

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 538, 562 & 601
100TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 3, 2020, with recommendation that the Senate Committee Substitute do pass.

3891S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 556.061, 571.015, 571.060, 571.063, and 571.070, RSMo, and to enact in lieu thereof five new sections relating to criminal offenses involving deadly weapons, with penalty provisions.

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

Section A. Sections 556.061, 571.015, 571.060, 571.063, and 571.070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 556.061, 571.015, 571.060, 571.063, and 571.070, to read as follows: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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 prints from negatives or slides, for compensation. The term commercial film and
19 photographic print processor shall include all employees of such persons but shall
20 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),
22 along with any internal storage devices, such as internal hard drives, and
23 internal communication devices, such as internal modems capable of sending or
24 receiving electronic mail or fax cards, along with any other hardware stored or
25 housed internally. Thus, computer refers to hardware, software and data
26 contained in the main unit. Printers, external modems attached by cable to the
27 main unit, monitors, and other external attachments will be referred to
28 collectively as peripherals and discussed individually when appropriate. When
29 the computer and all peripherals are referred to as a package, the term "computer
30 system" is used. Information refers to all the information on a computer system
31 including both software applications and data;

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

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

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

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

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

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

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

65 (13) "Confinement":

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

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

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

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

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

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

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

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

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

87 (b) It is given by a person who by reason of youth, mental disease or
88 defect, intoxication, a drug-induced state, or any other reason is manifestly
89 unable or known by the actor to be unable to make a reasonable judgment as to

90 the nature or harmfulness of the conduct charged to constitute the offense; or

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

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

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

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

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

103 (19) "Dangerous felony", the felonies of arson in the first degree, assault
104 in the first degree, attempted rape in the first degree if physical injury results,
105 attempted forcible rape if physical injury results, attempted sodomy in the first
106 degree if physical injury results, attempted forcible sodomy if physical injury
107 results, rape in the first degree, forcible rape, sodomy in the first degree, forcible
108 sodomy, assault in the second degree if the victim of such assault is a special
109 victim as defined in subdivision (14) of section 565.002, kidnapping in the first
110 degree, kidnapping, murder in the second degree, assault of a law enforcement
111 officer in the first degree, domestic assault in the first degree, elder abuse in the
112 first degree, robbery in the first degree, **armed criminal action**, statutory rape
113 in the first degree when the victim is a child less than twelve years of age at the
114 time of the commission of the act giving rise to the offense, statutory sodomy in
115 the first degree when the victim is a child less than twelve years of age at the
116 time of the commission of the act giving rise to the offense, child molestation in
117 the first or second degree, abuse of a child if the child dies as a result of injuries
118 sustained from conduct chargeable under section 568.060, child kidnapping,
119 parental kidnapping committed by detaining or concealing the whereabouts of the
120 child for not less than one hundred twenty days under section 565.153, and an
121 "intoxication-related traffic offense" or "intoxication-related boating offense" if the
122 person is found to be a "habitual offender" or "habitual boating offender" as such
123 terms are defined in section 577.001;

124 (20) "Dangerous instrument", any instrument, article or substance, which,
125 under the circumstances in which it is used, is readily capable of causing death

126 or other serious physical injury;

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

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

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

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

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

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

147 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (38) "Possess" or "possessed", having actual or constructive possession of
192 an object with knowledge of its presence. A person has actual possession if such
193 person has the object on his or her person or within easy reach and convenient
194 control. A person has constructive possession if such person has the power and
195 the intention at a given time to exercise dominion or control over the object either
196 directly or through another person or persons. Possession may also be sole or
197 joint. If one person alone has possession of an object, possession is sole. If two

198 or more persons share possession of an object, possession is joint;

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

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

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

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

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

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

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

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

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

232 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
233 whether or not such motor or machinery is a principal source of propulsion used

234 or capable of being used as a means of transportation on water, or any boat or
235 craft more than twelve feet in length which is powered by sail alone or by a
236 combination of sail and machinery, and used or capable of being used as a means
237 of transportation on water, but not any boat or craft having, as the only means
238 of propulsion, a paddle or oars;

239 (49) "Voluntary act":

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

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

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

571.015. 1. [Except as provided in subsection 4 of this section,] Any
2 person who commits any felony under the laws of this state by, with, or through
3 the use, assistance, or aid of a dangerous instrument or deadly weapon is also
4 guilty of the [crime] **offense** of armed criminal action and, upon conviction, shall
5 be punished by imprisonment by the department of corrections [and human
6 resources] for a term of not less than [three] **five years and not to exceed**
7 **fifteen years**. The punishment imposed pursuant to this subsection shall be in
8 addition to **and consecutive with** any punishment provided by law for the
9 crime committed by, with, or through the use, assistance, or aid of a dangerous
10 instrument or deadly weapon. No person convicted under this subsection shall
11 be eligible for parole, probation, conditional release or suspended imposition or
12 execution of sentence for a period of [three] **five** calendar years.

13 2. Any person convicted of a second offense of armed criminal action
14 **arising from a separate occurrence from the first offense of armed**
15 **criminal action** shall be punished by imprisonment by the department of
16 corrections and human resources for a term of not less than [five] **ten years and**
17 **not to exceed thirty years**. The punishment imposed pursuant to this
18 subsection shall be in addition to **and consecutive with** any punishment

19 provided by law for the crime committed by, with, or through the use, assistance,
20 or aid of a dangerous instrument or deadly weapon. No person convicted under
21 this subsection shall be eligible for parole, probation, conditional release or
22 suspended imposition or execution of sentence for a period of [five] **ten** calendar
23 years.

24 3. Any person convicted of a third or subsequent offense of armed criminal
25 action **arising from a separate occurrence from the first or second**
26 **offense of armed criminal action** shall be punished by imprisonment by the
27 department of corrections and human resources for a term of not less than [ten]
28 **fifteen** years. The punishment imposed pursuant to this subsection shall be in
29 addition to **and consecutive with** any punishment provided by law for the
30 crime committed by, with, or through the use, assistance, or aid of a dangerous
31 instrument or deadly weapon. No person convicted under this subsection shall
32 be eligible for parole, probation, conditional release or suspended imposition or
33 execution of sentence for a period of [ten] **fifteen** calendar years.

34 [4. The provisions of this section shall not apply to the felonies defined
35 in sections 564.590, 564.610, 564.620, 564.630, and 564.640.]

571.060. 1. A person commits the offense of unlawful transfer of weapons
2 if he:

3 (1) Knowingly sells, leases, loans, gives away or delivers a firearm or
4 ammunition for a firearm to any person who, under the provisions of section
5 571.070, is not lawfully entitled to possess such;

6 (2) **Knowingly sells, leases, loans, gives away, or delivers any**
7 **firearm to a person less than eighteen years old without the consent of**
8 **the child's custodial parent or guardian; provided, that this does not**
9 **prohibit the delivery of such weapons to any peace officer or member**
10 **of the Armed Forces or National Guard while performing his official**
11 **duty;**

12 (3) Knowingly sells, leases, loans, gives away or delivers a blackjack to
13 a person less than eighteen years old without the consent of the child's custodial
14 parent or guardian, or recklessly, as defined in section 562.016, [sells, leases,
15 loans, gives away or delivers any firearm to a person less than eighteen years old
16 without the consent of the child's custodial parent or guardian; provided, that this
17 does not prohibit the delivery of such weapons to any peace officer or member of
18 the Armed Forces or National Guard while performing his official duty]; or

19 [(3)] (4) Recklessly, as defined in section 562.016, sells, leases, loans,

20 gives away or delivers a firearm or ammunition for a firearm to a person who is
21 intoxicated.

22 2. Unlawful transfer of weapons under subdivision (1) **or (2)** of subsection
23 1 of this section is a class E felony; unlawful transfer of weapons under
24 [subdivisions (2) and] **subdivision (3) or (4)** of subsection 1 of this section is a
25 class A misdemeanor.

571.063. 1. As used in this section the following terms shall mean:

(1) "Ammunition", any cartridge, shell, or projectile designed for use in a
2 firearm;

(2) "Licensed dealer", a person who is licensed under 18 U.S.C. Section
4 923 to engage in the business of dealing in firearms;

(3) "Materially false information", any information that portrays an illegal
6 transaction as legal or a legal transaction as illegal;

(4) "Private seller", a person who sells or offers for sale any firearm, as
8 defined in section 571.010, or ammunition.

9 2. A person commits the crime of fraudulent purchase of a firearm if such
10 person:

(1) Knowingly solicits, persuades, encourages or entices a licensed dealer
12 or private seller of firearms or ammunition to transfer a firearm or ammunition
13 under circumstances which the person knows would violate the laws of this state
14 or the United States; or

(2) Provides to a licensed dealer or private seller of firearms or
16 ammunition what the person knows to be materially false information with intent
17 to deceive the dealer or seller about the legality of a transfer of a firearm or
18 ammunition; or

(3) Willfully procures another to violate the provisions of subdivision (1)
20 or (2) of this subsection.

21 3. Fraudulent purchase of a firearm is a class **[E] D** felony.

22 4. This section shall not apply to criminal investigations conducted by the
23 United States Bureau of Alcohol, Tobacco, Firearms and Explosives, authorized
24 agents of such investigations, or to a peace officer, as defined in section 542.261,
25 acting at the explicit direction of the United States Bureau of Alcohol, Tobacco,
26 Firearms and Explosives.

571.070. 1. A person commits the offense of unlawful possession of a
2 firearm if such person knowingly has any firearm in his or her possession and:

(1) Such person has been convicted of a felony under the laws of this

4 state, or of a crime under the laws of any state or of the United States which, if
5 committed within this state, would be a felony; or

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

8 2. Unlawful possession of a firearm is a class D felony, **unless a person**
9 **has been convicted of a dangerous felony pursuant to section 556.061,**
10 **in which case it is a class C felony.**

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

Unofficial ✓

Bill

Copy