

FIRST REGULAR SESSION

SENATE BILL NO. 433

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

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ADRIANE D. CROUSE, Secretary.

2108S.01I

AN ACT

To repeal section 556.061, RSMo, and to enact in lieu thereof two new sections relating to the offense of vehicle hijacking, with penalty provisions.

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

Section A. Section 556.061, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 556.061 and 570.027, to read as
3 follows:

556.061. In this code, unless the context requires a different definition,
2 the following terms shall mean:

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

6 (2) "Affirmative defense":

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

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

11 (3) "Burden of injecting the issue":

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

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

16 (4) "Commercial film and photographic print processor", any person who
17 develops exposed photographic film into negatives, slides or prints, or who makes
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, **vehicle hijacking punished as a class**
113 **A felony**, statutory rape in the first degree when the victim is a child less than
114 twelve years of age at the time of the commission of the act giving rise to the
115 offense, statutory sodomy in the first degree when the victim is a child less than
116 twelve years of age at the time of the commission of the act giving rise to the
117 offense, child molestation in the first or second degree, abuse of a child if the
118 child dies as a result of injuries sustained from conduct chargeable under section
119 568.060, child kidnapping, parental kidnapping committed by detaining or
120 concealing the whereabouts of the child for not less than one hundred twenty
121 days under section 565.153, and an "intoxication-related traffic offense" or
122 "intoxication-related boating offense" if the person is found to be a "habitual
123 offender" or "habitual boating offender" as such terms are defined in section
124 577.001;

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

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

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

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

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

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

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

148 (27) "Forcible compulsion" either:

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

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

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

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

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

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

160 (b) Where people assemble for purposes of business, government,
161 education, religion, entertainment, or public transportation; or

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

163 Any such vehicle, vessel, or structure is inhabitable regardless of whether a

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

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

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

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

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

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

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

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

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

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

192 (38) "Possess" or "possessed", having actual or constructive possession of
193 an object with knowledge of its presence. A person has actual possession if such
194 person has the object on his or her person or within easy reach and convenient
195 control. A person has constructive possession if such person has the power and
196 the intention at a given time to exercise dominion or control over the object either
197 directly or through another person or persons. Possession may also be sole or
198 joint. If one person alone has possession of an object, possession is sole. If two
199 or more persons share possession of an object, possession is joint;

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

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

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

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

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

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

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

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

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

233 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
234 whether or not such motor or machinery is a principal source of propulsion used
235 or capable of being used as a means of transportation on water, or any boat or

236 craft more than twelve feet in length which is powered by sail alone or by a
237 combination of sail and machinery, and used or capable of being used as a means
238 of transportation on water, but not any boat or craft having, as the only means
239 of propulsion, a paddle or oars;

240 (49) "Voluntary act":

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

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

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

**570.027. 1. A person commits the offense of vehicle hijacking
2 when he or she knowingly uses or explicitly or implicitly threatens the
3 use of physical force upon another person or persons to seize or
4 attempt to seize possession or control of a vehicle from the immediate
5 possession or control of another person or persons.**

**6 2. The offense of vehicle hijacking is a class B felony unless it
7 meets one of the criteria listed in subsection 3 of this section.**

**8 3. The following circumstances shall make the offense of vehicle
9 hijacking punished as a class A felony:**

10 (1) The person is armed with a deadly weapon; or

11 (2) The person uses or threatens the immediate use of a
12 dangerous instrument against any person; or

13 (3) The person displays or threatens the use of what appears to
14 be a deadly weapon or dangerous instrument; or

15 (4) The person causes serious physical injury to any person in
16 immediate possession, control, or presence of the vehicle; or

17 (5) Any victim of such vehicle hijacking is a child or a special
18 victim, as defined in section 565.002.

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