

FIRST REGULAR SESSION

HOUSE BILL NO. 36

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POLLOCK (123).

0300H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 556.061 and 569.140, RSMo, and to enact in lieu thereof two new sections relating to the offense of trespass 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Section A. Sections 556.061 and 569.140, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 556.061 and 569.140, to read as follows: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 devices and electronic tone-generating devices; as
44 well as any devices, mechanisms or parts that can be used to restrict access to computer
45 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 armed criminal action, conspiracy to commit an offense when the offense is a dangerous felony,
99 vehicle hijacking when punished as a class A felony, statutory rape in the first degree when the
100 victim is a child less than twelve years of age at the time of the commission of the act giving rise
101 to the offense, statutory sodomy in the first degree when the victim is a child less than twelve
102 years of age at the time of the commission of the act giving rise to the offense, child molestation
103 in the first or second degree, abuse of a child if the child dies as a result of injuries sustained
104 from conduct chargeable under section 568.060, child kidnapping, parental kidnapping
105 committed by detaining or concealing the whereabouts of the child for not less than one hundred
106 twenty days under section 565.153, and an "intoxication-related traffic offense" or
107 "intoxication-related boating offense" if the person is found to be a "habitual offender" or
108 "habitual boating offender" as such terms are defined in section 577.001;

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

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

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

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

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

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

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

128 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

143

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188 (43) "Serious emotional injury", an injury that creates a substantial risk of temporary or
189 permanent medical or psychological damage, manifested by impairment of a behavioral,
190 cognitive or physical condition. Serious emotional injury shall be established by testimony of
191 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
192 medical or psychological certainty;

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

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

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

202 (47) "**Vacant real property**", **real property that is not being occupied by an owner,**
203 **a tenant, or others authorized by the owner;**

204 (48) "**Vacant structure**", **a structure or building that is not being occupied by an**
205 **owner, a tenant, or others authorized by the owner;**

206 (49) "Vehicle", a self-propelled mechanical device designed to carry a person or persons,
207 excluding vessels or aircraft;

208 [~~48~~] (50) "Vessel", any boat or craft propelled by a motor or by machinery, whether or
209 not such motor or machinery is a principal source of propulsion used or capable of being used
210 as a means of transportation on water, or any boat or craft more than twelve feet in length which
211 is powered by sail alone or by a combination of sail and machinery, and used or capable of being
212 used as a means of transportation on water, but not any boat or craft having, as the only means
213 of propulsion, a paddle or oars;

214 [~~49~~] (51) "Voluntary act":

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

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

223 [~~50~~] (52) "Vulnerable person", any person in the custody, care, or control of the
224 department of mental health who is receiving services from an operated, funded, licensed, or
225 certified program.

569.140. 1. A person commits the offense of trespass in the first degree if he or she:

2 (1) Knowingly enters unlawfully or knowingly remains unlawfully in a building or
3 inhabitable structure or upon real property; or

4 (2) **Knowingly or intentionally enters and refuses to leave the real property of**
5 **another person after having been prohibited from entering or asked to leave the real**

6 **property by a law enforcement officer if the real property is vacant real property or a**
7 **vacant structure.**

8 2. A person does not commit the offense of trespass in the first degree by entering or
9 remaining upon real property unless the real property is fenced or otherwise enclosed in a manner
10 designed to exclude intruders or as to which notice against trespass is given by:

11 (1) Actual communication to the actor; or

12 (2) Posting in a manner reasonably likely to come to the attention of intruders.

13 3. The offense of trespass in the first degree is a class B misdemeanor, unless the victim
14 is intentionally targeted as a law enforcement officer, as defined in section 556.061, or the victim
15 is targeted because he or she is a relative within the second degree of consanguinity or affinity
16 to a law enforcement officer, in which case it is a class A misdemeanor. If the building or real
17 property is part of a nuclear power plant, the offense of trespass in the first degree is a class E
18 felony.

19 **4. A law enforcement officer shall not be held liable for actions or omissions made**
20 **in good faith under subdivision (2) of subsection 1 of this section.**

✓