

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

3614L.08T

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## 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.

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Section A. Sections 160.261, 565.090, and 565.225, RSMo, are repealed  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

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

15 2. The policy shall require school administrators to report acts of school  
16 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.**

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

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

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

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

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

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

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

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

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

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

85           4. Any student who violates the condition of suspension required pursuant  
86 to subsection 3 of this section may be subject to expulsion or further suspension  
87 pursuant to the provisions of sections 167.161, 167.164, and 167.171, RSMo. In  
88 making this determination consideration shall be given to whether the student  
89 poses a threat to the safety of any child or school employee and whether such  
90 student's unsupervised presence within one thousand feet of the school is

91 disruptive to the educational process or undermines the effectiveness of the  
92 school's disciplinary policy. Removal of any pupil who is a student with a  
93 disability is subject to state and federal procedural rights.

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

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

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

105           6. For the purpose of this section, the term "weapon" shall mean a firearm  
106 as defined under 18 U.S.C. 921 and the following items, as defined in section  
107 571.010, RSMo: a blackjack, a concealable firearm, an explosive weapon, a  
108 firearm, a firearm silencer, a gas gun, a knife, knuckles, a machine gun, a  
109 projectile weapon, a rifle, a shotgun, a spring gun or a switchblade knife; except  
110 that this section shall not be construed to prohibit a school board from adopting  
111 a policy to allow a Civil War reenactor to carry a Civil War era weapon on school  
112 property for educational purposes so long as the firearm is unloaded. The local  
113 board of education shall define weapon in the discipline policy. Such definition  
114 shall include the weapons defined in this subsection but may also include other  
115 weapons.

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

121           8. Teachers and other authorized district personnel in public schools  
122 responsible for the care, supervision, and discipline of schoolchildren, including  
123 volunteers selected with reasonable care by the school district, shall not be civilly  
124 liable when acting in conformity with the established policy of discipline  
125 developed by each board under this section, or when reporting to his or her  
126 supervisor or other person as mandated by state law acts of school violence or  
127 threatened acts of school violence, within the course and scope of the duties of the

128 teacher, authorized district personnel or volunteer, when such individual is acting  
129 in conformity with the established policies developed by the board. Nothing in  
130 this section shall be construed to create a new cause of action against such school  
131 district, or to relieve the school district from liability for the negligent acts of  
132 such persons.

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

145         10. Spanking, when administered by certificated personnel of a school  
146 district in a reasonable manner in accordance with the local board of education's  
147 written policy of discipline, is not abuse within the meaning of chapter 210,  
148 RSMo. The provisions of sections 210.110 to 210.165, RSMo, notwithstanding, the  
149 division of family services shall not have jurisdiction over or investigate any  
150 report of alleged child abuse arising out of or related to any spanking  
151 administered in a reasonable manner by any certificated school personnel  
152 pursuant to a written policy of discipline established by the board of education  
153 of the school district. Upon receipt of any reports of child abuse by the division  
154 of family services pursuant to sections 210.110 to 210.165, RSMo, which allegedly  
155 involves personnel of a school district, the division of family services shall notify  
156 the superintendent of schools of the district or, if the person named in the alleged  
157 incident is the superintendent of schools, the president of the school board of the  
158 school district where the alleged incident occurred. If, after an initial  
159 investigation, the superintendent of schools or the president of the school board  
160 finds that the report involves an alleged incident of child abuse other than the  
161 administration of a spanking by certificated school personnel pursuant to a  
162 written policy of discipline or a report made for the sole purpose of harassing a  
163 public school employee, the superintendent of schools or the president of the  
164 school board shall immediately refer the matter back to the division of family

165 services and take no further action. In all matters referred back to the division  
166 of family services, the division of family services shall treat the report in the  
167 same manner as other reports of alleged child abuse received by the division. If  
168 the report pertains to an alleged incident which arose out of or is related to a  
169 spanking administered by certificated personnel of a school district pursuant to  
170 a written policy of discipline or a report made for the sole purpose of harassing  
171 a public school employee, a notification of the reported child abuse shall be sent  
172 by the superintendent of schools or the president of the school board to the  
173 juvenile officer of the county in which the alleged incident occurred. The report  
174 shall be jointly investigated by the juvenile officer or a law enforcement officer  
175 designated by the juvenile officer and the superintendent of schools or, if the  
176 subject of the report is the superintendent of schools, by the juvenile officer or a  
177 law enforcement officer designated by the juvenile officer and the president of the  
178 school board or such president's designee. The investigation shall begin no later  
179 than forty-eight hours after notification from the division of family services is  
180 received, and shall consist of, but need not be limited to, interviewing and  
181 recording statements of the child and the child's parents or guardian within two  
182 working days after the start of the investigation, of the school district personnel  
183 allegedly involved in the report, and of any witnesses to the alleged incident. The  
184 juvenile officer or a law enforcement officer designated by the juvenile officer and  
185 the investigating school district personnel shall issue separate reports of their  
186 findings and recommendations after the conclusion of the investigation to the  
187 school board of the school district within seven days after receiving notice from  
188 the division of family services. The reports shall contain a statement of  
189 conclusion as to whether the report of alleged child abuse is substantiated or is  
190 unsubstantiated. The school board shall consider the separate reports and shall  
191 issue its findings and conclusions and the action to be taken, if any, within seven  
192 days after receiving the last of the two reports. The findings and conclusions  
193 shall be made in substantially the following form:

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

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

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

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

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

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

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

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

6 (2) [Makes a telephone call or communicates in writing and] **When**  
7 **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 (3) **[Makes] Knowingly frightens, intimidates, or causes emotional**  
11 **distress to another person by anonymously making a telephone call**  
12 **[anonymously] or any electronic communication; or**

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

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

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

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

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

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

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

34 3. **This section shall not apply to activities of federal, state,**  
35 **county, or municipal law enforcement officers conducting**  
36 **investigations of violation of federal, state, county, or 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**  
3 **or more** acts, which may include [electronic or other communications]  
4 **communication by any means**, over a period of time, however short,  
5 evidencing a continuity of purpose. Constitutionally protected activity is not  
6 included within the meaning of "course of conduct". Such constitutionally  
7 protected activity includes picketing or other organized protests;

8 (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**  
11 **domestic animals or livestock as defined in section 276.606, RSMo, kept**  
12 **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**  
14 **kidnapping of, the** person [and may include a threat communicated to the  
15 targeted person in writing, including electronic communications, by telephone, or  
16 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**  
18 **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  
21 person that serves no legitimate purpose, that would cause a reasonable person  
22 [to suffer substantial emotional distress, and that actually causes substantial  
23 emotional distress to that person] **under the circumstances to be frightened,**  
24 **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  
27 or follows with the intent of harassing another person [commits the crime of  
28 stalking].

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

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

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

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

42 (4) **At any time during the course of conduct, the other person is**  
43 **seventeen years of age or younger and the person harassing the other**  
44 **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           4. The crime of stalking shall be a class A misdemeanor [for the first  
49 offense. A second or subsequent offense within five years of a previous finding  
50 or plea of guilt against any victim] **unless the person has previously**  
51 **pleaded guilty to or been found guilty of a violation of this section, or**  
52 **of any offense committed in violation of any county or municipal**  
53 **ordinance in any state, any state law, any federal law, or any military**  
54 **law which, if committed in this state, would be chargeable or indictable**  
55 **as a violation of any offense listed in this section, in which case,**  
56 **stalking** shall be a class D felony.

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

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

68           7. **This section shall not apply to activities of federal, state,**  
69 **county, or municipal law enforcement officers conducting**  
70 **investigations of violation of federal, state, county, or municipal law.**

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