

SENATE BILL NO. 1368

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR THOMPSON REHDER.

5370S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 556.061 and 568.045, RSMo, and to enact in lieu thereof two new sections relating to the offense of endangering the welfare of a child in the first degree, with penalty provisions.

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

Section A. Sections 556.061 and 568.045, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 556.061 and 568.045, to read as follows:

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

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

7 (2) "Affirmative defense":

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

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

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

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

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

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

19 (4) "Commercial film and photographic print
20 processor", any person who develops exposed photographic
21 film into negatives, slides or prints, or who makes prints
22 from negatives or slides, for compensation. The term
23 commercial film and photographic print processor shall
24 include all employees of such persons but shall not include
25 a person who develops film or makes prints for a public
26 agency;

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

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

45 (7) "Computer hardware", all equipment which can
46 collect, analyze, create, display, convert, store, conceal
47 or transmit electronic, magnetic, optical or similar

48 computer impulses or data. Hardware includes, but is not
49 limited to, any data processing devices, such as central
50 processing units, memory typewriters and self-contained
51 laptop or notebook computers; internal and peripheral
52 storage devices, transistor-like binary devices and other
53 memory storage devices, such as floppy disks, removable
54 disks, compact disks, digital video disks, magnetic tape,
55 hard drive, optical disks and digital memory; local area
56 networks, such as two or more computers connected together
57 to a central computer server via cable or modem; peripheral
58 input or output devices, such as keyboards, printers,
59 scanners, plotters, video display monitors and optical
60 readers; and related communication devices, such as modems,
61 cables and connections, recording equipment, RAM or ROM
62 units, acoustic couplers, automatic dialers, speed dialers,
63 programmable telephone dialing or signaling devices and
64 electronic tone-generating devices; as well as any devices,
65 mechanisms or parts that can be used to restrict access to
66 computer hardware, such as physical keys and locks;

67 (8) "Computer network", two or more interconnected
68 computers or computer systems;

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

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

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

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

86 (13) "Confinement":

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

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

91 b. The person is released on bail, bond, or
92 recognizance, personal or otherwise; or

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

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

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

99 b. The person is under sentence to serve a term of
100 confinement which is not continuous, or is serving a
101 sentence under a work-release program, and in either such
102 case is not being held in a place of confinement or is not
103 being held under guard by a person having the legal power
104 and duty to transport the person to or from a place of
105 confinement;

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

108 (a) It is given by a person who lacks the mental
109 capacity to authorize the conduct charged to constitute the
110 offense and such mental incapacity is manifest or known to
111 the actor; or

112 (b) It is given by a person who by reason of youth,
113 mental disease or defect, intoxication, a drug-induced
114 state, or any other reason is manifestly unable or known by
115 the actor to be unable to make a reasonable judgment as to
116 the nature or harmfulness of the conduct charged to
117 constitute the offense; or

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

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

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

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

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

133 (19) "Dangerous felony", the felonies of arson in the
134 first degree, assault in the first degree, attempted rape in
135 the first degree if physical injury results, attempted
136 forcible rape if physical injury results, attempted sodomy
137 in the first degree if physical injury results, attempted
138 forcible sodomy if physical injury results, rape in the
139 first degree, forcible rape, sodomy in the first degree,
140 forcible sodomy, assault in the second degree if the victim
141 of such assault is a special victim as defined in
142 subdivision (14) of section 565.002, kidnapping in the first
143 degree, kidnapping, murder in the second degree, assault of

144 a law enforcement officer in the first degree, domestic
145 assault in the first degree, elder abuse in the first
146 degree, robbery in the first degree, armed criminal action,
147 conspiracy to commit an offense when the offense is a
148 dangerous felony, vehicle hijacking when punished as a class
149 A felony, statutory rape in the first degree when the victim
150 is a child less than twelve years of age at the time of the
151 commission of the act giving rise to the offense, statutory
152 sodomy in the first degree when the victim is a child less
153 than twelve years of age at the time of the commission of
154 the act giving rise to the offense, child molestation in the
155 first or second degree, abuse of a child if the child dies
156 as a result of injuries sustained from conduct chargeable
157 under section 568.060, child kidnapping, parental kidnapping
158 committed by detaining or concealing the whereabouts of the
159 child for not less than one hundred twenty days under
160 section 565.153, **endangering the welfare of a child in the**
161 **first degree**, and an "intoxication-related traffic offense"
162 or "intoxication-related boating offense" if the person is
163 found to be a "habitual offender" or "habitual boating
164 offender" as such terms are defined in section 577.001;

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

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

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

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

184 (24) "Disability", a mental, physical, or
185 developmental impairment that substantially limits one or
186 more major life activities or the ability to provide
187 adequately for one's care or protection, whether the
188 impairment is congenital or acquired by accident, injury or
189 disease, where such impairment is verified by medical
190 findings;

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

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

196 (27) "Forcible compulsion" either:

197 (a) Physical force that overcomes reasonable
198 resistance; or

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

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

206 (29) "Infraction", a violation defined by this code or
207 by any other statute of this state if it is so designated or

208 if no sentence other than a fine, or fine and forfeiture or
209 other civil penalty, is authorized upon conviction;

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

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

214 (b) Where people assemble for purposes of business,
215 government, education, religion, entertainment, or public
216 transportation; or

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

219 Any such vehicle, vessel, or structure is inhabitable
220 regardless of whether a person is actually present. If a
221 building or structure is divided into separately occupied
222 units, any unit not occupied by the actor is an inhabitable
223 structure of another;

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

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

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

231 (32) "Law enforcement officer", any public servant
232 having both the power and duty to make arrests for
233 violations of the laws of this state, and federal law
234 enforcement officers authorized to carry firearms and to
235 make arrests for violations of the laws of the United States;

236 (33) "Misdemeanor", an offense so designated or an
237 offense for which persons found guilty thereof may be

238 sentenced to imprisonment for a term of which the maximum is
239 one year or less;

240 (34) "Of another", property that any entity, including
241 but not limited to any natural person, corporation, limited
242 liability company, partnership, association, governmental
243 subdivision or instrumentality, other than the actor, has a
244 possessory or proprietary interest therein, except that
245 property shall not be deemed property of another who has
246 only a security interest therein, even if legal title is in
247 the creditor pursuant to a conditional sales contract or
248 other security arrangement;

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

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

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

257 (38) "Possess" or "possessed", having actual or
258 constructive possession of an object with knowledge of its
259 presence. A person has actual possession if such person has
260 the object on his or her person or within easy reach and
261 convenient control. A person has constructive possession if
262 such person has the power and the intention at a given time
263 to exercise dominion or control over the object either
264 directly or through another person or persons. Possession
265 may also be sole or joint. If one person alone has
266 possession of an object, possession is sole. If two or more
267 persons share possession of an object, possession is joint;

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

270 (40) "Public servant", any person employed in any way
271 by a government of this state who is compensated by the
272 government by reason of such person's employment, any person
273 appointed to a position with any government of this state,
274 or any person elected to a position with any government of
275 this state. It includes, but is not limited to,
276 legislators, jurors, members of the judiciary and law
277 enforcement officers. It does not include witnesses;

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

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

287 (43) "Serious emotional injury", an injury that
288 creates a substantial risk of temporary or permanent medical
289 or psychological damage, manifested by impairment of a
290 behavioral, cognitive or physical condition. Serious
291 emotional injury shall be established by testimony of
292 qualified experts upon the reasonable expectation of
293 probable harm to a reasonable degree of medical or
294 psychological certainty;

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

299 (45) "Services", when used in relation to a computer
300 system or network, means use of a computer, computer system,
301 or computer network and includes, but is not limited to,

302 computer time, data processing, and storage or retrieval
303 functions;

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

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

312 (48) "Vessel", any boat or craft propelled by a motor
313 or by machinery, whether or not such motor or machinery is a
314 principal source of propulsion used or capable of being used
315 as a means of transportation on water, or any boat or craft
316 more than twelve feet in length which is powered by sail
317 alone or by a combination of sail and machinery, and used or
318 capable of being used as a means of transportation on water,
319 but not any boat or craft having, as the only means of
320 propulsion, a paddle or oars;

321 (49) "Voluntary act":

322 (a) A bodily movement performed while conscious as a
323 result of effort or determination. Possession is a
324 voluntary act if the possessor knowingly procures or
325 receives the thing possessed, or having acquired control of
326 it was aware of his or her control for a sufficient time to
327 have enabled him or her to dispose of it or terminate his or
328 her control; or

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

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

568.045. 1. A person commits the offense of
2 endangering the welfare of a child in the first degree if he
3 or she:

4 (1) Knowingly acts in a manner that creates a
5 substantial risk to the life, body, or health of a child
6 less than seventeen years of age; or

7 (2) Knowingly engages in sexual conduct with a person
8 under the age of seventeen years over whom the person is a
9 parent, guardian, or otherwise charged with the care and
10 custody;

11 (3) Knowingly encourages, aids or causes a child less
12 than seventeen years of age to engage in any conduct which
13 violates the provisions of chapter 579;

14 (4) In the presence of a child less than seventeen
15 years of age or in a residence where a child less than
16 seventeen years of age resides, unlawfully manufactures, or
17 attempts to manufacture compounds, possesses, produces,
18 prepares, sells, transports, tests or analyzes **any of the**
19 **following: fentanyl, carfentanil, amphetamine [or],**
20 methamphetamine, or any of their analogues.

21 2. The offense of endangering the welfare of a child
22 in the first degree is a class D felony unless the offense:

23 (1) Is committed as part of an act or series of acts
24 performed by two or more persons as part of an established
25 or prescribed pattern of activity, or where physical injury
26 to the child results, or the offense is a second or
27 subsequent offense under this section, in which case the
28 offense is a class C felony;

29 (2) Involves fentanyl or carfentanil or any of their
30 analogues, in which case:

31 (a) The offense is a felony which shall be punished by
32 a term of imprisonment of not less than five years and not
33 more than ten years;

34 (b) No court shall suspend the imposition or execution
35 of sentence of a person who pleads guilty to or is found
36 guilty of an offense under this subdivision;

37 (c) No court shall sentence such person to pay a fine
38 in lieu of a term of imprisonment; and

39 (d) A person sentenced under this subdivision shall
40 not be eligible for conditional release or parole until he
41 or she has served at least five years of imprisonment;

42 (3) Results in serious physical injury to the child,
43 in which case the offense is a class B felony; or

44 [(3)] (4) Results in the death of a child, in which
45 case the offense is a class A felony.

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