FIRST REGULAR SESSION HOUSE BILL NO. 1220

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AUSTIN.

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 556.061 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh general assembly, first regular session, and section 571.070, RSMo, and to enact in lieu thereof two new sections relating to the unlawful possession of a firearm.

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

Section A. Section 556.061 as enacted by house bill no. 1371, ninety-seventh general 2 assembly, second regular session, section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh general assembly, first regular session, and section 571.070, 3 RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 4 556.061 and 571.070, to read as follows: 5 556.061. 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 from, 4 or otherwise make any use of any resources of, a computer, computer system, or computer 5 network; (2) "Affirmative defense": 6 (a) The defense referred to is not submitted to the trier of fact unless supported by 7 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;

(3) "Burden of injecting the issue":

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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.

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- 12 (a) The issue referred to is not submitted to the trier of fact unless supported by evidence;13 and
- (b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requiresa 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
 or slides, for compensation. The term commercial film and photographic print processor shall
 include all employees of such persons but shall not include a person who develops film or makes
 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 as internal modems capable of sending or receiving electronic mail or fax cards, along with any 23 other hardware stored or housed internally. Thus, computer refers to hardware, software and data 24 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 data. Hardware includes, but is not limited to, any data processing devices, such as central 34 35 processing units, memory typewriters and self-contained laptop or notebook computers; internal and peripheral storage devices, transistor-like binary devices and other memory storage devices, 36 37 such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard drive, optical disks and digital memory; local area networks, such as two or more computers 38 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;

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

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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, magnetic, optical or other digital form. The term commonly includes programs to run operating 51 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 pursuant to arrest or order of a court, and remains in confinement until: 61

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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 release without guard and without condition that he return to confinement; 65

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(b) A person is not in confinement if:

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

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

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

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(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;

(16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that
circumstances exist or a result will follow, and such failure constitutes a gross deviation from
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;
- (18) "Damage", when used in relation to a computer system or network, means any
 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 special victim as defined in subdivision (14) of section 565.002, kidnapping in the first degree, 95 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 "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is 105 found to be a "habitual offender" or "habitual boating offender" as such terms are defined in 106 107 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;

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

(22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a
shot, readily capable of producing death or serious physical injury, may be discharged, or a
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;

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

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

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

127 (27) "Forcible compulsion" either:

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

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

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

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

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7 (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 actually144 present.

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146 If a building or structure is divided into separately occupied units, any unit not occupied by the147 actor is an inhabitable structure of another;

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

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

151 (b) A result of conduct, means a person is aware that his or her conduct is practically 152 certain to cause that result;

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

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

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

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

166 (36) "Physical injury", slight impairment of any function of the body or temporary loss167 of use of any part of the body;

168 (37) "Place of confinement", any building or facility and the grounds thereof wherein a 169 court is legally authorized to order that a person charged with or convicted of a crime be held; 170 (38) "Possess" or "possessed", having actual or constructive possession of an object with 171 knowledge of its presence. A person has actual possession if such person has the object on his 172 or her person or within easy reach and convenient control. A person has constructive possession 173 if such person has the power and the intention at a given time to exercise dominion or control 174 over the object either directly or through another person or persons. Possession may also be sole 175 or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint; 176

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

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

184 (41) "Purposely", when used with respect to a person's conduct or to a result thereof, 185 means when it is his or her conscious object to engage in that conduct or to cause that result;

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

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

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

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

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

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

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

211 (49) "Violent felony", the felonies of arson in the first degree, assault in the first 212 degree, attempted rape in the first degree if physical injury results, attempted forcible rape 213 if physical injury results, attempted sodomy in the first degree if physical injury results, 214 attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape, 215 sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of 216 such assault is a special victim as defined in subdivision (14) of section 565.002, kidnapping 217 in the first degree, kidnapping, murder in the second degree, assault of a law enforcement 218 officer in the first degree, domestic assault in the first degree, elder abuse in the first 219 degree, robbery in the first degree, statutory rape in the first degree when the victim is a 220 child less than twelve years of age at the time of the commission of the act giving rise to the 221 offense, statutory sodomy in the first degree when the victim is a child less than twelve 222 years of age at the time of the commission of the act giving rise to the offense, child 223 molestation in the first or second degree, abuse of a child if the child dies as a result of 224 injuries sustained from conduct chargeable under section 568.060, child kidnapping,

parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153, and an "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such terms are defined in section 577.001;

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(50) "Voluntary act":

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

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

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

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

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(1) "Affirmative defense" has the meaning specified in section 556.056;

4 5 (2) "Burden of injecting the issue" has the meaning specified in section 556.051;
(3) "Commercial film and photographic print processor", any person who develops

6 exposed photographic film into negatives, slides or prints, or who makes prints from negatives
7 or slides, for compensation. The term commercial film and photographic print processor shall
8 include all employees of such persons but shall not include a person who develops film or makes
9 prints for a public agency;

10 (4) "Confinement":

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

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- a. A court orders the person's release; or
- b. The person is released on bail, bond, or recognizance, personal or otherwise; or

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

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

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

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

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

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

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

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

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(6) "Criminal negligence" has the meaning specified in section 562.016;

33 (7) "Custody", a person is in custody when the person has been arrested but has not been
34 delivered to a place of confinement;

35 (8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first 36 degree, attempted rape in the first degree if physical injury results, attempted forcible rape if 37 physical injury results, attempted sodomy in the first degree if physical injury results, attempted 38 forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the 39 first degree, forcible sodomy, kidnapping, murder in the second degree, assault of a law 40 enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child 41 42 less than twelve years of age at the time of the commission of the act giving rise to the offense, 43 statutory sodomy in the first degree when the victim is a child less than twelve years of age at 44 the time of the commission of the act giving rise to the offense, and, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section 568.060, child 45 kidnapping, and parental kidnapping committed by detaining or concealing the whereabouts of 46 47 the child for not less than one hundred twenty days under section 565.153;

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

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

54 (11) "Felony" has the meaning specified in section 556.016;

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- 55 (12) "Forcible compulsion" means either:
- 56 (a) Physical force that overcomes reasonable resistance; or
- 57 (b) A threat, express or implied, that places a person in reasonable fear of death, serious 58 physical injury or kidnapping of such person or another person;
- (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
 unable to communicate unwillingness to an act;
 - (14) "Infraction" has the meaning specified in section 556.021;
- 63 (15) "Inhabitable structure" has the meaning specified in section 569.010;
- 64 (16) "Knowingly" has the meaning specified in section 562.016;
- (17) "Law enforcement officer" means any public servant having both the power and
 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
 authorized to carry firearms and to make arrests for violations of the laws of the United States;
 - (18) "Misdemeanor" has the meaning specified in section 556.016;

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- (19) "Offense" means any felony, misdemeanor or infraction;
- 70 (20) "Physical injury" means physical pain, illness, or any impairment of physical71 condition;
- (21) "Place of confinement" means any building or facility and the grounds thereof
 wherein a court is legally authorized to order that a person charged with or convicted of a crime
 be held;
- (22) "Possess" or "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;
- 82 (23) "Public servant" means any person employed in any way by a government of this 83 state who is compensated by the government by reason of such person's employment, any person 84 appointed to a position with any government of this state, or any person elected to a position with 85 any government of this state. It includes, but is not limited to, legislators, jurors, members of the 86 judiciary and law enforcement officers. It does not include witnesses;
 - (24) "Purposely" has the meaning specified in section 562.016;
- 88 (25) "Recklessly" has the meaning specified in section 562.016;
- 89 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more90 persons as part of an established or prescribed pattern of activity;

91 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or
92 permanent medical or psychological damage, manifested by impairment of a behavioral,
93 cognitive or physical condition. Serious emotional injury shall be established by testimony of
94 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
95 medical or psychological certainty;

- 96 (28) "Serious physical injury" means physical injury that creates a substantial risk of
 97 death or that causes serious disfigurement or protracted loss or impairment of the function of any
 98 part of the body;
- 99 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;
 100 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,
 101 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;
- (30) "Sexual contact" means any touching of the genitals or anus of any person, or the
 breast of any female person, or any such touching through the clothing, for the purpose of
 arousing or gratifying sexual desire of any person;
- (31) "Sexual performance", any performance, or part thereof, which includes sexualconduct by a child who is less than seventeen years of age;
- 107 (32) "Violent felony" means the felonies of arson in the first degree, assault in the first degree, attempted rape in the first degree if physical injury results, attempted forcible 108 109 rape if physical injury results, attempted sodomy in the first degree if physical injury 110 results, attempted forcible sodomy if physical injury results, rape in the first degree, 111 forcible rape, sodomy in the first degree, forcible sodomy, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in 112 the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape 113 114 in the first degree when the victim is a child less than twelve years of age at the time of the 115 commission of the act giving rise to the offense, statutory sodomy in the first degree when 116 the victim is a child less than twelve years of age at the time of the commission of the act 117 giving rise to the offense, and, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section 568.060, child kidnapping, and parental 118 119 kidnapping committed by detaining or concealing the whereabouts of the child for not less 120 than one hundred twenty days under section 565.153;
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(33) "Voluntary act" has the meaning specified in section 562.011.

- 571.070. 1. A person commits the crime of unlawful possession of a firearm if such 2 person knowingly has any firearm in his or her possession and:
- 3 (1) Such person has been convicted of a violent felony as defined by section 556.061
- 4 [under the laws of this state], or of a crime under the laws of any state or of the United States
- 5 which, if committed within this state, would be a violent felony; or

6 (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged 7 condition, or is currently adjudged mentally incompetent.

8 2. Unlawful possession of a firearm is a class C felony.

9 3. The provisions of subdivision (1) of subsection 1 of this section shall not apply to the 10 possession of an antique firearm.

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