

SECOND REGULAR SESSION

SENATE BILL NO. 758

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Pre-filed December 30, 1999, and 1,000 copies ordered printed.

3168S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 537.525, 541.033, 542.281, 565.090, 565.225, 568.110, 569.070, 569.093, 569.094, 569.095, 569.097, 569.099, 573.010, 573.025, 573.035, 573.037 and 573.050, RSMo 1994, and sections 556.036 and 565.253, RSMo Supp. 1999, relating to computer crime, and to enact in lieu thereof twenty-four new sections relating to the same subject.

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

Section A. Sections 537.525, 541.033, 542.281, 565.090, 565.225, 568.110, 569.070, 569.093, 569.094, 569.095, 569.097, 569.099, 573.010, 573.025, 573.035, 573.037 and 573.050, RSMo 1994, and sections 556.036 and 565.253, RSMo Supp. 1999, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 537.525, 541.033, 542.281, 556.036, 565.090, 565.225, 565.252, 565.253, 568.110, 569.070, 573.010, 573.025, 573.037, 573.045, 573.050, 578.500, 578.503, 578.506, 578.509, 578.512, 578.515, 578.518, 578.521 and 578.024, to read as follows:

537.525. 1. In addition to any other civil remedy available, the owner or lessee of the **computer, computer equipment**, computer system, computer network, computer program, computer [service] **services** or data may bring a civil action against any person who **allegedly** violates sections [569.095 to 569.099] **578.503 to 578.515**, RSMo, for compensatory damages, including any expenditures reasonably and necessarily incurred by the owner or lessee to verify that [a] **the computer, computer equipment** computer system, computer network, computer program, computer [service,] **services** or data was not altered, damaged, or deleted by the **unauthorized access or expenditures reasonably and necessarily incurred to block future access to any person alleged to have violated section 578.512 or 578.515, RSMo.**

2. In any action brought pursuant to this section, the court may award reasonable

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

attorney's fees to a prevailing plaintiff.

541.033. Persons accused of committing offenses against the laws of this state, except as may be otherwise provided by law, shall be prosecuted:

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

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

(3) When an element of the offense was committed through access to a computer, computer network or computer system, then:

(a) In any county in which any act was performed in furtherance of any course of conduct which violated sections 578.500 to 578.521, RSMo; or

(b) In any county in which the accused had control or possession of any books, records, documents, property, financial instrument, computer equipment, computer software, computer programs, data or other material or objects which were used in furtherance of any offense; or

(c) In any county from which, to which or through which any access to a computer or computer network was made whether by wires, electromagnetic waves, microwaves, or any other means of communication; or

(d) In any county in which any computer or computer equipment which is an object or an instrument used in furtherance of any offense is located at the time of the alleged offense.

542.281. 1. Any police officer, sheriff or deputy sheriff may make application for the issuance of a search warrant to search for and seize:

(1) Obscene matter being held or displayed for sale, exhibition, distribution, or circulation to the public;

(2) Matter that is pornographic for minors being held or displayed for sale, exhibition, distribution, or circulation to minors;

(3) Property which has been used by the owner, or used with his consent, as a raw material or as an instrument to publish or produce such matter as described in [subdivisions (1) and (2) of] this subsection.

2. A warrant to search for and seize the matters and property described in subsection 1 of this section as evidence in a criminal proceeding pursuant to chapter 573, RSMo, may be issued by a judge of the circuit court in the county or judicial district in which the alleged matter or property is located. Except as provided in this section, the issuance of a warrant to search for and seize obscene matter shall be governed by the provisions of section 542.276. Notwithstanding subsection 3 of section 542.276, oral testimony may be considered.

3. The application and the warrant, if issued, shall designate precisely by title, or

otherwise, each item to be searched for and seized.

4. No warrant shall be issued to search for and seize any item unless the judge determines there is probable cause to believe that such item is obscene as defined in section 573.010, RSMo, and is being displayed, sold, exhibited, distributed, or circulated to the public or is pornographic for minors as defined in section 573.010, RSMo, and is being displayed, sold, exhibited, distributed or circulated to minors.

5. If the item to be seized is a book, magazine, paper, or pamphlet or an item that may be photographed, a copy or photograph of the allegedly obscene item may be annexed to the application.

6. If the item to be seized is a motion picture film or video cassette, written affidavits verified by oath or affirmation of law enforcement officers and city or county prosecutors may supplement the application.

7. An officer in making his application for a warrant may rely on past viewings of a motion picture film or video cassette that is the same as the motion picture film or video cassette to be seized if the film or video cassette to be seized can be identified as the same as or a copy of, the prior viewed film or video cassette by the title of the film or video cassette or the package or label on or surrounding the film or video cassette or some other manner.

8. If the purpose of applying for a warrant is to search for and seize obscene material, **other than child pornography as defined in section 573.010, RSMo**, for other than evidentiary purposes, the judge shall hold an adversary hearing to determine whether such matter is obscene before issuing a warrant. Not less than twenty-four hours before such hearing, written notice of the date, time, place and nature of the hearing, including a description of the matter sought, shall be personally served upon the dealer, exhibitor, displayer or his agent. No warrant shall be issued without the dealer, distributor, or displayer being given a reasonable opportunity to appear in opposition to the issuance. If the material to be seized is the same as or another copy of matter that has already been determined to be obscene in a criminal proceeding against the dealer, exhibitor, displayer or his agent, the determination of obscenity in the criminal proceeding shall constitute clear and convincing evidence that the matter to be seized pursuant to this subsection is obscene. Except when the dealer, exhibitor, or displayer consents to a longer period, or by his actions or pleadings, willfully prevents the prompt resolution of the hearing, a decision shall be rendered no later than ten days from the date of the commencement of the hearing. After service of notice of the hearing, or subpoena, or the execution of a search warrant, intentional alteration, destruction, or removal of any matter, or duplicate of matter, described in the notice shall be punished as contempt of court.

556.036. 1. A prosecution for murder or any class A felony may be commenced at any time.

2. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods of limitation:

- (1) For any felony, three years;
- (2) For any misdemeanor, one year;
- (3) For any infraction, six months.

3. If the period prescribed in subsection 2 has expired, a prosecution may nevertheless be commenced for:

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation by more than three years. As used in this subdivision, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses committed pursuant to sections 407.511 to 407.556, RSMo; and

(2) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years; [and]

(3) Any offense based upon an intentional and willful fraudulent claim of child support arrearage to a public servant in the performance of his or her duties within one year after discovery of the offense, but in no case shall this provision extend the period of limitation by more than three years; **and**

(4) Any offense in violation of sections 578.500 to 578.521, RSMo, within one year after the discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation by more than three years. As used in this section, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having jurisdiction under sections 578.518 and 578.521, RSMo, for offenses committed pursuant to sections 578.500 to 578.521, RSMo.

4. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

5. A prosecution is commenced either when an indictment is found or an information filed.

6. The period of limitation does not run:

(1) During any time when the accused is absent from the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when the accused is concealing himself from justice either within or

without this state; or

(3) During any time when a prosecution against the accused for the offense is pending in this state; or

(4) During any time when the accused is found to lack mental fitness to proceed pursuant to section 552.020, RSMo.

565.090. 1. A person commits the crime of harassment if for the purpose of frightening or disturbing another person, he

(1) Communicates in writing, **including any electronic communications**, [or] by telephone, **or in person** a threat to commit any felony; or

(2) [Makes a telephone call or] Communicates in writing, **including any electronic communications, or by telephone and, in the course of such communications**, [and] uses coarse language offensive to one of average sensibility; or

(3) [Makes a telephone call anonymously] **Communicates in writing, including any electronic communications, or by telephone in a manner that does not reveal the person's identity**; or

(4) **Sends repeated written messages, including electronic communications**, or makes repeated telephone calls.

2. Harassment is a class A misdemeanor **except that a violation of subdivision (1) of subsection 1 of this section is a class D felony.**

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

(1) "Course of conduct", a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct". Such constitutionally protected activity includes picketing or other organized protests;

(2) "Credible threat", a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause physical injury to, a person **and includes a threat communicated to the targeted person in writing, including electronic communications, by telephone, or by the posting of a site or message that is publicly accessible via a computer and is reasonably likely to cause the targeted person to reasonably fear for his or her safety if made aware of the content of the site or message;**

(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.

2. Any person who purposely and repeatedly harasses or follows with the intent of harassing another person commits the crime of stalking.

3. Any person who purposely and repeatedly harasses or follows with the intent of

harassing or harasses another person, and 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.

4. The crime of stalking shall be a class A misdemeanor for the first offense. A second or subsequent offense within five years of a previous finding or plea of guilt against any victim shall be a class D felony.

5. The crime of aggravated stalking shall be a class D felony for the first offense. A second or subsequent offense within five years of a previous finding or plea of guilt against any victim shall be a class C felony.

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

565.252. 1. A person commits the crime of invasion of privacy in the first degree if he or she knowingly photographs or films another person, without the person's knowledge and consent, while the person being photographed or filmed is in a state of full or partial nudity and is in a place where he or she would have a reasonable expectation of privacy, and the person subsequently distributes the photograph or film to another or transmits the image contained in the photograph or film in a manner that allows access to that image via a computer.

2. Invasion of privacy in the first degree is a class C felony.

565.253. 1. A person commits the crime of invasion of privacy **in the second degree** if he **or she** knowingly views, photographs or films another person, without that person's knowledge and consent, while the person being viewed, photographed or filmed is in a state of full or partial nudity and is in a place where he **or she** would have a reasonable expectation of privacy.

2. Invasion of privacy **in the second degree** is a class A misdemeanor; unless more than one person is viewed, photographed or filmed in full or partial nudity in violation of sections 565.250 to 565.257 during the same course of conduct, in which case invasion of privacy is a class D felony; and unless committed by a prior invasion of privacy offender, in which case invasion of privacy is a class C felony. Prior pleas or findings of guilt shall be pled and proven in the same manner required by the provisions of section 558.021, RSMo.

568.110. **1. Any [commercial] film and photographic print processor, computer provider, installer or repair person, or any Internet service provider** who has knowledge of or observes, within the scope of the person's professional capacity or employment, any film, photograph, videotape, negative, [or] slide, **visual depiction or computer-generated image or picture** depicting a child under the age of [seventeen] **eighteen** years engaged in an act of sexual conduct shall report such instance to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible.

2. Failure to make such report shall be a class B misdemeanor.

569.070. 1. A person commits the crime of causing catastrophe if he:

(1) Knowingly causes a catastrophe by explosion, fire, flood, collapse of a building, release of poison, radioactive material, bacteria, virus, **computer virus** or other dangerous and difficult to confine force or substance;

(2) **Knowingly and without authorization alters any computer network or program with the purpose of causing a catastrophe by one or more of the events listed in subdivision.**

2. "Catastrophe" means death or serious physical injury to ten or more people or substantial damage to five or more buildings or inhabitable structures or substantial damage to a vital public facility **or public service** which seriously impairs its usefulness or operation.

3. Causing catastrophe is a class A felony.

[569.093. As used in sections 569.094 to 569.099 and in section 537.525, RSMo, the following terms mean:

(1) "Access", to instruct, communicate with, store data in, retrieve or extract data from, or otherwise make any use of any resources of, a computer, computer system, or computer network;

(2) "Computer", a functional unit that can perform substantial computation, including numerous arithmetic operations, logic operations, or data processing, without intervention by a human operator during a run;

(3) "Computer equipment", computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network;

(4) "Computer network", a complex consisting of two or more interconnected computers or computer systems;

(5) "Computer program", a set of instructions, statements, or related data that directs or is intended to direct a computer to perform certain functions;

(6) "Computer software", a set of computer programs, procedures, and associated documentation pertaining to the operation of a computer system or computer network;

(7) "Computer system", a set of related, connected or unconnected, computer equipment, data, or software;

(8) "Damage", any alteration, deletion, or destruction of any part of a computer system or network;

(9) "Data", a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer or computer network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and as may be stored in the memory of a computer;

(10) "Property", anything of value as defined in subdivision (10) of section 570.010,

RSMo, and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value;

(11) "Services", the use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage or retrieval functions.]

[569.094. In a prosecution under sections 569.095 to 569.099, computer printouts shall be competent evidence of any computer software, program, or data contained in or taken from a computer, computer system, or computer network.]

[569.095. 1. A person commits the crime of tampering with computer data if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Modifies or destroys data or programs residing or existing internal to a computer, computer system, or computer network; or

(2) Modifies or destroys data or programs or supporting documentation residing or existing external to a computer, computer system, or computer network; or

(3) Discloses or takes data, programs, or supporting documentation, residing or existing internal or external to a computer, computer system, or computer network; or

(4) Discloses or takes a password, identifying code, personal identification number, or other confidential information about a computer system or network that is intended to or does control access to the computer system or network;

(5) Accesses a computer, a computer system, or a computer network, and intentionally examines information about another person;

(6) Receives, retains, uses, or discloses any data he knows or believes was obtained in violation of this subsection.

2. Tampering with computer data is a class A misdemeanor, unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is one hundred fifty dollars or more, in which case tampering with computer data is a class D felony.]

[569.097. 1. A person commits the crime of tampering with computer equipment if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Modifies, destroys, damages, or takes equipment or data storage devices used or intended to be used in a computer, computer system, or computer network; or

(2) Modifies, destroys, damages, or takes any computer, computer system, or computer network.

2. Tampering with computer equipment is a class A misdemeanor, unless:

(1) The offense is committed for the purpose of executing any scheme or artifice to defraud or obtain any property, the value of which is one hundred fifty dollars or more, in which case it is a class D felony; or

(2) The damage to such computer equipment or to the computer, computer system, or computer network is one hundred fifty dollars or more but less than one thousand dollars, in which case it is a class D felony; or

(3) The damage to such computer equipment or to the computer, computer system, or computer network is one thousand dollars or greater, in which case it is a class C felony.]

[569.099. 1. A person commits the crime of tampering with computer users if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Accesses or causes to be accessed any computer, computer system, or computer network; or

(2) Denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or in part, is owned by, under contract to, or operated for, or on behalf of, or in conjunction with another.

2. The offense of tampering with computer users is a class A misdemeanor unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is one hundred fifty dollars or more, in which case tampering with computer users is a class D felony.]

573.010. As used in this chapter the following terms shall mean:

(1) "Child pornography", any **visual depiction**, material or performance depicting sexual conduct, sexual contact, or a sexual performance, **including the lascivious exhibition of the genitals or pubic area**, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a child **or the representation of a child** under the age of eighteen; [provided, that it shall not include material which is not the visual reproduction of a live event;]

(2) "**Computer**", **the box that houses the central processing unit (cpu), along with any internal storage devices, such as internal hard drives, and internal communication devises, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, "computer" refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a**

computer system including both software applications and data;

(3) "Computer hardware", all equipment which can collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, optical, or similar computer impulses or data. Hardware includes, but is not limited to, any data-processing devices, such as central processing units, memory typewriters, and self-contained "laptop" or "notebook" computers; internal and peripheral storage devices, transistor-like binary devices, and other memory storage devices, such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two or more computers connected together or to a central computer server via cable or modem; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors, and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices, and electronic tone-generating devices; as well as any devices, mechanisms, or parts that can be used to restrict access to computer hardware, such as physical keys and locks;

(4) "Computer software", digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical, or other digital form. It commonly includes programs to run operating systems, applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters, and communications programs;

(5) "Computer-related documentation", written, recorded, printed, or electronically stored material which explains or illustrates how to configure or use computer hardware, software, or other related items;

(6) "Digital camera", a camera that records images in a format which enables the images to be downloaded into a computer;

[(2)] (7) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(8) "Electronic transfer", the transmission or transfer of computer data, computer or computer-generated image or picture via modem, facsimile, telephone or cellular phone, or any other means of transferring electronic data using a common carrier of communications, telephone or cellular phone service, cable television or satellite transmissions, either intrastate, interstate or foreign commerce, from one

computer, facsimile, television, telephone or cellular phone, or other electronic equipment to another computer, facsimile, television, telephone or cellular phone, or other electronic equipment;

[(3)] **(9)** "Explicit sexual material", any **visual depiction**, pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

[(4)] **(10)** "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit **electronic transfer, ship or transport in commerce**, or otherwise provide;

(11) "Identifiable minor" a minor who is capable of being recognized as an actual person by his or her face or other distinguishing feature or physical characteristic, although a prosecutor would not be required to prove the minor's actual identity;

(12) "Lascivious", characterized by or expressing lust or lewdness;

[(5)] **(13)** "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, **visual depiction, stored computer data, computer or computer-generated image or picture, digital camera image or picture**, videotape or videotape production, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical **production or reproduction**, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates and other latent representational objects;

[(6)] **(14)** "Minor", any person under the age of eighteen;

[(7)] **(15)** "Nudity", the showing of post-pubertal human genitals or pubic area, with less than a fully opaque covering;

[(8)] **(16)** "Obscene", any material or performance is obscene if, **taken as a whole**:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) [Taken as a whole with] The average person, applying contemporary community standards, **would find the material** it depicts or describes sexual conduct in a patently offensive way; and

(c) [Taken as a whole, it] **A reasonable person would find the material** lacks serious literary, artistic, political or scientific value;

[(9)] **(17)** "Performance", any play, motion picture film, **computer image or computer-generated image or picture, digital camera image or picture**, videotape, dance or exhibition performed before an audience of one or more;

[(10)] **(18)** "Pornographic for minors", any material or performance is pornographic for

minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

[(11)] **(19)** "Promote", to manufacture, **reproduce** issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, **electronic transfer, or ship or transport in commerce**, or advertise, or to offer or agree to do the same;

[(12)] **(20)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

[(13)] **(21)** "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

[(14)] **(22)** "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(23) "Visual depiction", any photograph, film, video, picture, drawing, digital camera image or picture, stored computer data, computer image or computer-generated image or picture, which is produced by electronic mechanical or other means, of sexual conduct, sexual contact or a sexual performance, where:

(a) Its production involved the use of a minor engaging in sexual conduct, sexual contact or sexual performance, including the lascivious exhibition of the genitals or pubic area;

(b) Such visual depiction is, or is represented as, a minor engaging in sexual conduct, sexual contact or a sexual performance, including the lascivious exhibition of the genitals or pubic area;

(c) Such visual depiction has been created, adapted or modified to appear that an identifiable minor is engaging in sexual conduct, sexual contact or a sexual performance, including the lascivious exhibition of the genitals or pubic area; or

(d) It is advertised, distributed, promoted or presented in such a manner as to convey the impression that it is a visual depiction of a minor engaging in sexual

conduct, sexual contact or a sexual performance, including the lascivious exhibition of the genitals or pubic area;

[(15)] **(24)** "Wholesale promote", to manufacture, **reproduce**, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, **electronic transfer, or ship, or transport in commerce**, or to offer or agree to do the same for purposes of resale or redistribution.

573.025. 1. A person commits the crime of promoting child pornography [in the first degree] if, knowing its content and character, he [photographs, films, videotapes, produces, publishes or otherwise creates child pornography, or knowingly causes another to do so.]:

(1) Photographs, films, videotapes, produces, publishes or otherwise creates child pornography, or knowingly causes another to do so;

(2) Alters, changes, or transfers to any other medium any visual depiction, material, photograph, videotape, film, digital camera graphic file, stored computer data, computer image or computer-generated images or pictures of child pornography for the purpose of electronic transfer, mailing, shipping, or transporting in commerce;

(3) Promotes the performance or showing of child pornography;

(4) Sells, delivers, reproduces, electronic transfers, mails, ships or transports through intrastate, interstate or foreign commerce, exhibits or otherwise makes available or offers or agrees to sell, deliver, reproduce, electronic transfer, mail, ship or transport in commerce, exhibit or otherwise make available, any child pornography; or

(5) Buys, procures, receives or possesses child pornography with the purpose to furnish it to others.

2. Promoting child pornography [in the first degree] is a class [B] **A** felony, and upon conviction an additional fine of at least five thousand dollars, but not more than five hundred thousand dollars may be added to any other penalties imposed by law.

3. For purposes of this section, each and every item of child pornography shall be a violation of this section and shall constitute a separate offense.

[573.035. 1. A person commits the crime of promoting child pornography in the second degree if, knowing its content and character, he:

(1) Sells, delivers, exhibits or otherwise makes available, or offers or agrees to sell, deliver, exhibit, or otherwise make available, any child pornography; or

(2) Buys, procures or possesses child pornography with the purpose to furnish it to others.

2. Promoting child pornography in the second degree is a class D felony, and upon conviction an additional fine of at least five thousand dollars, but not more than five hundred thousand dollars may be added to any other penalties imposed by law.]

573.037. 1. A person commits the crime of possession of child pornography if he

knowingly:

(1) Possesses or controls any **visual depiction or** obscene material that has a minor as one of its participants or portrays **a minor** as an observer of sexual conduct, sexual contact or a sexual performance [a minor]; or

(2) Possesses or controls any [material] **visual depiction** that shows a minor participating or engaging in sexual conduct.

2. Possession of child pornography is a [class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section committed at a different time, in which case it is a class D] **B** felony.

573.045. 1. A person commits the crime of furnishing child pornography to a minor if, knowing its content and character, he:

(1) **Furnishes any visual depiction of child pornography, knowing that the person to whom it is furnished is a minor, or the person to whom it is furnished has identified themselves as a minor or acting in reckless disregard or the likelihood that such person is a minor; or**

(2) **Mails, ships, electronic transfers, or transports in commerce a visual depiction of child pornography to a minor knowing that the person to whom it is sent is a minor, the person to whom it is sent has identified themselves as a minor or acting in reckless disregard of the likelihood that such person is a minor.**

2. Furnishing child pornography to a minor is a class A felony.

3. For purposes of this section, each and every visual depiction of child pornography shall be a violation of this section and shall constitute a separate offense.

573.050. 1. In any prosecution under this chapter evidence shall be admissible to show:

(1) What the predominant appeal of the material or performance would be for ordinary adults or minors;

(2) The literary, artistic, political or scientific value of the material or performance;

(3) The degree of public acceptance in this state and in the local community;

(4) The appeal to prurient interest in advertising or other promotion of the material or performance;

(5) The purpose of the author, creator, promoter, furnisher or publisher of the material or performance.

2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of obscenity or child pornography, shall be admissible.

3. In any prosecution for possession of child pornography, **furnishing child pornography to minors**, or promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was younger than

eighteen years of age may be made as set forth in section 568.100, RSMo, **or the person who participated in the child pornography is an identifiable minor as set forth in section 573.010**, or reasonable inferences drawn by a judge or jury after viewing the alleged pornographic material shall constitute sufficient evidence of the child's age to support a conviction.

4. In any prosecution for promoting child pornography in the first or second degree, **possession of child pornography or furnishing child pornography to minors**, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to prevailing standards in the community as a whole.

578.500. As used in sections 537.525, RSMo, 541.033, RSMo, 565.225, RSMo, 565.252, RSMo, 568.110, RSMo, 569.070, RSMo, and sections 578.500 to 578.524, the following terms mean:

(1) **"Access", to instruct, communicate with, store data in, retrieve or extract data from, or otherwise make any use of any resources of, a computer, computer system, or computer network;**

(2) **"Computer", an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, human instruction, or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on data and can communicate the results to another computer or to a person. The term "computer" includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, data or the results of computer operations to or from a person, another computer or another device;**

(3) **"Computer equipment", computers, terminals, data storage devices, and all other computer hardware, including all input, output, processing, storage, software, or communications facilities associated with a computer system or network;**

(4) **"Computer network", the interconnection of communication lines, including microwave or other means of communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers or computer systems;**

(5) **"Computer operations", arithmetic, logical, monitoring, or retrieval functions and any combination thereof, including, but not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed;**

(6) **"Computer program" or "program", a set of instructions, statements, or related data that directs or is intended to direct a computer to perform certain functions;**

(7) **"Computer software", a set of computer programs, data, procedures, and**

associated documentation pertaining to the operation of a computer system or computer network;

(8) "Computer system", a set of related, connected or unconnected, computer equipment, data, or software;

(9) "Computer user", any person who has authorized access to a computer, computer system or computer network;

(10) "Damage", any alteration, deletion, or destruction of any part of a computer, computer equipment, computer network, computer program, computer software or computer system;

(11) "Data", a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer network, computer program, computer software or computer system. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and also may be stored in the memory of a computer;

(12) "Data base", a collection of data;

(13) "Internet", the international computer network of both federal and non-federal interoperable packet switched data networks;

(14) "Internet Service Provider" or "ISP", any entity that provides Internet services to any person or persons for a fee;

(15) "Property", anything of value as defined in subdivision (10) of section 570.010, RSMo, including, but not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value;

(16) "Services", the use of a computer, computer system, or computer network including, but not limited to, computer time, data processing, and storage or retrieval functions.

578.503. 1. A person commits the crime of tampering with computer data if he or she knowingly and without authorization or without reasonable grounds to believe that he or she has such authorization:

(1) Modifies or destroys data or programs residing or existing internal to a computer, computer system, or computer network; or

(2) Modifies or destroy data or programs or supporting documentation residing or existing external to a computer, computer system, or computer network; or

(3) Discloses or takes data, programs, or supporting documentation, residing or existing internal or external to a computer, computer system, or computer network; or

(4) Discloses or takes a password, identifying code, personal identification number, or other confidential information relating to a computer system or network

that is intended to or does control access to the computer system or network; or

(5) Receives, retains, uses, or discloses any data he or she knows or believes was obtained in violation of this subsection.

2. Tampering with computer data is a class A misdemeanor, unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is five hundred dollars or more, in which case tampering with computer data is a class C felony.

578.506. 1. A person commits the crime of tampering with computer equipment if he or she knowingly and without authorization or without reasonable grounds to believe that he or she has such authorization:

(1) Modifies, destroys, damages, or takes any computer equipment used or intended to be used in a computer, computer system, or computer network; or

(2) Modifies, destroys, damages, or takes any computer, computer system, or computer network.

2. Tampering with computer equipment is a class A misdemeanor, unless:

(1) The offense is committed for the purpose of executing any scheme or artifice to defraud or obtain any property, the value of which is five hundred dollars or more, in which case it is a class C felony; or

(2) The damage to such computer equipment or to the computer, computer system, or computer network is five hundred dollars or more, in which case it is a class C felony.

578.509. 1. A person commits the crime of tampering with computer users if he or she knowingly and without authorization or without reasonable grounds to believe that he or she has such authorization:

(1) Accesses or causes to be accessed any computer, computer system, or computer network; or

(2) Denies or causes the denial of computer system services to any computer user.

2. Tampering with computer users is a class A misdemeanor unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is five hundred dollars or more, in which case tampering with computer users is a class C felony.

578.512. 1. A person commits the crime of computer invasion of privacy when he or she uses a computer, computer network, computer program, computer software, or computer system and intentionally examines without authority any employment, salary, credit or any other financial or personal information relating to any other person. "Examination" under this section requires that the person review the information relating to any other person after the time at which the person knows or

should know that he or she is without authority to view the information displayed.

2. Computer invasion of privacy is a class D felony, unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is five hundred dollars or more, in which case computer invasion of privacy is a class C felony.

578.515. 1. A person commits the crime of unlawful computerized communications if, for the purpose of frightening, intimidating, threatening, or disturbing another person, he or she:

- (1) Communicates by computer a threat to commit any felony; or
- (2) Communicates by computer and, in the course of such communication, uses coarse language offensive to one of average sensibility; or
- (3) Communicates by computer in a manner that does not reveal the person's identity; or
- (4) Sends repeated communications by computer after receiving notice from the receiver that no further communications are desired.

2. Unlawful computerized communications is a class A misdemeanor, except that unlawful computerized communications pursuant to subdivision (1) or (4) of subsection 1 of this section is a class D felony.

578.518. It shall be the duty of each prosecuting attorney and circuit attorney to commence any criminal actions under sections 578.500 to 578.518, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions.

578.521. If any element of any offense in violation of the laws of this state or any act in furtherance of any element of any offense involves access or permitted access:

- (1) To a computer, computer network, computer data, computer program or computer system located in whole or in part within this state;
- (2) To a computer, computer network, computer data, computer program or computer system if access was made by wire, electromagnetic waves, microwaves or any other means passing through this state;

it shall be the duty of the prosecuting attorney to commence any criminal action and the attorney general shall have concurrent original jurisdiction to commence such criminal actions.

578.524. 1. Any school district as defined in section 160.011, RSMo, any university or state college organized pursuant to chapters 172.174, RSMo, or any technical or vocational school organized pursuant to chapter 178 that provides computers accessible to its students or the public shall, on or before July 1, 2002, either:

- (1) Ensure that those computers contain software designed to prevent minors from gaining access to material which is pornographic for minors; or
- (2) Purchase Internet connectivity from an Internet service provider that

provides filter services to limit access by minors to material which is pornographic for minors.

The department of elementary and secondary education and the coordinating board for higher education shall have the authority to adopt, amend and repeal rules and regulations pursuant to this subsection and chapter 536, RSMo.

2. Any library which receives state funds and provides public access to its computers shall, on or before July 1, 2002, either:

(1) Ensure that those computers contain software designed to prevent minors from gaining access to material which is pornographic for minors; or

(2) Purchase Internet connectivity from an Internet service provider that provides filter services to limit access by minors to material which is pornographic for minors.

The secretary of state shall have the authority to adopt, amend and repeal rules and regulations pursuant to this subsection and chapter 536, RSMo.

3. Any school district, university, state college, vocational school, technical school or library described in subsections 1 and 2 of this section that does not comply with the requirements of this section by July 1, 2002, shall not expend any funds for the purchase of computers, computer equipment, computer programs, or computer services until such time as that entity has met the requirements of this section.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

✓