

FIRST REGULAR SESSION

SENATE BILL NO. 198

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Pre-filed December 31, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0934S.02I

AN ACT

To repeal sections 556.061 and 579.020, RSMo, and to enact in lieu thereof two new sections relating to penalties for the offense of delivery of controlled substances containing fentanyl or carfentanil, with penalty provisions.

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

Section A. Sections 556.061 and 579.020, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 556.061 and 579.020, to read as follows:

556.061. In this code, unless the context requires a different definition, the following terms shall 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) "Affirmative defense":

(a) The defense referred to is not submitted to the trier of fact unless supported by evidence; and

(b) If the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not;

(3) "Burden of injecting the issue":

(a) The issue referred to is not submitted to the trier of fact unless supported by evidence; and

(b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue;

(4) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes

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

18 prints from negatives or slides, for compensation. The term commercial film and
19 photographic print processor shall include all employees of such persons but shall
20 not include a person who develops film or makes prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU),
22 along with any internal storage devices, such as internal hard drives, and
23 internal communication devices, such as internal modems capable of sending or
24 receiving electronic mail or fax cards, along with any other hardware stored or
25 housed internally. Thus, computer refers to hardware, software and data
26 contained in the main unit. Printers, external modems attached by cable to the
27 main unit, monitors, and other external attachments will be referred to
28 collectively as peripherals and discussed individually when appropriate. When
29 the computer and all peripherals are referred to as a package, the term "computer
30 system" is used. Information refers to all the information on a computer system
31 including both software applications and data;

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

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

50 (8) "Computer network", two or more interconnected computers or
51 computer systems;

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

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

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

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

65 (13) "Confinement":

66 (a) A person is in confinement when such person is held in a place of
67 confinement pursuant to arrest or order of a court, and remains in confinement
68 until:

69 a. A court orders the person's release; or

70 b. The person is released on bail, bond, or recognizance, personal or
71 otherwise; or

72 c. A public servant having the legal power and duty to confine the person
73 authorizes his release without guard and without condition that he return to
74 confinement;

75 (b) A person is not in confinement if:

76 a. The person is on probation or parole, temporary or otherwise; or

77 b. The person is under sentence to serve a term of confinement which is
78 not continuous, or is serving a sentence under a work-release program, and in
79 either such case is not being held in a place of confinement or is not being held
80 under guard by a person having the legal power and duty to transport the person
81 to or from a place of confinement;

82 (14) "Consent": consent or lack of consent may be expressed or
83 implied. Assent does not constitute consent if:

84 (a) It is given by a person who lacks the mental capacity to authorize the
85 conduct charged to constitute the offense and such mental incapacity is manifest
86 or known to the actor; or

87 (b) It is given by a person who by reason of youth, mental disease or
88 defect, intoxication, a drug-induced state, or any other reason is manifestly
89 unable or known by the actor to be unable to make a reasonable judgment as to

90 the nature or harmfulness of the conduct charged to constitute the offense; or

91 (c) It is induced by force, duress or deception;

92 (15) "Controlled substance", a drug, substance, or immediate precursor in
93 schedules I through V as defined in chapter 195;

94 (16) "Criminal negligence", failure to be aware of a substantial and
95 unjustifiable risk that circumstances exist or a result will follow, and such failure
96 constitutes a gross deviation from the standard of care which a reasonable person
97 would exercise in the situation;

98 (17) "Custody", a person is in custody when he or she has been arrested
99 but has not been delivered to a place of confinement;

100 (18) "Damage", when used in relation to a computer system or network,
101 means any alteration, deletion, or destruction of any part of the computer system
102 or network;

103 (19) "Dangerous felony", the felonies of arson in the first degree, assault
104 in the first degree, attempted rape in the first degree if physical injury results,
105 attempted forcible rape if physical injury results, attempted sodomy in the first
106 degree if physical injury results, attempted forcible sodomy if physical injury
107 results, rape in the first degree, forcible rape, sodomy in the first degree, forcible
108 sodomy, assault in the second degree if the victim of such assault is a special
109 victim as defined in subdivision (14) of section 565.002, kidnapping in the first
110 degree, kidnapping, murder in the second degree, assault of a law enforcement
111 officer in the first degree, domestic assault in the first degree, elder abuse in the
112 first degree, robbery in the first degree, statutory rape in the first degree when
113 the victim is a child less than twelve years of age at the time of the commission
114 of the act giving rise to the offense, statutory sodomy in the first degree when the
115 victim is a child less than twelve years of age at the time of the commission of the
116 act giving rise to the offense, child molestation in the first or second degree,
117 abuse of a child if the child dies as a result of injuries sustained from conduct
118 chargeable under section 568.060, child kidnapping, parental kidnapping
119 committed by detaining or concealing the whereabouts of the child for not less
120 than one hundred twenty days under section 565.153, and an "intoxication-related
121 traffic offense" or "intoxication-related boating offense" if the person is found to
122 be a "habitual offender" or "habitual boating offender" as such terms are defined
123 in section 577.001, **and delivery of a controlled substance when the**
124 **substance is a mixture or substance containing a detectable amount of**
125 **fentanyl or carfentanil;**

126 (20) "Dangerous instrument", any instrument, article or substance, which,
127 under the circumstances in which it is used, is readily capable of causing death
128 or other serious physical injury;

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

134 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon
135 from which a shot, readily capable of producing death or serious physical injury,
136 may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal
137 knuckles;

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

140 (24) "Disability", a mental, physical, or developmental impairment that
141 substantially limits one or more major life activities or the ability to provide
142 adequately for one's care or protection, whether the impairment is congenital or
143 acquired by accident, injury or disease, where such impairment is verified by
144 medical findings;

145 (25) "Elderly person", a person sixty years of age or older;

146 (26) "Felony", an offense so designated or an offense for which persons
147 found guilty thereof may be sentenced to death or imprisonment for a term of
148 more than one year;

149 (27) "Forcible compulsion" either:

150 (a) Physical force that overcomes reasonable resistance; or

151 (b) A threat, express or implied, that places a person in reasonable fear
152 of death, serious physical injury or kidnapping of such person or another person;

153 (28) "Incapacitated", a temporary or permanent physical or mental
154 condition in which a person is unconscious, unable to appraise the nature of his
155 or her conduct, or unable to communicate unwillingness to an act;

156 (29) "Infraction", a violation defined by this code or by any other statute
157 of this state if it is so designated or if no sentence other than a fine, or fine and
158 forfeiture or other civil penalty, is authorized upon conviction;

159 (30) "Inhabitable structure", a vehicle, vessel or structure:

160 (a) Where any person lives or carries on business or other calling; or

161 (b) Where people assemble for purposes of business, government,

162 education, religion, entertainment, or public transportation; or

163 (c) Which is used for overnight accommodation of persons.

164 Any such vehicle, vessel, or structure is inhabitable regardless of whether a
165 person is actually present. If a building or structure is divided into separately
166 occupied units, any unit not occupied by the actor is an inhabitable structure of
167 another;

168 (31) "Knowingly", when used with respect to:

169 (a) Conduct or attendant circumstances, means a person is aware of the
170 nature of his or her conduct or that those circumstances exist; or

171 (b) A result of conduct, means a person is aware that his or her conduct
172 is practically certain to cause that result;

173 (32) "Law enforcement officer", any public servant having both the power
174 and duty to make arrests for violations of the laws of this state, and federal law
175 enforcement officers authorized to carry firearms and to make arrests for
176 violations of the laws of the United States;

177 (33) "Misdemeanor", an offense so designated or an offense for which
178 persons found guilty thereof may be sentenced to imprisonment for a term of
179 which the maximum is one year or less;

180 (34) "Of another", property that any entity, including but not limited to
181 any natural person, corporation, limited liability company, partnership,
182 association, governmental subdivision or instrumentality, other than the actor,
183 has a possessory or proprietary interest therein, except that property shall not
184 be deemed property of another who has only a security interest therein, even if
185 legal title is in the creditor pursuant to a conditional sales contract or other
186 security arrangement;

187 (35) "Offense", any felony or misdemeanor;

188 (36) "Physical injury", slight impairment of any function of the body or
189 temporary loss of use of any part of the body;

190 (37) "Place of confinement", any building or facility and the grounds
191 thereof wherein a court is legally authorized to order that a person charged with
192 or convicted of a crime be held;

193 (38) "Possess" or "possessed", having actual or constructive possession of
194 an object with knowledge of its presence. A person has actual possession if such
195 person has the object on his or her person or within easy reach and convenient
196 control. A person has constructive possession if such person has the power and
197 the intention at a given time to exercise dominion or control over the object either

198 directly or through another person or persons. Possession may also be sole or
199 joint. If one person alone has possession of an object, possession is sole. If two
200 or more persons share possession of an object, possession is joint;

201 (39) "Property", anything of value, whether real or personal, tangible or
202 intangible, in possession or in action;

203 (40) "Public servant", any person employed in any way by a government
204 of this state who is compensated by the government by reason of such person's
205 employment, any person appointed to a position with any government of this
206 state, or any person elected to a position with any government of this state. It
207 includes, but is not limited to, legislators, jurors, members of the judiciary and
208 law enforcement officers. It does not include witnesses;

209 (41) "Purposely", when used with respect to a person's conduct or to a
210 result thereof, means when it is his or her conscious object to engage in that
211 conduct or to cause that result;

212 (42) "Recklessly", consciously disregarding a substantial and unjustifiable
213 risk that circumstances exist or that a result will follow, and such disregard
214 constitutes a gross deviation from the standard of care which a reasonable person
215 would exercise in the situation;

216 (43) "Serious emotional injury", an injury that creates a substantial risk
217 of temporary or permanent medical or psychological damage, manifested by
218 impairment of a behavioral, cognitive or physical condition. Serious emotional
219 injury shall be established by testimony of qualified experts upon the reasonable
220 expectation of probable harm to a reasonable degree of medical or psychological
221 certainty;

222 (44) "Serious physical injury", physical injury that creates a substantial
223 risk of death or that causes serious disfigurement or protracted loss or
224 impairment of the function of any part of the body;

225 (45) "Services", when used in relation to a computer system or network,
226 means use of a computer, computer system, or computer network and includes,
227 but is not limited to, computer time, data processing, and storage or retrieval
228 functions;

229 (46) "Sexual orientation", male or female heterosexuality, homosexuality
230 or bisexuality by inclination, practice, identity or expression, or having a
231 self-image or identity not traditionally associated with one's gender;

232 (47) "Vehicle", a self-propelled mechanical device designed to carry a
233 person or persons, excluding vessels or aircraft;

234 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
235 whether or not such motor or machinery is a principal source of propulsion used
236 or capable of being used as a means of transportation on water, or any boat or
237 craft more than twelve feet in length which is powered by sail alone or by a
238 combination of sail and machinery, and used or capable of being used as a means
239 of transportation on water, but not any boat or craft having, as the only means
240 of propulsion, a paddle or oars;

241 (49) "Voluntary act":

242 (a) A bodily movement performed while conscious as a result of effort or
243 determination. Possession is a voluntary act if the possessor knowingly procures
244 or receives the thing possessed, or having acquired control of it was aware of his
245 or her control for a sufficient time to have enabled him or her to dispose of it or
246 terminate his or her control; or

247 (b) An omission to perform an act of which the actor is physically capable.
248 A person is not guilty of an offense based solely upon an omission to perform an
249 act unless the law defining the offense expressly so provides, or a duty to perform
250 the omitted act is otherwise imposed by law;

251 (50) "Vulnerable person", any person in the custody, care, or control of the
252 department of mental health who is receiving services from an operated, funded,
253 licensed, or certified program.

579.020. 1. A person commits the offense of delivery of a controlled
2 substance if, except as authorized in this chapter or chapter 195, he or she:

3 (1) Knowingly distributes or delivers a controlled substance;

4 (2) Attempts to distribute or deliver a controlled substance;

5 (3) Knowingly possesses a controlled substance with the intent to
6 distribute or deliver any amount of a controlled substance; or

7 (4) Knowingly permits a minor to purchase or transport illegally obtained
8 controlled substances.

9 2. Except when the controlled substance is thirty-five grams or less of
10 marijuana or synthetic cannabinoid or as otherwise provided under subsection 5
11 of this section, the offense of delivery of a controlled substance is a class C felony.

12 3. Except as otherwise provided under subsection 4 of this section, the
13 offense of delivery of thirty-five grams or less of marijuana or synthetic
14 cannabinoid is a class E felony.

15 4. The offense of delivery of thirty-five grams or less of marijuana or
16 synthetic cannabinoid to a person less than seventeen years of age who is at least

17 two years younger than the defendant is a class C felony.

18 5. The offense of delivery of a controlled substance is a class B felony if:

19 (1) The delivery or distribution is any amount of a controlled substance
20 except thirty-five grams or less of marijuana or synthetic cannabinoid, to a person
21 less than seventeen years of age who is at least two years younger than the
22 defendant; [or]

23 (2) The person knowingly permits a minor to purchase or transport
24 illegally obtained controlled substances; **or**

25 **(3) The person knowingly distributes or delivers a mixture or**
26 **substance containing a detectable amount of fentanyl or carfentanil.**

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Bill

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