

SECOND REGULAR SESSION

# HOUSE BILL NO. 1852

## 94TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES SMITH (14) (Sponsor), FUNDERBURK, FAITH, ONDER, DAVIS, PRATT, TILLEY, BIVINS, MEADOWS, RUESTMAN, NANCE, SANDER, SCHIEFFER, ROORDA, DARROUGH, NIEVES, MOORE, LAMPE AND BRUNS (Co-sponsors).

Read 1st time January 24, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4506L.01I

---

### AN ACT

To repeal sections 160.261, 565.090, and 565.225, RSMo, and to enact in lieu thereof three new sections relating to crimes involving harassment, with penalty provisions.

---

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

Section A. Sections 160.261, 565.090, and 565.225, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 160.261, 565.090, and 565.225, to read  
3 as follows:

160.261. 1. The local board of education of each school district shall clearly establish  
2 a written policy of discipline, including the district's determination on the use of corporal  
3 punishment and the procedures in which punishment will be applied. A written copy of the  
4 district's discipline policy and corporal punishment procedures, if applicable, shall be provided  
5 to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning  
6 of each school year and also made available in the office of the superintendent of such district,  
7 during normal business hours, for public inspection. All employees of the district shall annually  
8 receive instruction related to the specific contents of the policy of discipline and any  
9 interpretations necessary to implement the provisions of the policy in the course of their duties,  
10 including but not limited to approved methods of dealing with acts of school violence,  
11 disciplining students with disabilities and instruction in the necessity and requirements for  
12 confidentiality.

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.

13           2. The policy shall require school administrators to report acts of school violence to  
14 teachers and other school district employees with a need to know. For the purposes of this  
15 chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly  
16 responsible for the student's education or who otherwise interact with the student on a  
17 professional basis while acting within the scope of their assigned duties. As used in this section,  
18 the phrase "act of school violence" or "violent behavior" means the exertion of physical force by  
19 a student with the intent to do serious physical injury as defined in subdivision (6) of section  
20 565.002, RSMo, to another person while on school property, including a school bus in service  
21 on behalf of the district, or while involved in school activities. The policy shall at a minimum  
22 require school administrators to report, as soon as reasonably practical, to the appropriate law  
23 enforcement agency any of the following [felonies] **crimes**, or any act which if committed by an  
24 adult would be one of the following [felonies] **crimes**:

- 25           (1) First degree murder under section 565.020, RSMo;
- 26           (2) Second degree murder under section 565.021, RSMo;
- 27           (3) Kidnapping under section 565.110, RSMo;
- 28           (4) First degree assault under section 565.050, RSMo;
- 29           (5) Forcible rape under section 566.030, RSMo;
- 30           (6) Forcible sodomy under section 566.060, RSMo;
- 31           (7) Burglary in the first degree under section 569.160, RSMo;
- 32           (8) Burglary in the second degree under section 569.170, RSMo;
- 33           (9) Robbery in the first degree under section 569.020, RSMo;
- 34           (10) Distribution of drugs under section 195.211, RSMo;
- 35           (11) Distribution of drugs to a minor under section 195.212, RSMo;
- 36           (12) Arson in the first degree under section 569.040, RSMo;
- 37           (13) Voluntary manslaughter under section 565.023, RSMo;
- 38           (14) Involuntary manslaughter under section 565.024, RSMo;
- 39           (15) Second degree assault under section 565.060, RSMo;
- 40           (16) Sexual assault under section 566.040, RSMo;
- 41           (17) Felonious restraint under section 565.120, RSMo;
- 42           (18) Property damage in the first degree under section 569.100, RSMo;
- 43           (19) The possession of a weapon under chapter 571, RSMo;
- 44           (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- 45           (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- 46           (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; [or]
- 47           (23) Sexual abuse pursuant to section 566.100, RSMo;
- 48           **(24) Harassment under section 565.090, RSMo; or**

49           **(25) Stalking under section 565.225, RSMo;**

50

51 committed on school property, including but not limited to actions on any school bus in service  
52 on behalf of the district or while involved in school activities. The policy shall require that any  
53 portion of a student's individualized education program that is related to demonstrated or  
54 potentially violent behavior shall be provided to any teacher and other school district employees  
55 who are directly responsible for the student's education or who otherwise interact with the  
56 student on an educational basis while acting within the scope of their assigned duties. The policy  
57 shall also contain the consequences of failure to obey standards of conduct set by the local board  
58 of education, and the importance of the standards to the maintenance of an atmosphere where  
59 orderly learning is possible and encouraged.

60           3. The policy shall provide that any student who is on suspension for any of the offenses  
61 listed in subsection 2 of this section or any act of violence or drug-related activity defined by  
62 school district policy as a serious violation of school discipline pursuant to subsection 9 of this  
63 section shall have as a condition of his or her suspension the requirement that such student is not  
64 allowed, while on such suspension, to be within one thousand feet of any public school in the  
65 school district where such student attended school unless:

66           (1) Such student is under the direct supervision of the student's parent, legal guardian,  
67 or custodian;

68           (2) Such student is under the direct supervision of another adult designated by the  
69 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
70 which suspended the student;

71           (3) Such student is in an alternative school that is located within one thousand feet of a  
72 public school in the school district where such student attended school; or

73           (4) Such student resides within one thousand feet of any public school in the school  
74 district where such student attended school in which case such student may be on the property  
75 of his or her residence without direct adult supervision.

76           4. Any student who violates the condition of suspension required pursuant to subsection  
77 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of  
78 sections 167.161, 167.164, and 167.171, RSMo. In making this determination consideration  
79 shall be given to whether the student poses a threat to the safety of any child or school employee  
80 and whether such student's unsupervised presence within one thousand feet of the school is  
81 disruptive to the educational process or undermines the effectiveness of the school's disciplinary  
82 policy. Removal of any pupil who is a student with a disability is subject to state and federal  
83 procedural rights.

84           5. The policy shall provide for a suspension for a period of not less than one year, or  
85 expulsion, for a student who is determined to have brought a weapon to school, including but  
86 not limited to the school playground or the school parking lot, brought a weapon on a school bus  
87 or brought a weapon to a school activity whether on or off of the school property in violation of  
88 district policy, except that:

89           (1) The superintendent or, in a school district with no high school, the principal of the  
90 school which such child attends may modify such suspension on a case-by-case basis; and

91           (2) This section shall not prevent the school district from providing educational services  
92 in an alternative setting to a student suspended under the provisions of this section.

93           6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
94 under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack,  
95 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
96 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
97 knife; except that this section shall not be construed to prohibit a school board from adopting a  
98 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
99 educational purposes so long as the firearm is unloaded. The local board of education shall  
100 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
101 subsection but may also include other weapons.

102           7. All school district personnel responsible for the care and supervision of students are  
103 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any  
104 property of the school, on any school bus going to or returning from school, during  
105 school-sponsored activities, or during intermission or recess periods.

106           8. Teachers and other authorized district personnel in public schools responsible for the  
107 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable  
108 care by the school district, shall not be civilly liable when acting in conformity with the  
109 established policy of discipline developed by each board under this section, or when reporting  
110 to his or her supervisor or other person as mandated by state law acts of school violence or  
111 threatened acts of school violence, within the course and scope of the duties of the teacher,  
112 authorized district personnel or volunteer, when such individual is acting in conformity with the  
113 established policies developed by the board. Nothing in this section shall be construed to create  
114 a new cause of action against such school district, or to relieve the school district from liability  
115 for the negligent acts of such persons.

116           9. Each school board shall define in its discipline policy acts of violence and any other  
117 acts that constitute a serious violation of that policy. Acts of violence as defined by school  
118 boards shall include but not be limited to exertion of physical force by a student with the intent  
119 to do serious bodily harm to another person while on school property, including a school bus in

120 service on behalf of the district, or while involved in school activities. School districts shall for  
121 each student enrolled in the school district compile and maintain records of any serious violation  
122 of the district's discipline policy. Such records shall be made available to teachers and other  
123 school district employees with a need to know while acting within the scope of their assigned  
124 duties, and shall be provided as required in section 167.020, RSMo, to any school district in  
125 which the student subsequently attempts to enroll.

126       10. Spanking, when administered by certificated personnel of a school district in a  
127 reasonable manner in accordance with the local board of education's written policy of discipline,  
128 is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to  
129 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over  
130 or investigate any report of alleged child abuse arising out of or related to any spanking  
131 administered in a reasonable manner by any certificated school personnel pursuant to a written  
132 policy of discipline established by the board of education of the school district. Upon receipt of  
133 any reports of child abuse by the division of family services pursuant to sections 210.110 to  
134 210.165, RSMo, which allegedly involves personnel of a school district, the division of family  
135 services shall notify the superintendent of schools of the district or, if the person named in the  
136 alleged incident is the superintendent of schools, the president of the school board of the school  
137 district where the alleged incident occurred. If, after an initial investigation, the superintendent  
138 of schools or the president of the school board finds that the report involves an alleged incident  
139 of child abuse other than the administration of a spanking by certificated school personnel  
140 pursuant to a written policy of discipline or a report made for the sole purpose of harassing a  
141 public school employee, the superintendent of schools or the president of the school board shall  
142 immediately refer the matter back to the division of family services and take no further action.  
143 In all matters referred back to the division of family services, the division of family services shall  
144 treat the report in the same manner as other reports of alleged child abuse received by the  
145 division. If the report pertains to an alleged incident which arose out of or is related to a  
146 spanking administered by certificated personnel of a school district pursuant to a written policy  
147 of discipline or a report made for the sole purpose of harassing a public school employee, a  
148 notification of the reported child abuse shall be sent by the superintendent of schools or the  
149 president of the school board to the juvenile officer of the county in which the alleged incident  
150 occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement  
151 officer designated by the juvenile officer and the superintendent of schools or, if the subject of  
152 the report is the superintendent of schools, by the juvenile officer or a law enforcement officer  
153 designated by the juvenile officer and the president of the school board or such president's  
154 designee. The investigation shall begin no later than forty-eight hours after notification from the  
155 division of family services is received, and shall consist of, but need not be limited to,

156 interviewing and recording statements of the child and the child's parents or guardian within two  
157 working days after the start of the investigation, of the school district personnel allegedly  
158 involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law  
159 enforcement officer designated by the juvenile officer and the investigating school district  
160 personnel shall issue separate reports of their findings and recommendations after the conclusion  
161 of the investigation to the school board of the school district within seven days after receiving  
162 notice from the division of family services. The reports shall contain a statement of conclusion  
163 as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school  
164 board shall consider the separate reports and shall issue its findings and conclusions and the  
165 action to be taken, if any, within seven days after receiving the last of the two reports. The  
166 findings and conclusions shall be made in substantially the following form:

167 (1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law  
168 enforcement officer designated by the juvenile officer and the investigating school board  
169 personnel agree that the evidence shows that no abuse occurred;

170 (2) The report of the alleged child abuse is substantiated. The juvenile officer or a law  
171 enforcement officer designated by the juvenile officer and the investigating school district  
172 personnel agree that the evidence is sufficient to support a finding that the alleged incident of  
173 child abuse did occur;

174 (3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile  
175 officer or a law enforcement officer designated by the juvenile officer and the investigating  
176 school personnel are unable to agree on their findings and conclusions on the alleged incident.

177 11. The findings and conclusions of the school board shall be sent to the division of  
178 family services. If the findings and conclusions of the school board are that the report of the  
179 alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and  
180 no record shall be entered in the division of family services' central registry. If the findings and  
181 conclusions of the school board are that the report of the alleged child abuse is substantiated, the  
182 division of family services shall report the incident to the prosecuting attorney of the appropriate  
183 county along with the findings and conclusions of the school district and shall include the  
184 information in the division's central registry. If the findings and conclusions of the school board  
185 are that the issue involved in the alleged incident of child abuse is unresolved, the division of  
186 family services shall report the incident to the prosecuting attorney of the appropriate county  
187 along with the findings and conclusions of the school board, however, the incident and the names  
188 of the parties allegedly involved shall not be entered into the central registry of the division of  
189 family services unless and until the alleged child abuse is substantiated by a court of competent  
190 jurisdiction.

191           12. Any superintendent of schools, president of a school board or such person's designee  
192 or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or  
193 who knowingly withholds any information relative to any investigation or report pursuant to this  
194 section is guilty of a class A misdemeanor.

195           13. In order to ensure the safety of all students, should a student be expelled for bringing  
196 a weapon to school, violent behavior, or for an act of school violence, that student shall not, for  
197 the purposes of the accreditation process of the Missouri school improvement plan, be  
198 considered a dropout or be included in the calculation of that district's educational persistence  
199 ratio.

                  565.090. 1. A person commits the crime of harassment if [for the purpose of frightening  
2 or disturbing another person, he] **such person:**

3           (1) **Knowingly** communicates [in writing or by telephone] a threat to commit any felony  
4 **to another person and in so doing, frightens, intimidates, disturbs, or causes emotional**  
5 **distress to such other person; or**

6           (2) [Makes a telephone call or communicates in writing and] **When communicating**  
7 **with another person, knowingly** uses coarse language **or expression that is unwanted and**  
8 **offensive to one of average sensibility; or**

9           (3) [Makes] **Knowingly frightens, intimidates, disturbs, or causes emotional distress**  
10 **to another person by making** a telephone call anonymously; or

11           (4) **Knowingly communicates with another person who is, or who purports to be**  
12 **seventeen years of age or under and in so doing and without good cause:**

13           (a) **Recklessly frightens, intimidates, disturbs, or causes emotional distress to such**  
14 **other person; or**

15           (b) **Knowingly makes a misrepresentation or conceals a material fact relating to the**  
16 **identity, age, residence, or location of himself or herself; or**

17           [(4)] (5) **Knowingly** makes repeated [telephone calls.] **unwanted communication to**  
18 **another person; or**

19           (6) **Recklessly and without good cause engages in any other act that frightens,**  
20 **intimidates, disturbs, or causes emotional distress to another person.**

21           2. Harassment is a class A misdemeanor **unless:**

22           (1) **Committed by a person twenty-one years of age or older against a person**  
23 **seventeen years of age or younger; or**

24           (2) **The person violates the provisions of subsection 1 of this section with the**  
25 **purpose of frightening, intimidating, disturbing, or causing emotional distress to such**  
26 **other person; or**

27           (3) **The person has previously pled guilty or been found guilty of a violation of this**  
28 **section, or of any offense committed in violation of any county or municipal ordinance in**  
29 **any state, or any state law, or any federal offense, or any military offense which, if**  
30 **committed in this state, would be chargeable or indictable as a violation of any offense**  
31 **listed in this subsection;**

32

33 **in which case it is a class D felony.**

34           **3. The provisions of this section shall not apply to activities of federal, state, county,**  
35 **or municipal law enforcement officers conducting investigations of violations of federal,**  
36 **state, county, or municipal law.**

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

2           (1) "Course of conduct", a pattern of conduct composed of [a series of] **two or more**  
3 **acts, which may include [electronic or other communications] communication by any means,**  
4 **over a period of time, however short, evidencing a continuity of purpose. Constitutionally**  
5 **protected activity is not included within the meaning of "course of conduct". Such**  
6 **constitutionally protected activity includes picketing or other organized protests;**

7           (2) "Credible threat", a threat [made] **communicated** with the intent to cause the person  
8 **who is the target of the threat to reasonably fear for his or her safety, or the safety of his or her**  
9 **family, or household members or animals. The threat must be against the life of, or a threat**  
10 **to cause physical injury to, [a] or the kidnapping of, the person [and may include a threat**  
11 **communicated to the targeted person in writing, including electronic communications, by**  
12 **telephone, or by the posting of a site or message that is accessible via computer] or the person's**  
13 **family, or the person's household members or animals;**

14           (3) "Harasses", to engage in a course of conduct directed at a specific person that serves  
15 **no legitimate purpose, that would cause a reasonable person under the circumstances to [suffer**  
16 **substantial emotional distress, and that actually causes substantial emotional distress to that**  
17 **person] be frightened or intimidated, or emotionally disturbed or distressed.**

18           2. [Any] A person [who] **commits the crime of stalking if such person** purposely [and  
19 **repeatedly] harasses or follows with the intent of harassing another person [commits the crime**  
20 **of stalking].**

21           3. [Any] A person [who] **commits the crime of aggravated stalking if such person**  
22 **purposely [and repeatedly] harasses or follows with the intent of harassing [or harasses] another**  
23 **person, and:**

24           **(1) Makes a credible threat [with the intent to place that person in reasonable fear of**  
25 **death or serious physical injury, commits the crime of aggravated stalking.] ; or**



26           (2) At least one of the actions constituting the course of conduct is in violation of  
27 an order of protection and the person has received actual notice of that order of protection;  
28 or

29           (3) At least one of the actions constituting the offense is in violation of a condition  
30 of probation, a condition of parole, a condition of pretrial release, or a condition of release  
31 on bond pending appeal; or

32           (4) At any time during the course of conduct, the other person is seventeen years  
33 of age or younger and the person harassing the other person is twenty-one years of age or  
34 older; or

35           (5) Such person has previously pleaded guilty to or been found guilty of domestic  
36 assault, violation of an order of protection, or any other crime where the other person was  
37 the victim.

38           4. The crime of stalking shall be a class A misdemeanor [for the first offense. A second  
39 or subsequent offense within five years of a previous finding or plea of guilt against any victim]  
40 unless the person has previously pleaded guilty to or been found guilty of a violation of this  
41 section, or of any offense committed in violation of any county or municipal ordinance in  
42 any state, or any state law, or any federal offense, or any military offense which, if  
43 committed in this state, would be chargeable or indictable as a violation of any offense  
44 listed in this section, in which case stalking shall be a class D felony.

45           5. The crime of aggravated stalking shall be a class [D] C felony [for the first offense.  
46 A second or subsequent offense within five years of a previous finding or plea of guilt against  
47 any victim] unless the person has previously pleaded guilty to or been found guilty of a  
48 violation of this section, or any offense committed in violation of any county or municipal  
49 ordinance, or any state law, or any federal offense, or any military offense which, if  
50 committed in this state, would be chargeable or indictable as a violation of any offense  
51 listed in this section, in which case aggravated stalking shall be a class [C] B felony.

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

54           7. The provisions of this section shall not apply to activities of federal, state, county,  
55 or municipal law enforcement officers conducting investigations of a violation of federal,  
56 state, county, or municipal law.

✓