

FIRST REGULAR SESSION
[CORRECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 5
94TH GENERAL ASSEMBLY

Reported from the Committee on Crime Prevention and Public Safety May 2, 2007 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 5 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0310L.12C

AN ACT

To repeal sections 195.503, 566.147, 573.025, 573.035, 573.037, and 650.120, RSMo, and to enact in lieu thereof eight new sections relating to sexual offenses against children, with penalty provisions and an emergency clause for certain sections.

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

- Section A. Sections 195.503, 566.147, 573.025, 573.035, 573.037, and 650.120, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 195.503, 537.047, 566.147, 573.025, 573.035, 573.037, 573.038, and 650.120, to read as follows:
- 195.503. As used in sections 195.501 to 195.511, the following terms mean:
- (1) "Department", the department of public safety;
 - (2) "Director", the director of the department of public safety;
 - (3) "Drug laws", all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, distributing, or use of controlled substances, as defined in section 195.010;
 - (4) "Multijurisdictional enforcement group", or "MEG", a combination of political subdivisions established under sections 573.500 and 573.503, RSMo, section 178.653, RSMo,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 and section 311.329, RSMo, to [enforce the drug laws of this state] **investigate and enforce**
10 **computer, Internet-based, narcotics, and drug violations.**

537.047. 1. Any person who, while a child or minor as defined by section 573.010, RSMo, was a victim of a violation of sections 573.023, 573.025, 573.035, or 573.037, RSMo, and who suffers physical or psychological injury or illness as a result of such violation, shall be entitled to bring a civil action to recover the actual damages sustained as a result of the violation, and shall also be entitled to recover the costs of the civil action and reasonable fees for attorneys and expert witnesses. A psychological injury or illness as described under this section need not be accompanied by physical injury or illness. For purposes of this section, a "victim" means any child or minor who, in the creation of child pornography or obscene material, was a participant in or observer of sexual conduct, or was photographed, filmed, or videotaped.

2. Any action described under this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one, or within three years of the date the plaintiff discovers that the injury or illness was caused by the violation of an offense enumerated in subsection 1 of this section, whichever later occurs.

3. A cause of action under this section may arise only if the violation that caused the injury occurs on or after August 28, 2007.

4. No contract of insurance shall be construed to extend the terms of any such contract, including, but not limited to, any duty of an insurer to defend any insured person or pay any damages which any insured person is legally liable to pay, to apply in regard to any action brought under this section.

566.147. 1. Any person who, since July 1, 1979, has been or hereafter has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the provisions of this chapter or the provisions of subsection 2 of section 568.020, RSMo, incest; section 568.045, RSMo, endangering the welfare of a child in the first degree; subsection 2 of section 568.080, RSMo, use of a child in a sexual performance; section 568.090, RSMo, promoting a sexual performance by a child; section 573.023, RSMo, sexual exploitation of a minor; section 573.025, RSMo, promoting child pornography in the first degree; section 573.035, RSMo, promoting child pornography in the second degree; section 573.037, RSMo, possession of child pornography, or section 573.040, RSMo, furnishing pornographic material to minors; shall not reside within one thousand feet of any public school as defined in section 160.011, RSMo, or any private school giving instruction in a grade or grades not higher than the twelfth grade, or child-care facility as defined in section 210.201, RSMo, which is in existence at the time the individual begins to reside at the location.

14 2. If such person has already established a residence and a public school, a private
15 school, or child-care facility is subsequently built or placed within one thousand feet of such
16 person's residence, then such person shall, within one week of the opening of such public school,
17 private school, or child-care facility, notify the county sheriff where such public school, private
18 school, or child-care facility is located that he or she is now residing within one thousand feet
19 of such public school, private school, or child-care facility and shall provide verifiable proof to
20 the sheriff that he or she resided there prior to the opening of such public school, private school,
21 or child-care facility.

22 3. [For purposes of this section, "resides" means sleeps in a residence, which may
23 include more than one location and may be mobile or transitory] **The distance specified in**
24 **subsections 1 and 2 of this section shall be determined by measuring the shortest distance**
25 **between the property line of the person's residence and the property line of the school or**
26 **child-care facility.**

27 4. Violation of the provisions of subsection 1 of this section is a class D felony except
28 that the second or any subsequent violation is a class B felony. Violation of the provisions of
29 subsection 2 of this section is a class A misdemeanor except that the second or subsequent
30 violation is a class D felony.

573.025. 1. A person commits the crime of promoting child pornography in the first
2 degree if, knowing of its content and character, such person possesses with the intent to promote
3 or promotes [obscene material that has a child as one of its participants or portrays what appears
4 to be a child as a participant or observer of sexual conduct] **child pornography of a child less**
5 **than fourteen years of age or obscene material portraying what appears to be a child less**
6 **than fourteen years of age.**

7 2. Promoting child pornography in the first degree is a class B felony unless the person
8 knowingly promotes such material to a minor, in which case it is a class A felony. **No person**
9 **who pleads guilty to or is found guilty of, or is convicted of promoting child pornography**
10 **in the first degree shall be eligible for probation, parole, or conditional release for a period**
11 **of three calendar years.**

12 3. Nothing in this section shall be construed to require a provider of electronic
13 communication services or remote computing services to monitor any user, subscriber or
14 customer of the provider, or the content of any communication of any user, subscriber or
15 customer of the provider.

573.035. 1. A person commits the crime of promoting child pornography in the second
2 degree if knowing of its content and character such person possesses with the intent to promote
3 or promotes child pornography [or obscene material that has a minor as one of its participants,
4 or portrays what appears to be a minor as a participant or observer of sexual conduct] **of a minor**

5 **under the age of eighteen or obscene material portraying what appears to be a minor under**
6 **the age of eighteen.**

7 2. Promoting child pornography in the second degree is a class C felony unless the
8 person knowingly promotes such material to a minor, in which case it is a class B felony. **No**
9 **person who is found guilty of, pleads guilty to, or is convicted of promoting child**
10 **pornography in the second degree shall be eligible for probation.**

573.037. 1. A person commits the crime of possession of child pornography if, knowing
2 of its content and character, such person possesses any [obscene material that has a child as one
3 of its participants or portrays what appears to be a child as an observer or participant of sexual
4 conduct] **child pornography of a minor under the age of eighteen or obscene material**
5 **portraying what appears to be a minor under the age of eighteen.**

6 2. Possession of child pornography is a class [D] C felony unless the person **possesses**
7 **more than twenty still images of child pornography, possesses one motion picture, film,**
8 **videotape, videotape production, or other moving image of child pornography, or has**
9 **pleaded guilty to or has been found guilty of an offense under this section, in which case it is a**
10 **class [C] B felony.**

573.038. 1. **In any criminal proceeding, any property or material that constitutes**
2 **child pornography shall remain in the care, custody, and control of either the state or the**
3 **court.**

4 2. (1) **Notwithstanding Missouri Rule of Criminal Procedure 25.03 or any other**
5 **rule or statute to the contrary, a court shall deny, in any criminal proceeding, any request**
6 **by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or**
7 **material that constitutes child pornography, so long as the state makes the property or**
8 **material reasonably available to the defendant.**

9 (2) **For the purposes of subdivision (1) of this subsection, property or material shall**
10 **be deemed to be reasonably available to the defendant if the state provides ample**
11 **opportunity for inspection, viewing, and examination at a state or other governmental**
12 **facility of the property or material by the defendant, his or her attorney, and any**
13 **individual the defendant may seek to qualify to furnish expert testimony at trial.**

650.120. 1. Subject to appropriation, the department of public safety shall create a
2 program to distribute grants to multijurisdictional Internet cyber crime law enforcement task
3 forces, **multijurisdictional enforcement groups, as defined in section 195.503, RSMo, that**
4 **are investigating Internet sex crimes against children,** and other law enforcement agencies.
5 **Not more than three percent of the money appropriated may be used by the department**
6 **to pay the administrative costs of the grant program.** The grants shall be awarded and used
7 to pay the salaries of detectives and computer forensic personnel whose focus is investigating

8 Internet sex crimes against children, including but not limited to enticement of a child,
9 possession or promotion of child pornography, [and to] provide funding for the training of law
10 enforcement personnel, **and purchase necessary equipment, supplies, and services.** The
11 funding for such training may be used to cover the travel expenses of those persons participating.

12 2. A panel is hereby established in the department of public safety to award grants under
13 this program and shall be comprised of the following members:

14 (1) The director of the department of public safety, or his or her designee;

15 (2) Two members shall be appointed by the director of the department of public safety
16 from a list of six nominees submitted by the Missouri Police Chiefs Association;

17 (3) Two members shall be appointed by the director of the department of public safety
18 from a list of six nominees submitted by the Missouri Sheriffs' Association;

19 (4) Two members of the state highway patrol shall be appointed by the director of the
20 department of public safety from a list of six nominees submitted by the Missouri State Troopers
21 Association;

22 (5) One member of the house of representatives who shall be appointed by the speaker
23 of the house of representatives; and

24 (6) One member of the senate who shall be appointed by the president pro tem.

25
26 The panel members who are appointed under subdivisions (2), (3), and (4) of this subsection
27 shall serve a four-year term ending four years from the date of expiration of the term for which
28 his or her predecessor was appointed. However, a person appointed to fill a vacancy prior to the
29 expiration of such a term shall be appointed for the remainder of the term. Such members shall
30 hold office for the term of his or her appointment and until a successor is appointed. The
31 members of the panel shall receive no additional compensation but shall be eligible for
32 reimbursement for mileage directly related to the performance of panel duties.

33 3. Local matching amounts, which may include new or existing funds or in-kind
34 resources including but not limited to equipment or personnel, are required for
35 multijurisdictional Internet cyber crime law enforcement task forces and other law enforcement
36 agencies to receive grants awarded by the panel. Such amounts shall be determined by the state
37 appropriations process or by the panel.

38 4. When awarding grants, priority should be given to newly hired detectives and
39 computer forensic personnel.

40 5. The panel shall establish minimum training standards for detectives and computer
41 forensic personnel participating in the grant program established in subsection 1 of this section.

42 6. Multijurisdictional Internet cyber crime law enforcement task forces and other law
43 enforcement agencies participating in the grant program established in subsection 1 of this

44 section shall share information and cooperate with the highway patrol and with existing Internet
45 Crimes Against Children task force programs.

46 7. The panel may make recommendations to the general assembly regarding the need for
47 additional resources or appropriations.

48 8. **The power of arrest of any peace officer who is duly authorized as a member of**
49 **a multijurisdictional Internet cyber crime law enforcement task force shall only be**
50 **exercised during the time such peace officer is an active member of such task force and**
51 **only within the scope of the investigation on which the task force is working.**
52 **Notwithstanding other provisions of law to the contrary, such task force officer shall have**
53 **the power of arrest, as limited in this subsection, anywhere in the state and shall provide**
54 **prior notification to the chief of police of a municipality or the sheriff of the county in**
55 **which the arrest is to take place. If exigent circumstances exist, such arrest may be made**
56 **and notification shall be made to the chief of police or sheriff as appropriate and as soon**
57 **as practical. The chief of police or sheriff may elect to work with the multijurisdictional**
58 **Internet cyber crime law enforcement task force at his or her option when such task force**
59 **is operating within the jurisdiction of such chief of police or sheriff.**

60 9. Under section 23.253, RSMo, of the Missouri sunset act:

61 (1) The provisions of the new program authorized under this section shall sunset
62 automatically six years after June 5, 2006, unless reauthorized by an act of the general assembly;
63 and

64 (2) If such program is reauthorized, the program authorized under this section shall
65 sunset automatically twelve years after the effective date of the reauthorization of this section;
66 and

67 (3) This section shall terminate on September first of the calendar year immediately
68 following the calendar year in which the program authorized under this section is sunset.

Section B. Because of the need to protect the citizens of this state, the repeal and
2 reenactment of sections 195.503, 566.147, and 650.120 of section A of this act is deemed
3 necessary for the immediate preservation of the public health, welfare, peace and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution, and the repeal
5 and reenactment of sections 195.503, 566.147, and 650.120 of section A of this act shall be in
6 full force and effect upon its passage and approval.

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