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A State Chapter of
The Association of Family and Conciliation Courts

Don't sneak around in "my space":
How accessing another's electronic account could land your
client in jail.

Boone County Courthouse, Columbia MO 65201

October 16, 2012; 11:30-1:00, presentation starting at noon.

1.2 hours CLE, .5 hours ethics

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Definitions.

455.010. As used in this chapter, unless the context clearly indicates otherwise, the following terms shall mean:

- (1) "Abuse" includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner:
 - (a) "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;
 - (b) "Battery", purposely or knowingly causing physical harm to another with or without a deadly weapon;
 - (c) "Coercion", compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;
 - (d) "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to:
 - a. Following another about in a public place or places;
 - b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;
 - (e) "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress;
 - (f) "Unlawful imprisonment", holding, confining, detaining or abducting another person against that person's will;
- (2) "Adult", any person seventeen years of age or older or otherwise emancipated;
- (3) "Child", any person under seventeen years of age unless otherwise emancipated;
- (4) "Court", the circuit or associate circuit judge or a family court commissioner;
- (5) "Domestic violence", abuse or stalking, as both terms are defined in this section;
- (6) "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;
- (7) "Family" or "household member", spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person

who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;

(8) "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

(9) "Order of protection", either an ex parte order of protection or a full order of protection;

(10) "Pending", exists or for which a hearing date has been set;

(11) "Petitioner", a family or household member who has been a victim of domestic violence, or any person who has been the victim of stalking, or a person filing on behalf of a child pursuant to section 455.503 who has filed a verified petition pursuant to the provisions of section 455.020 or section 455.505;

(12) "Respondent", the family or household member alleged to have committed an act of domestic violence, or person alleged to have committed an act of stalking, against whom a verified petition has been filed or a person served on behalf of a child pursuant to section 455.503;

(13) "Stalking" is when any person purposely and repeatedly engages in an unwanted course of conduct that causes alarm to another person when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:

(a) "Alarm" means to cause fear of danger of physical harm;

(b) "Course of conduct" means a pattern of conduct composed of repeated acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact; and

(c) "Repeated" means two or more incidents evidencing a continuity of purpose.

(L. 1980 S.B. 524 § 1, A.L. 1986 S.B. 450, A.L. 1989 S.B. 420, A.L. 1993 H.B. 476 & 194, A.L. 1995 S.B. 174, A.L. 1996 H.B. 1619, A.L. 2000 H.B. 1677, et al., A.L. 2004 S.B. 1211, A.L. 2009 H.B. 481, A.L. 2011 S.B. 320)

Arrest for violation of order--penalties--good faith immunity for law enforcement officials.

455.085. 1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to abuse or assault, as defined in section 455.010, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer. When the officer declines to make arrest pursuant to this subsection, the officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and any other pertinent information. Any law enforcement officer subsequently called to the same address within a twelve-hour period, who shall find probable cause to believe the same offender has again committed a violation as stated in this subsection against the same or any other family or household member, shall arrest the offending party for this subsequent offense. The primary report of nonarrest in the preceding twelve-hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

2. When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, has committed an act of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

3. When an officer makes an arrest he is not required to arrest two parties involved in an assault when both parties claim to have been assaulted. The arresting officer shall attempt to identify and shall arrest the party he believes is the primary physical aggressor. The term "primary physical aggressor" is defined as the most significant, rather than the first, aggressor. The law enforcement officer shall consider any or all of the following in determining the primary physical aggressor:

- (1) The intent of the law to protect victims of domestic violence from continuing abuse;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury;
- (3) The history of domestic violence between the persons involved.

No law enforcement officer investigating an incident of family violence shall threaten the arrest of all parties for the purpose of discouraging requests or law enforcement intervention by any party. Where complaints are received from two or more opposing parties, the officer shall evaluate each complaint separately to determine whether he should seek a warrant for an arrest.

4. In an arrest in which a law enforcement officer acted in good faith reliance on this section, the arresting and assisting law enforcement officers and their employing entities and superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment or malicious prosecution.

5. When a person against whom an order of protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.

6. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.

7. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner, of an ex parte order of protection of which the respondent has notice, shall be a class A misdemeanor unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict.

8. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner, of a full order of protection shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict. For the purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection if the law enforcement officer responding to a call of a reported incident of abuse or violation of an order of protection presented a copy of the order of protection to the respondent.

9. Good faith attempts to effect a reconciliation of a marriage shall not be deemed tampering with a witness or victim tampering under section 575.270.

10. Nothing in this section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth herein.

(L. 1980 S.B. 524 § 16, A.L. 1986 S.B. 450, A.L. 1989 S.B. 420, A.L. 1993 H.B. 476 & 194, A.L. 2000 H.B. 1677, et al., A.L. 2011 S.B. 320)

Definitions (Preliminary Provisions (Criminal Code))

556.063. In all criminal statutes, unless the context requires a different definition, the following terms 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) "Computer", the box that houses the central* processing unit (cpu), along with any 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 other hardware stored or housed internally. Thus, computer refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a computer system including both software applications and data;
- (3) "Computer equipment", computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network;
- (4) "Computer hardware", all equipment which can collect, analyze, create, display, 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 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, 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 connected together to a central computer server via cable or modem**; peripheral input or output devices, such as keyboards, printers, scanners, plotters, video display monitors and optical readers; and related communication devices, such as modems, cables and connections, recording equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers, programmable telephone dialing or signaling devices and electronic tone-generating devices; as well as any devices, mechanisms or parts that can be used to restrict access to computer hardware, such as physical keys and locks;
- (5) "Computer network", a complex consisting of two or more interconnected computers or computer systems;
- (6) "Computer program", a set of instructions, statements, or related data that directs or is intended to direct a computer to perform certain functions;
- (7) "Computer software", digital information which can be interpreted by a computer and any of its related components to direct the way they work. Software is stored in electronic, magnetic, optical or other digital form. It commonly includes programs to run operating systems and*** applications, such as word processing, graphic, or spreadsheet programs, utilities, compilers, interpreters and communications programs;

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

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

(10) "Damage", any alteration, deletion, or destruction of any part of a computer system or network;

(11) "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;

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

(13) "Property", anything of value as defined in subdivision (10) of section 570.010 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value;

(14) "Services", the 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.

(L. 2000 S.B. 757 & 602)

*Word "cental" appears in original rolls.

**Word "mode" appears in original rolls.

***Word "and" does not appear in original rolls.

Harassment.

565.090. 1. A person commits the crime of harassment if he or she:

- (1) Knowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person; or
- (2) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or
- (3) Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication; or
- (4) Knowingly communicates with another person who is, or who purports to be, seventeen years of age or younger and in so doing and without good cause recklessly frightens, intimidates, or causes emotional distress to such other person; or
- (5) Knowingly makes repeated unwanted communication to another person; or
- (6) Without good cause engages in any other act with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

2. Harassment is a class A misdemeanor unless:

- (1) Committed by a person twenty-one years of age or older against a person seventeen years of age or younger; or
- (2) The person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this subsection.

In such cases, harassment shall be a class D felony.

3. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

(L. 1977 S.B. 60, A.L. 2008 S.B. 818 & 795)

(2012) Subdivision (5) of subsection 1 making it a crime to knowingly make repeated unwanted communication to another person is unconstitutionally overbroad. *State v. Vaughn*, 366 S.W.3d 513 (Mo.banc).

Crime of stalking--definitions--penalties.

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

(1) "Course of conduct", a pattern of conduct composed of two or more acts, which may include communication by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct. Such constitutionally protected activity includes picketing or other organized protests;

(2) "Credible threat", a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, or the safety of his or her family, or household members or domestic animals or livestock as defined in section 276.606 kept at such person's residence or on such person's property. The threat must be against the life of, or a threat to cause physical injury to, or the kidnapping of, the person, the person's family, or the person's household members or domestic animals or livestock as defined in section 276.606 kept at such person's residence or on such person's property;

(3) "Harasses", to engage in a course of conduct directed at a specific person that serves no legitimate purpose, that would cause a reasonable person under the circumstances to be frightened, intimidated, or emotionally distressed.

2. A person commits the crime of stalking if he or she purposely, through his or her course of conduct, harasses or follows with the intent of harassing another person.

3. A person commits the crime of aggravated stalking if he or she purposely, through his or her course of conduct, harasses or follows with the intent of harassing another person, and:

(1) Makes a credible threat; or

(2) At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or

(3) At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or

(4) At any time during the course of conduct, the other person is seventeen years of age or younger and the person harassing the other person is twenty-one years of age or older; or

(5) He or she has previously pleaded guilty to or been found guilty of domestic assault, violation of an order of protection, or any other crime where the other person was the victim.

4. The crime of stalking shall be a class A misdemeanor unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, in which case stalking shall be a class D felony.

5. The crime of aggravated stalking shall be a class D felony unless the person has previously pleaded guilty to or been found guilty of a violation of this section, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be chargeable or indictable as a violation of any offense listed in this section, aggravated stalking shall be a class C felony.

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

7. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

(L. 1993 H.B. 476 & 194 § 1, A.L. 2002 S.B. 969, et al., A.L. 2008 S.B. 818 & 795)

Definitions (Offenses against the person).

565.250. As used in sections 565.250 to 565.257, the following terms mean:

- (1) "Full or partial nudity", the showing of all or any part of the human genitals or pubic area or buttock, or any part of the nipple of the breast of any female person, with less than a fully opaque covering;
- (2) "Photographs" or "films", the making of any photograph, motion picture film, videotape, or any other recording or transmission of the image of a person;
- (3) "Place where a person would have a reasonable expectation of privacy", any place where a reasonable person would believe that a person could disrobe in privacy, without being concerned that the person's undressing was being viewed, photographed or filmed by another;
- (4) "Prior invasion of privacy offender", a person who previously has pleaded or been found guilty of the crime of invasion of privacy;
- (5) "Same course of conduct", more than one person has been filmed in full or partial nudity under the same or similar circumstances pursuant to one scheme or course of conduct, whether at the same or different times;
- (6) "Views", the looking upon of another person, with the unaided eye or with any device designed or intended to improve visual acuity, for the purpose of arousing or gratifying the sexual desire of any person.

(L. 1995 H.B. 160 § 1 subsec. 1, A.L. 1997 H.B. 300)

Invasion of privacy, first degree, penalty.

565.252. 1. A person commits the crime of invasion of privacy in the first degree if such person:

- (1) Knowingly photographs or films another person, without the person's knowledge and consent, while the person being photographed or filmed is in a state of full or partial nudity and is in a place where one would have a reasonable expectation of privacy, and the person subsequently distributes the photograph or film to another or transmits the image contained in the photograph or film in a manner that allows access to that image via a computer; or
- (2) Knowingly disseminates or permits the dissemination by any means, to another person, of a videotape, photograph, or film obtained in violation of subdivision (1) of this subsection or in violation of section 565.253.

2. Invasion of privacy in the first degree is a class D felony.

(L. 2002 S.B. 969, et al.)

Crime of invasion of privacy, second degree, penalties.

565.253. 1. A person commits the crime of invasion of privacy in the second degree if:

(1) Such person knowingly views, photographs or films another person, without that person's knowledge and consent, while the person being viewed, photographed or filmed is in a state of full or partial nudity and is in a place where one would have a reasonable expectation of privacy; or

(2) Such person knowingly uses a concealed camcorder or photographic camera of any type to secretly videotape, photograph, or record by electronic means another person under or through the clothing worn by that other person for the purpose of viewing the body of or the undergarments worn by that other person without that person's consent.

2. Invasion of privacy in the second degree pursuant to subdivision (1) of subsection 1 of this section is a class A misdemeanor; unless more than one person is viewed, photographed or filmed in full or partial nudity in violation of sections 565.250 to 565.257 during the same course of conduct, in which case invasion of privacy is a class D felony; and unless committed by a person who has previously pled guilty to or been found guilty of invasion of privacy, in which case invasion of privacy is a class D felony. Invasion of privacy in the second degree pursuant to subdivision (2) of subsection 1 of this section is a class A misdemeanor; unless more than one person is secretly videotaped, photographed or recorded in violation of sections 565.250 to 565.257 during the same course of conduct, in which case invasion of privacy is a class D felony; and unless committed by a person who has previously pled guilty to or been found guilty of invasion of privacy, in which case invasion of privacy is a class C felony. Prior pleas or findings of guilt shall be pled and proven in the same manner required by the provisions of section 558.021.

(L. 1995 H.B. 160 § 1 subsecs. 2, 3, A.L. 2002 S.B. 969, et al.)

Tampering with computer data, penalties.

569.095. 1. A person commits the crime of tampering with computer data if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

- (1) Modifies or destroys data or programs residing or existing internal to a computer, computer system, or computer network; or
- (2) Modifies or destroys data or programs or supporting documentation residing or existing external to a computer, computer system, or computer network; or
- (3) Discloses or takes data, programs, or supporting documentation, residing or existing internal or external to a computer, computer system, or computer network; or
- (4) Discloses or takes a password, identifying code, personal identification number, or other confidential information about a computer system or network that is intended to or does control access to the computer system or network;
- (5) Accesses a computer, a computer system, or a computer network, and intentionally examines information about another person;
- (6) Receives, retains, uses, or discloses any data he knows or believes was obtained in violation of this subsection.

2. Tampering with computer data is a class A misdemeanor, unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is five hundred dollars or more, in which case tampering with computer data is a class D felony.

(L. 1982 H.B. 1454, et al. § 2, A.L. 1987 H.B. 208, A.L. 2002 H.B. 1888)

CROSS REFERENCES:

Civil action for tampering with computer data, expenses, attorney fees, 537.525

Definitions for criminal statutes for computer crimes unless context requires a different definition, 556.063

Tampering with computer equipment, penalties.

569.097. 1. A person commits the crime of tampering with computer equipment if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Modifies, destroys, damages, or takes equipment or data storage devices used or intended to be used in a computer, computer system, or computer network; or

(2) Modifies, destroys, damages, or takes any computer, computer system, or computer network.

2. Tampering with computer equipment is a class A misdemeanor, unless:

(1) The offense is committed for the purpose of executing any scheme or artifice to defraud or obtain any property, the value of which is five hundred dollars or more, in which case it is a class D felony; or

(2) The damage to such computer equipment or to the computer, computer system, or computer network is five hundred dollars or more but less than one thousand dollars, in which case it is a class D felony; or

(3) The damage to such computer equipment or to the computer, computer system, or computer network is one thousand dollars or greater, in which case it is a class C felony.

(L. 1982 H.B. 1454, et al. § 3, A.L. 1987 H.B. 208, A.L. 2002 H.B. 1888)

CROSS REFERENCES: Civil action for tampering with computer equipment, expenses and attorney fees, 537.525

Definitions for criminal statutes for computer crimes unless context requires a different definition, 556.063

Tampering with computer users, penalties.

569.099. 1. A person commits the crime of tampering with computer users if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Accesses or causes to be accessed any computer, computer system, or computer network; or

(2) Denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or in part, is owned by, under contract to, or operated for, or on behalf of, or in conjunction with another.

2. The offense of tampering with computer users is a class A misdemeanor unless the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is five hundred dollars or more, in which case tampering with computer users is a class D felony.

(L. 1982 H.B. 1454, et al. § 4, A.L. 1987 H.B. 208, A.L. 2002 H.B. 1888)

CROSS REFERENCES: Civil action for tampering with computer users, expenses and attorney fees, 537.525

Definitions for criminal statutes for computer crimes unless context requires a different definition, 556.063

Joint Committee on Legislative Research

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