

SECOND REGULAR SESSION

HOUSE BILL NO. 2371

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), GEORGE, WILDBERGER,
SCHOEMEHL, PAGE, DARROUGH AND KRAUS (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

5222L.01I

AN ACT

To repeal section 566.151, RSMo, and to enact in lieu thereof five new sections relating to the child predation prevention act of 2008, with penalty provisions.

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

Section A. Section 566.151, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 27.150, 27.155, 170.325, 566.081, and 566.082, to read as follows:

27.150. This act shall be known and may be cited as the "Child Predation Prevention Act of 2008".

27.155. 1. The attorney general shall appoint a special counsel for child exploitation prevention and interdiction within the office of attorney general.

2. The special counsel shall have the following duties:

(1) Coordinating the policies and strategies of the executive branch related to the prevention and investigation of child exploitation cases;

(2) Pursuing memorandums of understanding and other interagency agreements related to the prevention, investigation, and apprehension of individuals exploiting children, including seeking cooperation and collaboration with other state and federal agencies;

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.

10 (3) Developing, providing, and coordinating technical assistance and training for
11 state and local law enforcement agencies related to the prevention, investigation, and
12 prosecution of child exploitation crimes;

13 (4) Developing, providing, and coordinating training and technical assistance to
14 state and local law enforcement related to forensic computer examination and analysis;

15 (5) Developing and overseeing research programs related to child exploitation
16 prevention;

17 (6) Directing and overseeing programs for child exploitation prevention and
18 education, including programs related to Internet safety;

19 (7) Maintaining liaison with the judicial branches of the federal and state
20 governments on matters relating to child exploitation;

21 (8) Providing information to the governor, general assembly, judiciary, local
22 governments, and the general public on matters relating to child exploitation;

23 (9) Serving, at the request of the attorney general, as the general's representative
24 on task forces, boards, committees, or commissions addressing policies or issues relating
25 to child exploitation; and

26 (10) Providing technical assistance, coordination, training, and support to:

27 (a) Other components of state and local governments in efforts to develop policies
28 and to enforce state laws relating to child exploitation cases, including the litigation of civil
29 and criminal actions relating to enforcing such laws;

30 (b) Other federal, state, and local agencies in efforts to develop policy, provide
31 technical assistance, and improve coordination among agencies carrying out efforts to
32 eliminate child exploitation; and

33 (c) Agencies and organizations that provide support and assistance to victims of
34 such exploitation and their families.

35 3. The special counsel, consistent with budgetary limitations, may hire or appoint
36 such staff as may be required to carry out the duties described in this section. Such staff
37 may include any number of positions designated as "Prosecutor for Child Protection",
38 "Investigator for Child Protection", and "Supervised Officer for Child Protection".

170.325. 1. The department of elementary and secondary education shall propose
2 model curriculum for educating children regarding child online safety, taking into
3 consideration the curriculum on this subject developed by other states, as well as any other
4 curricular materials suggested by education experts, child psychologists, or technology
5 companies who work on child online safety issues. Topics shall include, but not be limited
6 to, safe online communications, privacy protection, cyber-bullying, viewing inappropriate
7 material, file sharing, and the importance of open communication with responsible adults.

8 **2. The department of elementary and secondary education shall provide to each**
9 **school district educational materials for parents regarding child online safety.**

566.081. 1. (1) A person commits the crime of Internet sexual exploitation of a
2 **child if a person who is at least four years older than a child who is less than fifteen years**
3 **of age persuades, solicits, coaxes, entices, or lures the child through communication via a**
4 **computer network or system to:**

5 **(a) Expose or touch the child's own or another person's intimate parts while**
6 **communicating with the person via a computer network or system; or**

7 **(b) Observe the person's intimate parts while communicating with the person via**
8 **a computer network or system.**

9 **(2) It shall not be an affirmative defense to a prosecution for a violation of this**
10 **subsection that the other person was a law enforcement officer posing as a child less than**
11 **fifteen years of age.**

12 **(3) Internet sexual exploitation of a child is a class C felony.**

13 **2. (1) A person commits the crime of Internet luring of a child if a person who is**
14 **more than four years older than a child who is less than fifteen years of age communicates**
15 **a statement over the computer or computer network describing explicit sexual conduct**
16 **and, in connection with the communication, makes a statement persuading or inviting the**
17 **child to meet the person for any purpose.**

18 **(2) It shall not be an affirmative defense to this subsection that:**

19 **(a) A meeting did not occur; or**

20 **(b) The other person was a law enforcement officer posing as a child less than**
21 **fifteen years of age.**

22 **(3) For purposes of this subsection, "in connection with" means communications**
23 **that further, advance, promote, or have a continuity of purpose and may occur before,**
24 **during, or after the invitation to meet.**

25 **(4) Internet luring of a child is a class D felony; except that Internet luring of a**
26 **child is a class C felony if committed with the intent to meet the child for the purpose of**
27 **engaging in sexual exploitation or sexual contact.**

28 **3. (1) A person who knowingly views over the Internet any visual depiction or copy**
29 **thereof of a minor engaged in sexually explicit conduct is guilty of a class D felony.**

30 **(2) In a prosecution under this subsection, the trier of fact shall consider the title,**
31 **text, and content of the visual depiction, as well as the Internet history, search terms,**
32 **thumbnail images, downloading activity, expert computer forensic testimony, number of**
33 **depictions of minors engaged in sexually explicit conduct, the defendant's access to and**
34 **control over the electronic device, and its content upon which the depictions were found,**

35 and any other relevant evidence, in determining whether a person knowingly viewed the
36 material.

37 (3) It shall be an affirmative defense to a charge under this subsection that the
38 defendant promptly and in good faith, and without retaining or allowing any person, other
39 than a law enforcement agency, to access any visual depiction or copy thereof, reported the
40 matter to a law enforcement agency and afforded the agency access to each visual
41 depiction.

566.082. 1. For purposes of this section, "sexual offense involving a minor" means
2 any crime that involves the possession, production, distribution, publication, or making of
3 child pornography, the solicitation of a minor to engage in sexual conduct, a crime
4 involving luring or enticing a minor to engage in illegal sexual activity, any other crime
5 that places a convicted defendant on the state's sexual offender registry for an offense
6 involving a minor, or an attempt to commit any such crimes. For purposes of this section,
7 "conviction" includes a conviction, an adjudication of delinquency, and a finding of not
8 guilty by reason of insanity.

9 2. If a person is charged with a sexual offense involving a minor, such charge shall
10 create a rebuttable presumption that the person's liberty will constitute an unreasonable
11 danger to the public and to children in the community, and where the presumption is not
12 successfully rebutted, the person may be detained pending trial.

13 3. (1) All audio and visual equipment, computer equipment, electronic equipment,
14 devices, software, storage media, and other personal property owned by the defendant and
15 used in connection with a sexual offense involving a minor shall be subject to lawful
16 seizure, impoundment, and forfeiture.

17 (2) In the case of an arrest for and conviction of a sexual offense involving a minor,
18 the seizure and impoundment may be effectuated by a law enforcement officer and the
19 forfeiture shall be effectuated by order of the court in which a conviction is obtained.

20 (3) If during supervised release or probation a person convicted of a sexual offense
21 involving a minor is subject to periodic inspections or monitoring authorized under this
22 section, or is subject to any other lawful investigation of the person's computer or device
23 with Internet capability, and if such inspection, monitoring, or investigation yields any
24 evidence of crimes, potential crimes, probation, or supervisory violations, or other conduct
25 manifesting an intent to commit a sexual offense, including but not limited to a sexual
26 offense involving a minor, or to engage in unlawful acts, the supervisor of such release or
27 probation may seize and impound the person's property used to commit the acts in
28 question, and the court or board of probation and parole may order the property's
29 forfeiture.

(4) The court or board ordering the forfeiture shall dispose of the property as it deems proper, including awarding the property to the agency seizing such property or to a state agency for lawful purposes. A forfeiture under this section shall not extinguish the rights of any person without knowledge of the illegal or violative use of the property who is the lawful owner or has a valid and perfected lien on the property.

4. In addition to any condition imposed upon the release or probation, the court may order a person convicted of a sexual offense involving a minor to pay an amount no less than fifty dollars per month and no more than ten percent of the person's monthly income to offset:

(1) The cost to the state of any online monitoring imposed under this section;

(2) The cost to the state for any other enhanced monitoring imposed as a condition of release; and

(3) The person's obligation to the crime victims' compensation fund, established in section 595.045, RSMo, for the duration of the person's supervision.

To secure payment, the attorney general, the probation officer, or other supervisory officer may petition the court for garnishment of the person's wages. Such fee may be reduced or waived in cases of indigence upon application by the chief probation or supervisory officer to the sentencing court.

5. In the case of a person who has been convicted of a sexual offense involving a minor, the court may, in addition to any other disposition, issue an order:

(1) Prohibiting the person from accessing the Internet or using a computer or any other device with an Internet connection in the person's place of residence for five years after the person's release from physical custody, or for half of the person's initial sentence, whichever is greater;

(2) Requiring the person to submit to in-person or remote monitoring of the person's use of the Internet or of a computer or any other device with an Internet connection in the person's place of residence for a period of time deemed necessary to protect public safety, including, at the court's discretion, monitoring for life;

(3) Requiring the person to submit to the installation on the person's computer or other device with Internet capability, at the person's expense, one or more hardware or software systems capable of blocking or monitoring the person's Internet usage, to detect any tampering with such systems, and to automatically deliver electronically to a destination selected by the state the system's blocking, monitoring, and tamper-detection information;

65 (4) Requiring the person to maintain and upgrade such blocking, monitoring, and
66 tamper-detection hardware or software at the person's expense for the duration of the
67 blocking or monitoring term;

68 (5) Requiring the person to submit to periodic unannounced examinations of the
69 person's computer or any other device with Internet capability by a probation officer,
70 supervisory officer, law enforcement officer, or assigned computer specialist, including the
71 retrieval and copying of all data from the computer or device and any internal or external
72 peripherals and removal of such information, equipment, or device to conduct a more
73 thorough inspection; and

74 (6) At the court's discretion, instructing the person's probation or supervisory
75 officer to advise the person's employer of the importance of supervising the person's
76 computer activities and of reporting potentially unlawful behavior.

77 6. In the case of a person who has been convicted of a sexual offense against a
78 minor, the court may, in addition to any other disposition, issue an order:

79 (1) Prohibiting the person from accessing the Internet or using a computer or any
80 other device with Internet capability at any location other than the person's place of
81 residence without the prior written approval of, and subject to conditions specified by, the
82 person's probation or supervisory officer; and

83 (2) Requiring the person to submit to any other restrictions necessary to effectuate
84 such prohibition or conditions.

85 7. A prohibition on Internet usage imposed under subsection 5 or 6 of this section
86 may be reduced or waived if, upon application by the chief probation or supervisory officer
87 to the sentencing court, the court finds that, on balance, the risk of the person's recidivism
88 is outweighed by the likelihood of substantial harm to the person's employment prospects,
89 to the person's family, or to others who reside with the person. In reducing or waiving
90 such a prohibition, the court may require monitoring of the person's use of the Internet or
91 of a computer or any other device with an Internet connection for a period of time deemed
92 necessary to protect public safety, including, at the court's discretion, monitoring for life.

93 8. Nothing in this section shall be construed to alter the ability of a chief probation
94 or supervisory officer, or board to impose without a court order under other law or
95 regulation comparable terms, including stricter terms, of probation or release on any
96 person in state custody.

97 9. All agencies of the state, unless otherwise prohibited by law, shall respect and
98 abide by any probationary and supervisory conditions imposed in another jurisdiction
99 upon a person who enters the state and registers with the state's sexual offender registry
100 and who in such other jurisdiction was convicted of a sexual offense against a minor.

101 Within five business days after receiving notice of such conditions, the appropriate state
102 agency shall issue any legal compliance request or seek any court order necessary to
103 effectuate another jurisdiction's conditions of release. The attorney general shall take
104 appropriate steps to facilitate other jurisdictions' enforcement of probationary or
105 supervisory conditions imposed by this state under this section.

106 10. (1) A joint committee is hereby established to assess the technical feasibility,
107 reliability, cost-effectiveness, constitutionality, and other implementation factors associated
108 with monitoring the whereabouts of persons convicted of sexual crimes against children
109 by radio-location technologies, such as, but not limited to, the global positioning system and
110 terrestrial triangulation.

111 (2) The committee shall study:

112 (a) The use of active monitoring compared to the use of passive monitoring and the
113 costs associated with each;

114 (b) The types of crimes for which active and passive monitoring should be required;

115 (c) The use of active and passive monitoring in other states;

116 (d) The appropriate staffing levels to administer active or passive monitoring; and

117 (e) The role of a law enforcement agency in supervising active or passive
118 monitoring.

119 (3) The committee shall consist of the following members:

120 (a) Two victims' advocates, one of whom is appointed by the president pro tem of
121 the senate and one of whom is appointed by the speaker of the house of representatives;

122 (b) Two members of the senate who are appointed by the president pro tem and
123 minority leader of the senate;

124 (c) Two members of the house who are appointed by the speaker and minority
125 leader of the house of representatives;

126 (d) Two judges appointed by the chief justice of the Missouri supreme court, with
127 one judge from a county with a population of more than four hundred thousand
128 inhabitants and one from a county with a population of less than four hundred thousand
129 inhabitants;

130 (e) The attorney general, or the attorney general's designee;

131 (f) The director of the department of corrections, or the director's designee;

132 (g) Two chiefs of police or county sheriffs, with one appointed by the president pro
133 tem of the senate and one appointed by the speaker of the house of representatives;

134 (h) Two probation officers appointed by the board of probation and parole, with
135 one from a county with a population of more than four hundred thousand inhabitants and
136 one from a county with a population of less than four hundred thousand inhabitants;

137 (i) One representative of the court system who has experience with the provision
138 of probation services to be appointed by the state courts administrator.

139 (4) The president pro tem of the senate and the speaker of the house of
140 representatives shall each select a co-chair of the committee.

141 (5) The committee may solicit comments from citizens, government officials,
142 academics, advocates, private enterprise, and other experts in developing its plan of action
143 and recommendations.

144 (6) The committee shall submit a written report regarding the committee's activities
145 and recommendations on or before December 1, 2008, to the governor, the president pro
146 tem of the senate, and the speaker of the house of representatives, and provide a copy of
147 the report to the secretary of state and the state archivist.

2 [566.151. 1. A person at least twenty-one years of age or older commits
3 the crime of enticement of a child if that person persuades, solicits, coaxes,
4 entices, or lures whether by words, actions or through communication via the
5 Internet or any electronic communication, any person who is less than fifteen
6 years of age for the purpose of engaging in sexual conduct.

7 2. It is not an affirmative defense to a prosecution for a violation of this
8 section that the other person was a peace officer masquerading as a minor.

9 3. Enticement of a child or an attempt to commit enticement of a child
10 is a felony for which the authorized term of imprisonment shall be not less than
11 five years and not more than thirty years. No person convicted under this section
12 shall be eligible for parole, probation, conditional release, or suspended
imposition or execution of sentence for a period of five calendar years.]

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