion
162 as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school
163 board shall consider the separate reports and shall issue its findings and conclusions and the
164 action to be taken, if any, within seven days after receiving the last of the two reports. The
165 findings and conclusions shall be made in substantially the following form:

166 (1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law
167 enforcement officer designated by the juvenile officer and the investigating school board
168 personnel agree that the evidence shows that no abuse occurred;

169 (2) The report of the alleged child abuse is substantiated. The juvenile officer or a law
170 enforcement officer designated by the juvenile officer and the investigating school district
171 personnel agree that the evidence is sufficient to support a finding that the alleged incident of
172 child abuse did occur;

173 (3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile
174 officer or a law enforcement officer designated by the juvenile officer and the investigating
175 school personnel are unable to agree on their findings and conclusions on the alleged incident.

176 11. The findings and conclusions of the school board shall be sent to the division of
177 family services. If the findings and conclusions of the school board are that the report of the
178 alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and
179 no record shall be entered in the division of family services' central registry. If the findings and
180 conclusions of the school board are that the report of the alleged child abuse is substantiated, the
181 division of family services shall report the incident to the prosecuting attorney of the appropriate
182 county along with the findings and conclusions of the school district and shall include the
183 information in the division's central registry. If the findings and conclusions of the school board
184 are that the issue involved in the alleged incident of child abuse is unresolved, the division of
185 family services shall report the incident to the prosecuting attorney of the appropriate county
186 along with the findings and conclusions of the school board, however, the incident and the
187 names of the parties allegedly involved shall not be entered into the central registry of the
188 division of family services unless and until the alleged child abuse is substantiated by a court of
189 competent jurisdiction.

190 12. Any superintendent of schools, president of a school board or such person's designee
191 or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or
192 who knowingly withholds any information relative to any investigation or report pursuant to this
193 section is guilty of a class A misdemeanor.

194 13. In order to ensure the safety of all students, should a student be expelled for bringing
195 a weapon to school, violent behavior, or for an act of school violence, that student shall not, for

196 the purposes of the accreditation process of the Missouri school improvement plan, be
197 considered a dropout or be included in the calculation of that district's educational persistence
198 ratio.

565.090. 1. A person commits the crime of harassment if [for the purpose of frightening
2 or disturbing another person,] he **or she:**

3 (1) **Knowingly** communicates [in writing or by telephone] a threat to commit any felony
4 **to another person and in so doing, frightens, intimidates, or causes emotional distress to**
5 **such other person; or**

6 (2) [Makes a telephone call or communicates in writing and] **When communicating**
7 **with another person, knowingly** uses coarse language offensive to one of average sensibility
8 **and thereby puts such person in reasonable apprehension of offensive physical contact or**
9 **harm; or**

10 (3) [Makes] **Knowingly frightens, intimidates, or causes emotional distress to**
11 **another person by anonymously making** a telephone call [anonymously] **or any electronic**
12 **communication; or**

13 (4) **Knowingly communicates with another person who is, or who purports to be,**
14 **seventeen years of age or younger and in so doing and without good cause recklessly**
15 **frightens, intimidates, or causes emotional distress to such other person; or**

16 (5) **Knowingly** makes repeated [telephone calls] **unwanted communication to another**
17 **person; or**

18 (6) **Without good cause engages in any other act with the purpose to frighten,**
19 **intimidate, or cause emotional distress to another person, cause such person to be**
20 **frightened, intimidated, or emotionally distressed, and such person's response to the act**
21 **is one of a person of average sensibilities considering the age of such person.**

22 2. Harassment is a class A misdemeanor **unless:**

23 (1) **Committed by a person twenty-one years of age or older against a person**
24 **seventeen years of age or younger; or**

25 (2) **The person has previously pleaded guilty to or been found guilty of a violation**
26 **of this section, or of any offense committed in violation of any county or municipal**
27 **ordinance in any state, any state law, any federal law, or any military law which, if**
28 **committed in this state, would be chargeable or indictable as a violation of any offense**
29 **listed in this subsection.**

30

31 **In such cases, harassment shall be a class D felony.**

32 **3. This section shall not apply to activities of federal, state, county, or municipal law**
33 **enforcement officers conducting investigations of violation of federal, state, county, or**
34 **municipal law.**

565.225. 1. As used in this section, the following terms shall mean:

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

7 (2) "Credible threat", a threat [made] **communicated** with the intent to cause the person
8 who is the target of the threat to reasonably fear for his or her safety, **or the safety of his or her**
9 **family, or household members or domestic animals or livestock as defined in section**
10 **276.606, RSMo, kept at such person's residence or on such person's property.** The threat
11 must be against the life of, or a threat to cause physical injury to, [a] **or the kidnapping of, the**
12 person [and may include a threat communicated to the targeted person in writing, including
13 electronic communications, by telephone, or by the posting of a site or message that is accessible
14 via computer] , **the person's family, or the person's household members or domestic animals**
15 **or livestock as defined in section 276.606, RSMo, kept at such person's residence or on such**
16 **person's property;**

17 (3) "Harasses", to engage in a course of conduct directed at a specific person that serves
18 no legitimate purpose, that would cause a reasonable person [to suffer substantial emotional
19 distress, and that actually causes substantial emotional distress to that person] **under the**
20 **circumstances to be frightened, intimidated, or emotionally distressed.**

21 2. [Any] A person [who] **commits the crime of stalking if he or she** purposely [and
22 repeatedly] , **through his or her course of conduct,** harasses or follows with the intent of
23 harassing another person [commits the crime of stalking].

24 3. [Any] A person [who] **commits the crime of aggravated stalking if he or she**
25 purposely [and repeatedly] , **through his or her course of conduct,** harasses or follows with
26 the intent of harassing [or harasses] another person, and:

27 (1) Makes a credible threat [with the intent to place that person in reasonable fear of
28 death or serious physical injury, commits the crime of aggravated stalking] ; **or**

29 (2) **At least one of the acts constituting the course of conduct is in violation of an**
30 **order of protection and the person has received actual notice of such order; or**

31 (3) **At least one of the actions constituting the course of conduct is in violation of**
32 **a condition of probation, parole, pretrial release, or release on bond pending appeal; or**

33 (4) **At any time during the course of conduct, the other person is seventeen years**
34 **of age or younger and the person harassing the other person is twenty-one years of age or**
35 **older; or**

36 **(5) He or she has previously pleaded guilty to or been found guilty of domestic**
37 **assault, violation of an order of protection, or any other crime where the other person was**
38 **the victim.**

39 4. The crime of stalking shall be a class A misdemeanor [for the first offense. A second
40 or subsequent offense within five years of a previous finding or plea of guilt against any victim]
41 **unless the person has previously pleaded guilty to or been found guilty of a violation of this**
42 **section, or of any offense committed in violation of any county or municipal ordinance in**
43 **any state, any state law, any federal law, or any military law which, if committed in this**
44 **state, would be chargeable or indictable as a violation of any offense listed in this section,**
45 **in which case, stalking** shall be a class D felony.

46 5. The crime of aggravated stalking shall be a class D felony [for the first offense. A
47 second or subsequent offense within five years of a previous finding or plea of guilt against any
48 victim] **unless the person has previously pleaded guilty to or been found guilty of a violation**
49 **of this section, or of any offense committed in violation of any county or municipal**
50 **ordinance in any state, any state law, any federal law, or any military law which, if**
51 **committed in this state, would be chargeable or indictable as a violation of any offense**
52 **listed in this section, aggravated stalking** shall be a class C felony.

53 6. Any law enforcement officer may arrest, without a warrant, any person he or she has
54 probable cause to believe has violated the provisions of this section.

55 **7. This section shall not apply to activities of federal, state, county, or municipal law**
56 **enforcement officers conducting investigations of violation of federal, state, county, or**
57 **municipal law.**

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