

SECOND REGULAR SESSION

HOUSE BILL NO. 2197

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

4490H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 556.061 and 558.041, RSMo, and to enact in lieu thereof two new sections relating to imprisonment, with penalty provisions.

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

Section A. Sections 556.061 and 558.041, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 556.061 and 558.041, to read as follows:

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

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

(2) "Affirmative defense":

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

(b) If the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not;

(3) "Burden of injecting the issue":

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

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

(4) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives

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.

18 or slides, for compensation. The term commercial film and photographic print processor shall
19 include all employees of such persons but shall not include a person who develops film or makes
20 prints for a public agency;

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

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

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

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

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

49 (10) "Computer software", digital information which can be interpreted by a computer
50 and any of its related components to direct the way they work. Software is stored in electronic,
51 magnetic, optical or other digital form. The term commonly includes programs to run operating
52 systems and applications, such as word processing, graphic, or spreadsheet programs, utilities,
53 compilers, interpreters and communications programs;

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

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

59 (13) "Confinement":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

127 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 (34) "Of another", property that any entity, including but not limited to any natural
158 person, corporation, limited liability company, partnership, association, governmental
159 subdivision or instrumentality, other than the actor, has a possessory or proprietary interest
160 therein, except that property shall not be deemed property of another who has only a security

161 interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or
162 other security arrangement;

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

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

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

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

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

177 (40) **"Public safety officer", any firefighter, uniformed employee of the office of the**
178 **state fire marshal, emergency medical technician, police officer, capitol police officer,**
179 **parole officer, probation officer, state correctional employee, water safety officer, park**
180 **ranger, conservation officer, or highway patrolman employed by the state of Missouri or**
181 **a political subdivision thereof;**

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

187 [(41)] (42) "Purposely", when used with respect to a person's conduct or to a result
188 thereof, means when it is his or her conscious object to engage in that conduct or to cause that
189 result;

190 [(42)] (43) "Recklessly", consciously disregarding a substantial and unjustifiable risk that
191 circumstances exist or that a result will follow, and such disregard constitutes a gross deviation
192 from the standard of care which a reasonable person would exercise in the situation;

193 [(43)] (44) "Serious emotional injury", an injury that creates a substantial risk of
194 temporary or permanent medical or psychological damage, manifested by impairment of a
195 behavioral, cognitive or physical condition. Serious emotional injury shall be established by

196 testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable
197 degree of medical or psychological certainty;

198 [(44)] (45) "Serious physical injury", physical injury that creates a substantial risk of
199 death or that causes serious disfigurement or protracted loss or impairment of the function of any
200 part of the body;

201 [(45)] (46) "Services", when used in relation to a computer system or network, means
202 use of a computer, computer system, or computer network and includes, but is not limited to,
203 computer time, data processing, and storage or retrieval functions;

204 [(46)] (47) "Sexual orientation", male or female heterosexuality, homosexuality or
205 bisexuality by inclination, practice, identity or expression, or having a self-image or identity not
206 traditionally associated with one's gender;

207 [(47)] (48) "Vehicle", a self-propelled mechanical device designed to carry a person or
208 persons, excluding vessels or aircraft;

209 [(48)] (49) "Vessel", any boat or craft propelled by a motor or by machinery, whether or
210 not such motor or machinery is a principal source of propulsion used or capable of being used
211 as a means of transportation on water, or any boat or craft more than twelve feet in length which
212 is powered by sail alone or by a combination of sail and machinery, and used or capable of being
213 used as a means of transportation on water, but not any boat or craft having, as the only means
214 of propulsion, a paddle or oars;

215 [(49)] (50) "Voluntary act":

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

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

224 [(50)] (51) "Vulnerable person", any person in the custody, care, or control of the
225 department of mental health who is receiving services from an operated, funded, licensed, or
226 certified program.

558.041. 1. Any offender committed to the department of corrections [~~except those~~
2 ~~persons committed pursuant to subsection 7 of section 558.016, or subsection 3 of section~~
3 ~~566.125,~~] may receive additional credit in terms of days spent in confinement upon
4 recommendation for such credit by the offender's institutional superintendent when the offender
5 meets the requirements for such credit as provided in subsections 3 and 4 of this section. Good

6 time credit may be rescinded by the director or his or her designee pursuant to the divisional
7 policy issued pursuant to subsection 3 of this section. **This section shall not apply to persons**
8 **committed pursuant to subsection 3 of section 566.125; however, it shall apply to any first-**
9 **time offender who is required to serve a minimum prison term under subsection 3 of**
10 **section 558.019 unless the first-time offender was convicted of murder under section**
11 **565.020 or 565.021 or any offense in which the victim was a public safety officer or elected**
12 **official.**

13 2. Any credit extended to an offender shall only apply to the sentence which the offender
14 is currently serving.

15 3. The director of the department of corrections shall issue a policy for awarding credit.
16 The policy may reward an inmate who has served his or her sentence in an orderly and peaceable
17 manner and has taken advantage of the rehabilitation programs available to him or her. Any
18 violation of institutional rules or the laws of this state may result in the loss of all or a portion
19 of any credit earned by the inmate pursuant to this section.

20 4. The department shall cause the policy to be published in the code of state regulations.

21 5. No rule or portion of a rule promulgated under the authority of this chapter shall
22 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

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