

SECOND REGULAR SESSION

HOUSE BILL NO. 2411

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKER.

5145H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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Section A. Sections 556.061 and 568.045, RSMo, are repealed and two new sections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

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

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

6 (2) "Affirmative defense":

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

9 (b) If the defense is submitted to the trier of fact the defendant has the burden of
10 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 supported by
13 evidence; and

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

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.

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

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

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

33 (7) "Computer hardware", all equipment which can collect, analyze, create, display,
34 convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses
35 or data. Hardware includes, but is not limited to, any data processing devices, such as central
36 processing units, memory typewriters and self-contained laptop or notebook computers;
37 internal and peripheral storage devices, transistor-like binary devices and other memory
38 storage devices, such as floppy disks, removable disks, compact disks, digital video disks,
39 magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two
40 or more computers connected together to a central computer server via cable or modem;
41 peripheral input or output devices, such as keyboards, printers, scanners, plotters, video
42 display monitors and optical readers; and related communication devices, such as modems,
43 cables and connections, recording equipment, RAM or ROM units, acoustic couplers,
44 automatic dialers, speed dialers, programmable telephone dialing or signaling devices and
45 electronic tone-generating devices; as well as any devices, mechanisms or parts that can be
46 used to restrict access to computer hardware, such as physical keys and locks;

47 (8) "Computer network", two or more interconnected computers or computer
48 systems;

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

51 (10) "Computer software", digital information which can be interpreted by a
52 computer and any of its related components to direct the way they work. Software is stored in

53 electronic, magnetic, optical or other digital form. The term commonly includes programs to
54 run operating systems and applications, such as word processing, graphic, or spreadsheet
55 programs, utilities, compilers, interpreters and communications programs;

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

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

61 (13) "Confinement":

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

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

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

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

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

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

70 b. The person is under sentence to serve a term of confinement which is not
71 continuous, or is serving a sentence under a work-release program, and in either such case is
72 not being held in a place of confinement or is not being held under guard by a person having
73 the legal power and duty to transport the person to or from a place of confinement;

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

76 (a) It is given by a person who lacks the mental capacity to authorize the conduct
77 charged to constitute the offense and such mental incapacity is manifest or known to the
78 actor; or

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

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

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

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

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

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

93 (19) "Dangerous felony", the felonies of arson in the first degree, assault in the first
94 degree, attempted rape in the first degree if physical injury results, attempted forcible rape if
95 physical injury results, attempted sodomy in the first degree if physical injury results,
96 attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape,
97 sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of such
98 assault is a special victim as defined in subdivision (14) of section 565.002, kidnapping in the
99 first degree, kidnapping, murder in the second degree, assault of a law enforcement officer in
100 the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in
101 the first degree, armed criminal action, conspiracy to commit an offense when the offense is a
102 dangerous felony, vehicle hijacking when punished as a class A felony, statutory rape in the
103 first degree when the victim is a child less than twelve years of age at the time of the
104 commission of the act giving rise to the offense, statutory sodomy in the first degree when the
105 victim is a child less than twelve years of age at the time of the commission of the act giving
106 rise to the offense, child molestation in the first or second degree, abuse of a child if the child
107 dies as a result of injuries sustained from conduct chargeable under section 568.060, child
108 kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of
109 the child for not less than one hundred twenty days under section 565.153, **endangering the**
110 **welfare of a child in the first degree**, and an "intoxication-related traffic offense" or
111 "intoxication-related boating offense" if the person is found to be a "habitual offender" or
112 "habitual boating offender" as such terms are defined in section 577.001;

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

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

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

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

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

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

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

133 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 (43) "Serious emotional injury", an injury that creates a substantial risk of temporary
196 or permanent medical or psychological damage, manifested by impairment of a behavioral,
197 cognitive or physical condition. Serious emotional injury shall be established by testimony of

198 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
199 medical or psychological certainty;

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

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

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

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

211 (48) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not
212 such motor or machinery is a principal source of propulsion used or capable of being used as
213 a means of transportation on water, or any boat or craft more than twelve feet in length which
214 is powered by sail alone or by a combination of sail and machinery, and used or capable of
215 being used as a means of transportation on water, but not any boat or craft having, as the only
216 means of propulsion, a paddle or oars;

217 (49) "Voluntary act":

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

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

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

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

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

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

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

10 (4) In the presence of a child less than seventeen years of age or in a residence where
11 a child less than seventeen years of age resides, unlawfully manufactures~~[7]~~ or attempts to
12 manufacture compounds, possesses, produces, prepares, sells, transports, tests or analyzes
13 **any of the following: fentanyl, carfentanil, amphetamine, or methamphetamine, or any [of**
14 **their analogues] analogue thereof.**

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

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

21 (2) **Involves fentanyl or carfentanil, or any analogue thereof, in which case:**

22 (a) **The offense is a class C felony with a minimum term of imprisonment of not**
23 **less than five years;**

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

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

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

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

32 ~~[(3)]~~ (4) Results in the death of a child, in which case the offense is a class A felony.

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