SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 818 & 795
94TH GENERAL ASSEMBLY
2008

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Section A. Sections 160.261, 565.090, and 565.225, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 160.261, 565.090, and 565.225, to read as follows:

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

2. The policy shall require school administrators to report acts of school violence to teachers and other school district employees with a need to know. For

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
the purposes of this chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002, RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following [felonies] crimes, or any act which if committed by an adult would be one of the following [felonies] crimes:

(1) First degree murder under section 565.020, RSMo;
(2) Second degree murder under section 565.021, RSMo;
(3) Kidnapping under section 565.110, RSMo;
(4) First degree assault under section 565.050, RSMo;
(5) Forcible rape under section 566.030, RSMo;
(6) Forcible sodomy under section 566.060, RSMo;
(7) Burglary in the first degree under section 569.160, RSMo;
(8) Burglary in the second degree under section 569.170, RSMo;
(9) Robbery in the first degree under section 569.020, RSMo;
(10) Distribution of drugs under section 195.211, RSMo;
(11) Distribution of drugs to a minor under section 195.212, RSMo;
(12) Arson in the first degree under section 569.040, RSMo;
(13) Voluntary manslaughter under section 565.023, RSMo;
(14) Involuntary manslaughter under section 565.024, RSMo;
(15) Second degree assault under section 565.060, RSMo;
(16) Sexual assault under section 566.040, RSMo;
(17) Felonious restraint under section 565.120, RSMo;
(18) Property damage in the first degree under section 569.100, RSMo;
(19) The possession of a weapon under chapter 571, RSMo;
(20) Child molestation in the first degree pursuant to section 566.067, RSMo;
(21) Deviate sexual assault pursuant to section 566.070, RSMo;
(22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; [or]
(23) Sexual abuse pursuant to section 566.100, RSMo;
(24) Harassment under section 565.090, RSMo; or
(25) Stalking under section 565.225, RSMo;

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

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

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

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

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

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

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

5. The policy shall provide for a suspension for a period of not less than one year, or expulsion, for a student who is determined to have brought a weapon to school, including but not limited to the school playground or the school parking lot, brought a weapon on a school bus or brought a weapon to a school activity whether on or off of the school property in violation of district policy, except that:

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

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

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

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

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

9. Each school board shall define in its discipline policy acts of violence
and any other acts that constitute a serious violation of that policy. Acts of
violence as defined by school boards shall include but not be limited to exertion
of physical force by a student with the intent to do serious bodily harm to another
person while on school property, including a school bus in service on behalf of the
district, or while involved in school activities. School districts shall for each
student enrolled in the school district compile and maintain records of any
serious violation of the district's discipline policy. Such records shall be made
available to teachers and other school district employees with a need to know
while acting within the scope of their assigned duties, and shall be provided as
required in section 167.020, RSMo, to any school district in which the student
subsequently attempts to enroll.

10. Spanking, when administered by certificated personnel of a school
district in a reasonable manner in accordance with the local board of education's
written policy of discipline, is not abuse within the meaning of chapter 210,
RSMo. The provisions of sections 210.110 to 210.165, RSMo, notwithstanding, the
division of family services shall not have jurisdiction over or investigate any
report of alleged child abuse arising out of or related to any spanking
administered in a reasonable manner by any certificated school personnel
pursuant to a written policy of discipline established by the board of education
of the school district. Upon receipt of any reports of child abuse by the division
of family services pursuant to sections 210.110 to 210.165, RSMo, which allegedly
involves personnel of a school district, the division of family services shall notify
the superintendent of schools of the district or, if the person named in the alleged
incident is the superintendent of schools, the president of the school board of the
school district where the alleged incident occurred. If, after an initial
investigation, the superintendent of schools or the president of the school board
finds that the report involves an alleged incident of child abuse other than the
administration of a spanking by certificated school personnel pursuant to a
written policy of discipline or a report made for the sole purpose of harassing a
public school employee, the superintendent of schools or the president of the
school board shall immediately refer the matter back to the division of family
services and take no further action. In all matters referred back to the division
of family services, the division of family services shall treat the report in the
same manner as other reports of alleged child abuse received by the division. If
the report pertains to an alleged incident which arose out of or is related to a
 spanking administered by certificated personnel of a school district pursuant to
a written policy of discipline or a report made for the sole purpose of harassing
a public school employee, a notification of the reported child abuse shall be sent
by the superintendent of schools or the president of the school board to the
juvenile officer of the county in which the alleged incident occurred. The report
shall be jointly investigated by the juvenile officer or a law enforcement officer
designated by the juvenile officer and the superintendent of schools or, if the
subject of the report is the superintendent of schools, by the juvenile officer or a
law enforcement officer designated by the juvenile officer and the president of the
school board or such president's designee. The investigation shall begin no later
than forty-eight hours after notification from the division of family services is
received, and shall consist of, but need not be limited to, interviewing and
recording statements of the child and the child's parents or guardian within two
working days after the start of the investigation, of the school district personnel
allegedly involved in the report, and of any witnesses to the alleged incident. The
juvenile officer or a law enforcement officer designated by the juvenile officer and
the investigating school district personnel shall issue separate reports of their
findings and recommendations after the conclusion of the investigation to the
school board of the school district within seven days after receiving notice from
the division of family services. The reports shall contain a statement of
conclusion as to whether the report of alleged child abuse is substantiated or is
unsubstantiated. The school board shall consider the separate reports and shall
issue its findings and conclusions and the action to be taken, if any, within seven
days after receiving the last of the two reports. The findings and conclusions
shall be made in substantially the following form:

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

(2) The report of the alleged child abuse is substantiated. The juvenile
officer or a law enforcement officer designated by the juvenile officer and the
investigating school district personnel agree that the evidence is sufficient to
support a finding that the alleged incident of child abuse did occur;
(3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

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

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

13. In order to ensure the safety of all students, should a student be expelled for bringing a weapon to school, violent behavior, or for an act of school violence, that student shall not, for the purposes of the accreditation process of the Missouri school improvement plan, be considered a dropout or be included in the calculation of that district's educational persistence ratio.

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

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

(2) [Makes a telephone call or communicates in writing and] When communicating with another person, knowingly uses coarse language
8 offensive to one of average sensibility and thereby puts such person in
9 reasonable apprehension of offensive physical contact or harm; or
10
11 (3) [Makes] Knowingly frightens, intimidates, or causes emotional
12 distress to another person by anonymously making a telephone call
13 [anonymously] or any electronic communication; or
14
15 (4) Knowingly communicates with another person who is, or who
16 purports to be, seventeen years of age or younger and in so doing and
17 without good cause recklessly frightens, intimidates, or causes
18 emotional distress to such other person; or
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20 (5) Knowingly makes repeated [telephone calls] unwanted
21 communication to another person; or
22
23 (6) Without good cause engages in any other act with the purpose
24 to frighten, intimidate, or cause emotional distress to another person,
25 cause such person to be frightened, intimidated, or emotionally
26 distressed, and such person's response to the act is one of a person of
27 average sensibilities considering the age of such person.
28
29 2. Harassment is a class A misdemeanor unless:
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31 (1) Committed by a person twenty-one years of age or older
32 against a person seventeen years of age or younger; or
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34 (2) The person has previously pleaded guilty to or been found
35 guilty of a violation of this section, or of any offense committed in
36 violation of any county or municipal ordinance in any state, any state
37 law, any federal law, or any military law which, if committed in this
38 state, would be chargeable or indictable as a violation of any offense
39 listed in this subsection.
40
41 In such cases, harassment shall be a class D felony.
42
43 3. This section shall not apply to activities of federal, state,
44 county, or municipal law enforcement officers conducting
45 investigations of violation of federal, state, county, or municipal law.
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565.225. 1. As used in this section, the following terms shall mean:
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3 (1) "Course of conduct", a pattern of conduct composed of [a series of] two
4 or more acts, which may include [electronic or other communications]
5 communication by any means, over a period of time, however short,
6 evidencing a continuity of purpose. Constitutionally protected activity is not
7 included within the meaning of "course of conduct". Such constitutionally
8 protected activity includes picketing or other organized protests;
9
10 (2) "Credible threat", a threat [made] communicated with the intent to
9 cause the person who is the target of the threat to reasonably fear for his or her
10 safety, or the safety of his or her family, or household members or
domestic animals or livestock as defined in section 276.606, RSMo, kept
at such person's residence or on such person's property. The threat must
13 be against the life of, or a threat to cause physical injury to, [a] or the
kidnapping of, the person [and may include a threat communicated to the
15 targeted person in writing, including electronic communications, by telephone, or
by the posting of a site or message that is accessible via computer], the person's
17 family, or the person's household members or domestic animals or
livestock as defined in section 276.606, RSMo, kept at such person's
19 residence or on such person's property;
20 (3) "Harasses", to engage in a course of conduct directed at a specific
person that serves no legitimate purpose, that would cause a reasonable person
[to suffer substantial emotional distress, and that actually causes substantial
emotional distress to that person] under the circumstances to be frightened,
intimidated, or emotionally distressed.
25 2. [Any] A person [who] commits the crime of stalking if he or she
26 purposely [and repeatedly], through his or her course of conduct, harasses
or follows with the intent of harassing another person [commits the crime of
stalking].
29 3. [Any] A person [who] commits the crime of aggravated stalking
if he or she purposely [and repeatedly], through his or her course of
conduct, harasses or follows with the intent of harassing [or harasses] another
person, and:
33 (1) Makes a credible threat [with the intent to place that person in
reasonable fear of death or serious physical injury, commits the crime of
aggravated stalking]; or
36 (2) At least one of the acts constituting the course of conduct is
in violation of an order of protection and the person has received
actual notice of such order; or
39 (3) At least one of the actions constituting the course of conduct
is in violation of a condition of probation, parole, pretrial release, or
release on bond pending appeal; or
42 (4) At any time during the course of conduct, the other person is
seventeen years of age or younger and the person harassing the other
person is twenty-one years of age or older; or
45 (5) He or she has previously pleaded guilty to or been found
46 guilty of domestic assault, violation of an order of protection, or any
47 other crime where the other person was the victim.
48
49 4. The crime of stalking shall be a class A misdemeanor [for the first
50 offense. A second or subsequent offense within five years of a previous finding
51 or plea of guilt against any victim] unless the person has previously
52 pleaded guilty to or been found guilty of a violation of this section, or
53 of any offense committed in violation of any county or municipal
54 ordinance in any state, any state law, any federal law, or any military
55 law which, if committed in this state, would be chargeable or indictable
56 as a violation of any offense listed in this section, in which case, stalking
57 shall be a class D felony.
58
59 5. The crime of aggravated stalking shall be a class D felony [for the first
60 offense. A second or subsequent offense within five years of a previous finding
61 or plea of guilt against any victim] unless the person has previously
62 pleaded guilty to or been found guilty of a violation of this section, or
63 of any offense committed in violation of any county or municipal
64 ordinance in any state, any state law, any federal law, or any military
65 law which, if committed in this state, would be chargeable or indictable
66 as a violation of any offense listed in this section, aggravated stalking
67 shall be a class C felony.
68
69 6. Any law enforcement officer may arrest, without a warrant, any person
70 he or she has probable cause to believe has violated the provisions of this section.
71
72 7. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.