

FIRST REGULAR SESSION

HOUSE BILL NO. 246

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH.

Read 1st time January 3, 2001, and 1000 copies ordered printed.

ANNE C. WALKER, Chief Clerk

0968L.011

AN ACT

To repeal sections 542.261, 542.276, 565.225 and 569.070, RSMo 2000, relating to technological crimes, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Sections 542.261, 542.276, 565.225 and 569.070, RSMo 2000, are repealed
2 and seven new sections enacted in lieu thereof, to be known as sections 542.261, 542.276,
3 565.225, 569.070, 578.600, 578.605 and 578.610, to read as follows:

542.261. As used in sections 542.261 to 542.296 and section 542.301, the term "peace
2 officer" means a police officer, member of the highway patrol to the extent otherwise permitted
3 by law to conduct searches, sheriff or deputy sheriff, **and the term "technology crime" shall**
4 **be defined as it is in section 578.600, RSMo.**

542.276. 1. Any peace officer or prosecuting attorney may make application under
2 section 542.271 for the issuance of a search warrant. **In any investigation of a technological**
3 **crime, the attorney general may also make application under section 542.271 for the**
4 **issuance of a search warrant.**

5 2. The application shall:

6 (1) Be in writing;

7 (2) State the time and date of the making of the application;

8 (3) Identify the property, article, material, substance or person which is to be searched
9 for and seized, in sufficient detail and particularity that the officer executing the warrant can
10 readily ascertain it;

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

11 (4) Identify the person, place, or thing which is to be searched, in sufficient detail and
12 particularity that the officer executing the warrant can readily ascertain whom or what he is to
13 search;

14 (5) State facts sufficient to show probable cause for the issuance of a search warrant;

15 (6) Be verified by the oath or affirmation of the applicant;

16 (7) Be filed in the proper court;

17 (8) Be signed by the prosecuting attorney of the county where the search is to take place,
18 or [his] **by the prosecuting attorney's designated assistant, or, in the case of an application**
19 **to search for and seize evidence related to a technological crime, be signed by the attorney**
20 **general or the attorney general's designated assistant, or the prosecuting attorney or the**
21 **prosecuting attorney's designated assistant.**

22 3. The application may be supplemented by a written affidavit verified by oath or
23 affirmation. Such affidavit shall be considered in determining whether there is probable cause
24 for the issuance of a search warrant and in filling out any deficiencies in the description of the
25 person, place, or thing to be searched or of the property, article, material, substance, or person
26 to be seized. Oral testimony shall not be considered.

27 4. The judge shall hold a nonadversary hearing to determine whether sufficient facts have
28 been stated to justify the issuance of a search warrant. If it appears from the application and any
29 supporting affidavit that there is probable cause to believe that property, article, material,
30 substance, or person subject to seizure is on the person or at the place or in the thing described,
31 a search warrant shall immediately be issued. The warrant shall be issued in the form of an
32 original and two copies.

33 5. The application and any supporting affidavit and a copy of the warrant shall be
34 retained in the records of the court from which the warrant was issued.

35 6. The search warrant shall:

36 (1) Be in writing and in the name of the state of Missouri;

37 (2) Be directed to any peace officer in the state;

38 (3) State the time and date the warrant is issued;

39 (4) Identify the property, article, material, substance or person which is to be searched
40 for and seized, in sufficient detail and particularity that the officer executing the warrant can
41 readily ascertain it;

42 (5) Identify the person, place, or thing which is to be searched, in sufficient detail and
43 particularity that the officer executing the warrant can readily ascertain whom or what he is to
44 search;

45 (6) Command that the described person, place, or thing be searched and that any of the
46 described property, article, material, substance, or person found thereon or therein be seized or

47 photographed or copied and be returned, or the photograph or copy be brought, within ten days
48 after filing of the application, to the judge who issued the warrant, to be dealt with according to
49 law;

50 (7) Be signed by the judge, with his title of office indicated.

51 7. A search warrant issued under this section may be executed only by a peace officer.
52 The warrant shall be executed by conducting the search and seizure commanded.

53 8. A search warrant shall be executed as soon as practicable and shall expire if it is not
54 executed and the return made within ten days after the date of the making of the application.

55 9. After execution of the search warrant, the warrant with a return thereon, signed by the
56 officer making the search, shall be delivered to the judge who issued the warrant. The return
57 shall show the date and manner of execution, what was seized, and the name of the possessor and
58 of the owner, when he is not the same person, if known. The return shall be accompanied by a
59 copy of the itemized receipt required by subsection [6] 5 of section 542.291. The judge or clerk
60 shall, upon request, deliver a copy of such receipt to the person from whose possession the
61 property was taken and to the applicant for the warrant.

62 10. A search warrant shall be deemed invalid:

63 (1) If it was not issued by a judge; or

64 (2) If it was issued without a written application having been filed and verified; or

65 (3) If it was issued without probable cause; or

66 (4) If it was not issued in the proper county; or

67 (5) If it does not describe the person, place, or thing to be searched or the property,
68 article, material, substance, or person to be seized with sufficient certainty; or

69 (6) If it is not signed by the judge who issued it; or

70 (7) If it was not executed within the time prescribed by subsection 8 of this section.

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

2 (1) "Course of conduct", a pattern of conduct composed of a series of acts, **which may**
3 **include electronic or other communications**, over a period of time, however short, evidencing
4 a continuity of purpose. Constitutionally protected activity is not included within the meaning
5 of "course of conduct". Such constitutionally protected activity includes picketing or other
6 organized protests;

7 (2) "Credible threat", a threat made with the intent to cause the person who is the target
8 of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a
9 threat to cause physical injury to, a person **and may include a threat communicated to the**
10 **targeted person in writing, including electronic communications, by telephone, or by the**
11 **posting of a site or message that is accessible via computer and is reasonably likely to cause**
12 **the targeted person to reasonably fear for his or her safety if made aware of the contact of**

13 **the site or message;**

14 (3) "Harasses", to engage in a course of conduct directed at a specific person that serves
15 no legitimate purpose, that would cause a reasonable person to suffer substantial emotional
16 distress, and that actually causes substantial emotional distress to that person.

17 2. Any person who purposely and repeatedly harasses or follows with the intent of
18 harassing another person commits the crime of stalking.

19 3. Any person who purposely and repeatedly harasses or follows with the intent of
20 harassing or harasses another person, and makes a credible threat with the intent to place that
21 person in reasonable fear of death or serious physical injury, commits the crime of aggravated
22 stalking.

23 4. The crime of stalking shall be a class A misdemeanor for the first offense. A second
24 or subsequent offense within five years of a previous finding or plea of guilt against any victim
25 shall be a class D felony.

26 5. The crime of aggravated stalking shall be a class D felony for the first offense. A
27 second or subsequent offense within five years of a previous finding or plea of guilt against any
28 victim shall be a class C felony.

29 6. Any law enforcement officer may arrest, without a warrant, any person he or she has
30 probable cause to believe has violated the provisions of this section.

569.070. 1. A person commits the crime of causing catastrophe if [he] **such person:**

2 (1) Knowingly causes a catastrophe by explosion, fire, flood, collapse of a building,
3 release of poison, radioactive material, bacteria, virus or other dangerous and difficult to confine
4 force or substance; **or**

5 (2) **Knowingly causes a catastrophe by modifying, destroying, damaging or**
6 **disabling any computer network or program; or**

7 (3) **Knowingly causes a catastrophe by initiating a computer virus.**

8 2. "Catastrophe" means death or serious physical injury to [ten] **five** or more people or
9 substantial damage to five or more buildings or inhabitable structures or substantial damage to
10 a **private or public utility**, vital public facility **or public service** which seriously impairs its
11 usefulness or operation.

12 3. Causing catastrophe is a class A felony.

578.600. As used in sections 578.600 to 578.610, "technology crime" means any
2 **crime that involves, or the commission of which has been furthered by, any component,**
3 **device, equipment, system or network that, alone or in conjunction with any other**
4 **component, device, equipment, system or network, is designed or has the capability to:**

5 (a) **Be programmed; or**

6 (b) **Generate, process, store, retrieve, convey, emit, transmit, receive, relay, record**

7 or reproduce any data, information, image, program, signal or sound in a technological
8 format, including, without limitation, a format that involves analog, digital, electronic,
9 electromagnetic, or magnetic or optical technology.

578.605. 1. The attorney general shall have the authority to conduct investigations
2 of technological crimes. The attorney general may use all such powers provided by law in
3 order to conduct such investigations.

4 2. Upon completing an investigation of a technological crime where the attorney
5 general does not have concurrent original jurisdiction to commence a criminal action to
6 prosecute the offense, the attorney general shall provide the information obtained during
7 the investigation to the appropriate prosecuting attorney.

8 3. Within thirty days after the prosecuting attorney's receipt of information
9 pursuant to subsection 2 of this section, the prosecuting attorney shall notify the attorney
10 general whether or not the prosecuting attorney intends to commence a prosecution.

578.610. In the course of a criminal investigation of a technological crime, the
2 attorney general may request the circuit judge of any county in which the suspected offense
3 could be prosecuted to issue a subpoena to any witness who may have information for the
4 purpose of oral examination under oath and to require the production of books, papers,
5 records or other material of any evidentiary nature at such time and place as is required
6 under the subpoena.