

SECOND REGULAR SESSION

# HOUSE BILL NO. 2386

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SANDER (Sponsor), STILL, DAY, FUNDERBURK,  
PARKINSON, KINGERY, ZERR, SATER, McGHEE, ROORDA, WEBBER AND KELLY (Co-sponsors).

4898L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 542.301, 566.083, 566.151, 566.153, and 568.080, RSMo, and to enact in lieu thereof six new sections relating to sexual offenses, with penalty provisions.

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

Section A. Sections 542.301, 566.083, 566.151, 566.153, and 568.080, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 542.301, 566.015,  
3 566.083, 566.151, 566.153, and 568.080, to read as follows:

542.301. 1. Property which comes into the custody of an officer or of a court as the  
2 result of any seizure and which has not been forfeited pursuant to any other provisions of law or  
3 returned to the claimant shall be disposed of as follows:

4 (1) Stolen property, or property acquired in any other manner declared an offense by  
5 chapters 569 and 570, RSMo, but not including any of the property referred to in subdivision (2)  
6 of this subsection, shall be delivered by order of court upon claim having been made and  
7 established, to the person who is entitled to possession:

8 (a) The claim shall be made by written motion filed with the court with which a motion  
9 to suppress has been, or may be, filed. The claim shall be barred if not made within one year  
10 from the date of the seizure;

11 (b) Upon the filing of such motion, the judge shall order notice to be given to all persons  
12 interested in the property, including other claimants and the person from whose possession the  
13 property was seized, of the time, place and nature of the hearing to be held on the motion. The  
14 notice shall be given in a manner reasonably calculated to reach the attention of all interested  
15 persons. Notice may be given to unknown persons and to persons whose address is unknown

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 by publication in a newspaper of general circulation in the county. No property shall be  
17 delivered to any claimant unless all interested persons have been given a reasonable opportunity  
18 to appear and to be heard;

19 (c) After a hearing, the judge shall order the property delivered to the person or persons  
20 entitled to possession, if any. The judge may direct that delivery of property required as evidence  
21 in a criminal proceeding shall be postponed until the need no longer exists;

22 (d) A law enforcement officer having custody of seized property may, at any time that  
23 seized property has ceased to be useful as evidence, request that the prosecuting attorney of the  
24 county in which property was seized file a motion with the court of such county for the  
25 disposition of the seized property. If the prosecuting attorney does not file such motion within  
26 sixty days of the request by the law enforcement officer having custody of the seized property,  
27 then such officer may request that the attorney general file a written motion with the circuit court  
28 of the county or judicial district in which the seizure occurred. Upon filing of the motion, the  
29 court shall issue an order directing the disposition of the property. Such disposition may, if the  
30 property is not claimed within one year from the date of the seizure or if no one establishes a  
31 right to it, and the seized property has ceased to be useful as evidence, include a public sale of  
32 the property. Pursuant to a motion properly filed and granted under this section, the proceeds  
33 of any sale, less necessary expenses of preservation and sale, shall be paid into the county  
34 treasury for the use of the county. If the property is not salable, the judge may order its  
35 destruction. Notwithstanding any other provision of law, if no claim is filed within one year of  
36 the seizure and no motion pursuant to this section is filed within six months thereafter, and the  
37 seized property has ceased to be useful as evidence, the property shall be deemed abandoned,  
38 converted to cash and shall be turned over immediately to the treasurer pursuant to section  
39 447.543, RSMo;

40 (e) If the property is a living animal or is perishable, the judge may, at any time, order  
41 it sold at public sale. The proceeds shall be held in lieu of the property. A written description  
42 of the property sold shall be filed with the judge making the order of sale so that the claimant  
43 may identify the property. If the proceeds are not claimed within the time limited for the claim  
44 of the property, the proceeds shall be paid into the county treasury. If the property is not salable,  
45 the judge may order its destruction.

46 (2) Weapons, tools, devices, **computers, computer equipment, computer software,**  
47 **computer hardware, cellular telephones, or other devices capable of accessing the internet,**  
48 and substances other than motor vehicles, aircraft or watercraft, used by the owner or with the  
49 owner's consent as a means for committing felonies other than the offense of possessing burglary  
50 tools in violation of section 569.180, RSMo, and property, the possession of which is an offense  
51 under the laws of this state or which has been used by the owner, or used with the owner's

52 acquiescence or consent, as a raw material or as an instrument to manufacture [or] , produce,  
53 **distribute, or be used as a means of storage of** anything the possession of which is an offense  
54 under the laws of this state, or which any statute authorizes or directs to be seized, other than  
55 lawfully possessed weapons seized by an officer incident to an arrest, shall be forfeited to the  
56 state of Missouri.

57         2. The officer who has custody of the property shall inform the prosecuting attorney of  
58 the fact of seizure and of the nature of the property. The prosecuting attorney shall thereupon  
59 file a written motion with the court with which the motion to suppress has been, or may be, filed  
60 praying for an order directing the forfeiture of the property. If the prosecuting attorney of a  
61 county in which property is seized fails to file a motion with the court for the disposition of the  
62 seized property within sixty days of the request by a law enforcement officer, the officer having  
63 custody of the seized property may request the attorney general to file a written motion with the  
64 circuit court of the county or judicial district in which the seizure occurred. Upon filing of the  
65 motion, the court shall issue an order directing the disposition of the property. The signed  
66 motion shall be returned to the requesting agency. A motion may also be filed by any person  
67 claiming the right to possession of the property praying that the court declare the property not  
68 subject to forfeiture and order it delivered to the moving party.

69         3. Upon the filing of a motion either by the prosecuting attorney or by a claimant, the  
70 judge shall order notice to be given to all persons interested in the property, including the person  
71 out of whose possession the property was seized and any lienors, of the time, place and nature  
72 of the hearing to be held on the motion. The notice shall be given in a manner reasonably  
73 calculated to reach the attention of all interested persons. Notice may be given to unknown  
74 persons and to persons of unknown address by publication in a newspaper of general circulation  
75 in the county. Every interested person shall be given a reasonable opportunity to appear and to  
76 be heard as to the nature of the person's claim to the property and upon the issue of whether or  
77 not it is subject to forfeiture.

78         4. If the evidence is clear and convincing that the property in issue is in fact of a kind  
79 subject to forfeiture under this subsection, the judge shall declare it forfeited and order its  
80 destruction or sale. The judge shall direct that the destruction or sale of property needed as  
81 evidence in a criminal proceeding shall be postponed until this need no longer exists.

82         5. If the forfeited property can be put to a lawful use, it may be ordered sold after any  
83 alterations which are necessary to adapt it to a lawful use have been made. **In the case of**  
84 **computers, computer equipment, computer software, computer hardware, cellular**  
85 **telephones, or other devices capable of accessing the internet, or other devices used in the**  
86 **acquisition, possession, or distribution of child pornography or obscene material, the law**  
87 **enforcement agency in possession of these items may, upon court order, retain possession**

88 **of such property and convert such property to the use of the law enforcement agency for**  
89 **use in criminal investigations.** If there is a holder of a bona fide lien against property which  
90 has been used as a means for committing an offense or which has been used as a raw material  
91 or as an instrument to manufacture or produce anything which is an offense to possess, who  
92 establishes that the use was without the lienholder's acquiescence or consent, the proceeds, less  
93 necessary expenses of preservation and sale, shall be paid to the lienholder to the amount of the  
94 lienholder's lien. The remaining amount shall be paid into the county treasury.

95         6. If the property is perishable the judge may order it sold at a public sale or destroyed,  
96 as may be appropriate, prior to a hearing. The proceeds of a sale, less necessary expenses of  
97 preservation and sale, shall be held in lieu of the property.

98         7. When a warrant has been issued to search for and seize allegedly obscene matter for  
99 forfeiture to the state, after an adversary hearing, the judge, upon return of the warrant with the  
100 matter seized, shall give notice of the fact to the prosecuting attorney of the county in which the  
101 matter was seized and the dealer, exhibitor or displayer and shall conduct further adversary  
102 proceedings to determine whether the matter is subject to forfeiture. If the evidence is clear and  
103 convincing that the matter is obscene as defined by law and it was being held or displayed for  
104 sale, exhibition, distribution or circulation to the public, the judge shall declare it to be obscene  
105 and forfeited to the state and order its destruction or other disposition; except that, no forfeiture  
106 shall be declared without the dealer, distributor or displayer being given a reasonable opportunity  
107 to appear in opposition and without the judge having thoroughly examined each item. If the  
108 material to be seized is the same as or another copy of matter that has already been determined  
109 to be obscene in a criminal proceeding against the dealer, exhibitor, displayer or such person's  
110 agent, the determination of obscenity in the criminal proceeding shall constitute clear and  
111 convincing evidence that the matter to be forfeited pursuant to this subsection is obscene. Except  
112 when the dealer, exhibitor or displayer consents to a longer period, or by such person's actions  
113 or pleadings willfully prevents the prompt resolution of the hearing, judgment shall be rendered  
114 within ten days of the return of the warrant. If the matter is not found to be obscene or is not  
115 found to have been held or displayed for sale, exhibition or distribution to the public, or a  
116 judgment is not entered within the time provided for, the matter shall be restored forthwith to the  
117 dealer, exhibitor or displayer.

118         8. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment,  
119 the case should be assigned for hearing at the earliest practicable date and expedited in every  
120 way. Destruction or disposition of a matter declared forfeited shall be postponed until the  
121 judgment has become final by exhaustion of appeal, or by expiration of the time for appeal, and  
122 until the matter is no longer needed as evidence in a criminal proceeding.

123           9. A determination of obscenity, pursuant to this subsection, shall not be admissible in  
124 any criminal proceeding against any person or corporation for sale or possession of obscene  
125 matter; except that dealer, distributor or displayer from which the obscene matter was seized for  
126 forfeiture to the state.

127           10. When allegedly obscene matter or pornographic material for minors has been seized  
128 under a search warrant issued pursuant to subsection 2 of section 542.281 and the matter is no  
129 longer needed as evidence in a criminal proceeding the prosecuting attorney of the county in  
130 which the matter was seized may file a written motion with the circuit court of the county or  
131 judicial district in which the seizure occurred praying for an order directing the forfeiture of the  
132 matter. Upon filing of the motion, the court shall set a date for a hearing. Written notice of date,  
133 time, place and nature of the hearing shall be personally served upon the owner, dealer, exhibitor,  
134 displayer or such person's agent. Such notice shall be served no less than five days before the  
135 hearing.

136           11. If the evidence is clear and convincing that the matter is obscene as defined by law,  
137 and that the obscene material was being held or displayed for sale, exhibition, distribution or  
138 circulation to the public or that the matter is pornographic for minors and that the pornographic  
139 material was being held or displayed for sale, exhibition, distribution or circulation to minors,  
140 the judge shall declare it to be obscene or pornographic for minors and forfeited to the state and  
141 order its destruction or other disposition. A determination that the matter is obscene in a  
142 criminal proceeding as well as a determination that such obscene material was held or displayed  
143 for sale, exhibition, distribution or circulation to the public or a determination that the matter is  
144 pornographic for minors in a criminal proceeding as well as a determination that such  
145 pornographic material was held or displayed for sale, exhibition, distribution or circulation to  
146 minors shall be clear and convincing evidence that such material should be forfeited to the state;  
147 except that, no forfeiture shall be declared without the dealer, distributor or displayer being given  
148 a reasonable opportunity to appear in opposition and without a judge having thoroughly  
149 examined each item. A dealer, distributor or displayer shall have had reasonable opportunity to  
150 appear in opposition if the matter the prosecutor seeks to destroy is the same matter that formed  
151 the basis of a criminal proceeding against the dealer, distributor or displayer where the dealer,  
152 distributor or displayer has been charged and found guilty of holding or displaying for sale,  
153 exhibiting, distributing or circulating obscene material to the public or pornographic material for  
154 minors to minors. If the matter is not found to be obscene, or if obscene material is not found  
155 to have been held or displayed for sale, exhibition, distribution or circulation to the public, or if  
156 the matter is not found to be pornographic for minors or if pornographic material is not found  
157 to have been held or displayed for sale, exhibition, distribution or circulation to minors, the  
158 matter shall be restored forthwith to the dealer, exhibitor or displayer.

159           12. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment,  
160 the case shall be assigned for hearing at the earliest practicable date and expedited in every way.  
161 Destruction or disposition of matter declared forfeited shall be postponed until the judgment has  
162 become final by exhaustion of appeal, or by expiration of the time for appeal, and until the matter  
163 is no longer needed as evidence in a criminal proceeding.

164           13. A determination of obscenity shall not be admissible in any criminal proceeding  
165 against any person or corporation for sale or possession of obscene matter.

166           14. An appeal by any party shall be allowed from the judgment of the court as in other  
167 civil actions.

168           15. All other property still in the custody of an officer or of a court as the result of any  
169 seizure and which has not been forfeited pursuant to this section or any other provision of law  
170 after three years following the seizure and which has ceased to be useful as evidence shall be  
171 deemed abandoned, converted to cash and shall be turned over immediately to the treasurer  
172 pursuant to section 447.543, RSMo.

173           16. In fiscal year 2003, the commissioner of administration shall estimate the amount  
174 of any additional state revenue received pursuant to this section and section 447.532, RSMo,  
175 shall transfer an equivalent amount of general revenue to the schools of the future fund created  
176 in section 163.005, RSMo.

**566.015. Upon a plea of guilty or a finding of guilt for a felony sexual offense in**  
2 **which computers, computer equipment, computer devices, cellular telephones or other**  
3 **electronic devices were seized, the court may, in addition to imposition of any penalties**  
4 **provided by law, order the defendant to reimburse the state or local law enforcement**  
5 **agency costs incurred by that law enforcement agency in the examination of any computer,**  
6 **computer equipment, computer devices, cellular telephones or other electronic devices**  
7 **seized. Such costs shall include the reasonable costs of performing examinations of the**  
8 **seized electronic devices. Each law enforcement agency may establish a schedule of such**  
9 **costs, however, the court may order the costs reduced if it determines that the costs are**  
10 **excessive.**

566.083. 1. A person commits the crime of sexual misconduct involving a child if [the]  
2 **such** person:

3           (1) Knowingly exposes his or her genitals to a child less than fifteen years of age under  
4 circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm  
5 to the child;

6           (2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the  
7 purpose of arousing or gratifying the sexual desire of any person, including the child; or

8 (3) Knowingly coerces or induces a child less than fifteen years of age to expose the  
9 child's genitals **or the breasts of a female child** for the purpose of arousing or gratifying the  
10 sexual desire of any person, including the child.

11 2. The provisions of this section shall apply regardless of whether the person violates  
12 [the] **this** section in person or via the Internet or other electronic means.

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

15 4. Sexual misconduct involving a child or attempted sexual misconduct involving a child  
16 is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an  
17 offense pursuant to this chapter or the actor has previously pleaded guilty to or has been  
18 convicted of an offense against the laws of another state or jurisdiction which would constitute  
19 an offense under this chapter **or the actor was twenty-one years of age or older and was**  
20 **located outside the state of Missouri at the time of the commission of the offense**, in which  
21 case it is a class C felony.

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

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

8 3. Enticement of a child or an attempt to commit enticement of a child **when the victim**  
9 **is less than fifteen years of age** is a felony for which the authorized term of imprisonment shall  
10 be not less than five years and not more than thirty years. **Enticement of a child or an attempt**  
11 **to commit enticement of a child when the victim is at least fifteen years of age but less than**  
12 **seventeen years of age is a class D felony.** No person convicted under this section, **when the**  
13 **victim is less than fifteen years of age**, shall be eligible for parole, probation, conditional  
14 release, or suspended imposition or execution of sentence for a period of five calendar years.

566.153. 1. A person commits the crime of age misrepresentation [with intent to solicit  
2 a minor when he or she knowingly] **when such person knowingly** misrepresents his or her age  
3 [with the intent to use the Internet to engage in criminal sexual conduct involving a minor] **to a**  
4 **person less than seventeen years of age or to a police officer masquerading as a person less**  
5 **than seventeen years of age, in order to commit or attempt to commit a felony offense**  
6 **under chapter 566 or 568.**

7 2. Age misrepresentation [with intent to solicit a minor] is a class D felony.

568.080. 1. A person commits the crime of use of a child in a sexual performance if,  
2 knowing the character and content thereof, the person employs, authorizes, or induces a child  
3 less than seventeen years of age to engage in a sexual performance or, being a parent, legal  
4 guardian, or custodian of such child, consents to the participation by such child in such sexual  
5 performance.

6       2. **As used in this section "sexual performance" means any performance, or part**  
7 **thereof, which includes sexual conduct by a child who is less than seventeen years of age**  
8 **and "sexual conduct" means acts of human masturbation; deviate sexual intercourse;**  
9 **sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic**  
10 **area, buttocks, or the breast of a female in an act of apparent sexual stimulation or**  
11 **gratification.**

12       3. Use of a child in a sexual performance is a class C felony, unless in the course thereof  
13 the person inflicts serious emotional injury on the child, in which case the crime is a class B  
14 felony.

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