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## NOTE

# Schoolyard Felons: Missouri's New Criminal Code and Its Impact on Schools

*Michele L. Moyer\**

### I. INTRODUCTION

On April 24, 2014, Missouri lawmakers sent former Governor Jay Nixon the first comprehensive rewrite in decades of the state's criminal laws.<sup>1</sup> The substantial revisions to Missouri's criminal code finally took effect on January 1, 2017,<sup>2</sup> "after years of vetting, 30 public hearings . . . and a two-year waiting period to work out kinks before implementation."<sup>3</sup>

The most significant changes dealt with penalty provisions, such as "tougher sentences for drunken drivers and the elimination of jail time for first-time [drug] offenders convicted of possessing 10 grams or less of marijuana."<sup>4</sup> Other pivotal modifications cracked down on crimes against children by "adding incest as an aggravating factor in child sex abuse cases and increasing the number of felony child molestation charges."<sup>5</sup> Additionally, there were a few revisions that could have a noteworthy impact on Missouri's school districts.<sup>6</sup> One such change involved the enactment of a new statutory

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1. *Missouri Lawmakers Pass Criminal Code Overhaul*, SPRINGFIELD NEWS-LEADER (Apr. 24, 2014, 2:17 PM), <http://www.news-leader.com/story/news/politics/2014/04/24/missouri-lawmakers-pass-criminal-code-overhaul/8107207/>.

2. EDCOUNSEL, MISSOURI'S NEW CRIMINAL CODE & THE IMPACT ON SCHOOLS 1 (2017), <http://www.edcounsel.law/wp-content/uploads/2017/02/2017-January-New-Criminal-Code.pdf>.

3. Celeste Bott, *Sweeping Changes to Missouri's Criminal Code Take Effect Sunday*, ST. LOUIS POST-DISPATCH (Jan. 1, 2017), [http://www.stltoday.com/news/local/crime-and-courts/sweeping-changes-to-missouri-s-criminal-code-take-effect-sunday/article\\_b802765c-b6d1-5806-a2dd-b9ba36f1eb60.html](http://www.stltoday.com/news/local/crime-and-courts/sweeping-changes-to-missouri-s-criminal-code-take-effect-sunday/article_b802765c-b6d1-5806-a2dd-b9ba36f1eb60.html).

4. *Id.*

5. *Id.*

6. EDCOUNSEL, *supra* note 2, at 1.

structure that implements a class of misdemeanors and felonies under state law.<sup>7</sup> By adding a Class D misdemeanor and a Class E felony, the legislature intended to develop a more evenly-graduated range of punishments for both misdemeanors and felony convictions or pleas.<sup>8</sup>

Although developed with the best of intentions, this change potentially impacts Missouri's students and has stirred controversy and unrest in school districts statewide. Namely, the new law categorizes third-degree assault and certain forms of harassment as Class E felonies.<sup>9</sup> This revision sparks apprehension because, if the victim suffers emotional distress<sup>10</sup> as a result of the harassment, the "perpetrator" could be charged with a felony.<sup>11</sup>

School districts' concerns are valid considering the law's loose definition of harassment could subject schoolchildren as young as five years old to harsh punishments for simply calling their classmates foul names.<sup>12</sup> Another fear under the new law is that students who get into fights could face felony charges.<sup>13</sup>

Following the legislation's enactment, school districts across the state began warning parents that the new levels of felony assault and harassment could likely subject students involved in rough-and-tumble grade-school altercations to felony charges.<sup>14</sup> School administrators cautioned students and their parents to seek proper resolution to problems with classmates rather than taking matters into their own hands.<sup>15</sup> Under the new law, a rash decision to fight on the playground could potentially have a detrimental impact on a student's future.<sup>16</sup> A simple scuffle could follow a child for the rest of his or her life if a prosecutor decided to charge the student under the new law.

The possibility that schoolchildren could be charged with felonies raises concerns among school leaders that the revised legislation might fuel the school-to-prison pipeline, "a disturbing national trend wherein children are

7. MO. COAL. AGAINST DOMESTIC & SEXUAL VIOLENCE, NEW 2014 MISSOURI LAW 2, <https://www.mocadsv.org/FileStream.aspx?FileID=146>.

8. *See id.*

9. Tanasia Kenney, *School Fights Could Expose Children as Young as 5 to Felony Charges, Thanks to New Missouri Law*, ATLANTA BLACK STAR (Dec. 27, 2016), <http://atlantablackstar.com/2016/12/27/school-fights-could-expose-children-as-young-as-5-to-felony-charges-thanks-to-new-missouri-law/>.

10. MO. REV. STAT. § 565.002(7) (Cum. Supp. 2017) defines emotional distress as "something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living."

11. Kenney, *supra* note 9.

12. *Id.*

13. *Id.*

14. *See id.*

15. *Id.*

16. *Id.*

funneled out of public schools and into the juvenile and criminal justice systems,”<sup>17</sup> which disproportionately impacts minority students.<sup>18</sup>

An examination of the federal Safe Schools Act of 1994, events leading to the passage of Missouri’s Safe Schools Act, the effect of zero tolerance policies<sup>19</sup> enacted by schools, and the state’s anti-bullying statute<sup>20</sup> provide insight into the concerns expressed about these criminal code revisions. The changes, although implemented to eliminate confusing and repetitive laws, have caused panic among school administrators statewide due to their potential to hyper-criminalize behaviors that should not be categorized as felonies.<sup>21</sup> These amendments to Missouri’s criminal code are likely to funnel once innocent children into the criminal justice system at an early age for simply fighting on the playground or calling a classmate inappropriate names.

## II. LEGAL BACKGROUND

Ideally, students wake each morning excited about spending the day in the classroom – perhaps continuing an adventure with Huck Finn, building a solar system for the science fair, or playing soccer at recess. Unfortunately, this is far from reality for many students. “Every school day thousands of America’s children find themselves threatened – in playground arguments that may escalate into fistfights, or confrontations with lethal weapons that may end in death or permanent injury. Many stay home rather than face the possibility of violence.”<sup>22</sup> Acts of violence disrupt the safe harbor students and teachers expect while tucked securely behind the schoolhouse gates. “School violence includes all behaviors that create an environment in which

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17. *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline> (last visited Feb. 5, 2018).

18. Kenney, *supra* note 9.

19. A zero tolerance policy generally “mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context.” RUSSELL SKIBA ET AL., ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 2 (Aug. 9, 2006), <https://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

20. See MO. REV. STAT. § 160.775 (Cum. Supp. 2017).

21. See Kenney, *supra* note 9. As discussed further in Part IV, *infra*, interactions such as minor disagreements on the playground generally characterize a normal childhood for most students. These behaviors should not be elevated to a level of severity such that they warrant punishments that will likely funnel the child into the criminal justice system at an early age, often a path from which he or she will find it difficult to stray.

22. Robert C. Cloud, *Federal, State, and Local Responses to Public School Violence*, 120 EDUC. L. REP. 877, 894 (1997) (quoting William J. Clinton, President of the U.S., Speech at the National Education Association’s Summit on Safe Schools at the Century Plaza Hotel and Towers (Apr. 8, 1995)).

students, teachers, and administrators feel fear or intimidation in addition to being victimized by physical assault, theft, or vandalism.”<sup>23</sup>

Disciplinary problems and violence in public schools are nothing new.<sup>24</sup> “School safety has been a concern of educators[,] [legislators,] and the general public for decades.”<sup>25</sup> In recent years, the perception of schools as dangerous places has grown.<sup>26</sup> Preventing school violence has been a national priority since the 1970s, when Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970.<sup>27</sup> Several government initiatives followed, including the federal Safe Schools Act – a grant program established to support local school efforts to reduce violence and promote safety.<sup>28</sup> Many state legislatures followed the federal government and passed their own safe schools acts.<sup>29</sup> In Missouri, the state’s legislature and governor enacted the Missouri Safe Schools Act in 1996 (“Missouri Act”), hoping to “send the message to every classroom and every school that [the state] is not going to tolerate violent and disruptive students.”<sup>30</sup>

After these laws were enacted, many schools implemented zero tolerance policies with the goal of creating safe learning environments.<sup>31</sup> Although the lack of a single definition of zero tolerance makes it difficult to estimate the effectiveness of these policies, they “appear to be relatively widespread in America’s schools.”<sup>32</sup> In zero tolerance disciplinary systems, “school administrators outline the expected or desired behaviors of all stu-

23. *Id.* at 877.

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.* at 879 (citing 18 U.S.C. §§ 801–971 (2012)). Title II of the 1970 Act became known as the Controlled Substances Act. *Id.* Under the Controlled Substances Act, it is a Federal crime “to sell drugs in or near a public or private elementary, secondary, vocational, or post-secondary school.” *Id.* This “schoolhouse” law makes “drug sales within 1000 feet of a campus [] punishable by up to double the prison sentence that would apply if the sale happened elsewhere.” *Id.* at 879–80. Repeat offenders suffer even longer sentences. *Id.* at 880. This law effectively deterred many drug dealers from peddling their supply at schools. *Id.* Selling drugs to children and teenagers regardless of time or place now qualifies as a federal crime. *Id.*

28. *Id.* at 881.

29. T. Nikki Eckland, *The Safe Schools Act: Legal and ADR Responses to Violence in Schools*, 31 URB. LAW. 309, 314 (1999).

30. Cathi M. Kraetzer, Law Summary, *Does the Missouri Safe Schools Act Pass the Test? Expelling Disruptive Students to Keep Missouri’s Schools Safe*, 67 MO. L. REV. 123, 124 (2002) (quoting Press Release, Office of the Governor, Carnahan Signs Safe Schools Legislation (June 14, 1996)).

31. *See* Catherine E. Johnson, *Disrupted Lives; Diverted Futures: Zero Tolerance Policies’ Impact on Students with Disabilities*, 40 NOVA L. REV. 425, 427–28 (2016).

32. SKIBA ET AL., *supra* note 19, at 2.

dents, along with the designated punishments for violating these rules.”<sup>33</sup> “The discipline is predetermined with no deviation from the designated punishment” and no “[c]onsideration . . . given [to a] . . . student’s unique circumstances.”<sup>34</sup> Abundant controversy surrounds the actual implementation of zero tolerance policies and practices.<sup>35</sup> For example, a ten-year-old girl in Florida suffered expulsion for possessing a weapon after school officials discovered a knife her mother placed in her lunchbox to cut an apple.<sup>36</sup> In another case, a school expelled a teenager for violating school rules by talking to his mother on a cell phone while at school – his mother was deployed in Iraq and they had not spoken in a month.<sup>37</sup>

Zero tolerance policies are viewed as a provocative approach to addressing school violence, especially because they have been expanded to address not only a wide range of violent behaviors but also non-violent acts, such as school disruption, truancy, and insubordination.<sup>38</sup> Further, there is an ongoing “debate regarding how to address [the epidemic of] bullying in schools, and how institutions have adopted zero-tolerance policies as a response.”<sup>39</sup>

In schools’ attempts to eliminate crime, teachers and administrators began to “push children out of the school system by placing them on out-of-school suspension, transferring them to alternative schools, expelling them, and/or having them arrested for minor offenses.”<sup>40</sup> This is the start of the school-to-prison pipeline, a distressing process through which many of the nation’s youths, “particularly males and students of color . . . receive an inadequate education and are then pushed out of public schools and into the criminal punishment system.”<sup>41</sup>

Children of color or children with disabilities unfortunately bear the brunt of these disciplinary actions “because of an overreliance on discriminatory punitive school discipline policies, [a] lack of resources and training within schools, and ignorance regarding disability behaviors.”<sup>42</sup> The escalat-

33. Johnson, *supra* note 32, at 427–28.

34. *Id.* at 428.

35. SKIBA ET AL., *supra* note 19, at 2.

36. *Id.* at 16.

37. *Id.* at 16–17.

38. Johnson, *supra* note 32, at 428.

39. MARVIN J. BERLOWITZ ET AL., BULLYING AND ZERO-TOLERANCE POLICIES: THE SCHOOL TO PRISON PIPELINE 6 (2015), [http://www.auburn.edu/outreach/opce/antibullying/documents/2015presentations/JetteKelli\\_School%20to%20Prison%20Pipeline%20Official.pdf](http://www.auburn.edu/outreach/opce/antibullying/documents/2015presentations/JetteKelli_School%20to%20Prison%20Pipeline%20Official.pdf).

40. Judith A.M. Scully, *Examining and Dismantling the School-to-Prison Pipeline: Strategies for a Better Future*, 68 ARK. L. REV. 959, 960 (2016).

41. *Id.* at 959.

42. AM. CIVIL LIBERTIES UNION, WRITTEN STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION FOR A HEARING ON “ENDING THE SCHOOL-TO-PRISON PIPELINE” 2 (Dec. 12, 2012), [https://www.aclu.org/files/assets/aclu\\_statement\\_for\\_sjc\\_subcomm\\_hearing\\_on\\_the\\_school\\_to\\_prison\\_pipeline\\_12\\_2012.pdf](https://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf).

ing “use of zero tolerance policies and other exclusionary practices, like suspensions, expulsions, and referrals to law enforcement, decrease academic achievement and increase the likelihood that students will end up in jail cells rather than in college classrooms.”<sup>43</sup>

Yet, “[t]he policies that laid the foundation for the school-to-prison pipeline were not implemented to have detrimental impacts on minority students.”<sup>44</sup> In fact, they actually started as well-intentioned attempts to increase educational standards and opportunities, especially for minority and disabled students.<sup>45</sup> But reports about school violence, bullying, and gangs in schools began to drown the positive goals of the reforms as they morphed into a “tough on crime” environment rather than the safe havens free from violence intended at the outset.<sup>46</sup> Thus, the achievement gap between minority and non-minority students steadily grows as the policies designed to aid disadvantaged students regrettably lead to substantial disruptions in their education.<sup>47</sup> This unfortunate result leads to the funneling of the most vulnerable individuals into a criminal justice system riddled with its own problems.<sup>48</sup>

#### A. Safe Schools Act of 1994

Pursuant to its spending power, Congress enacted the federal Safe Schools Act of 1994 (“the Act”),<sup>49</sup> “which offers grants to high-crime school districts that are willing to undertake various approaches to decrease[] . . . violence in schools.”<sup>50</sup> In fact, the federal government “grants up to \$3,000,000 over two years to local educational agencies demonstrating a high incidence of juvenile violent crime.”<sup>51</sup> The stated purpose of the Act is “to help local school systems achieve Goal Six<sup>52</sup> of the National Education Goals.”<sup>53</sup> Goal Six provides that “[b]y the year 2000, every school in the

43. *Id.*

44. Lisa A. Rich, “*Cerd-Ain* Reform: Dismantling the School-to-Prison Pipeline Through More Thorough Coordination of the Departments of Justice and Education,” 49 LOY. L.A. L. REV. 119, 144 (2016).

45. *Id.*

46. *Id.*

47. *Id.* at 144–45.

48. *Id.* at 145.

49. Safe Schools Act of 1994, 20 U.S.C. §§ 5961–5968 (2012); see generally Kraetzer, *supra* note 31, at 125 (providing the legal background of the Missouri Act).

50. Carl W. Chamberlin, *Johnny Can’t Read ‘Cause Jane’s Got a Gun: The Effects of Guns in Schools, and Options After Lopez*, 8 CORNELL J.L. & PUB. POL’Y 281, 285 (1999); accord 20 U.S.C. § 5962 (2012).

51. Chamberlin, *supra* note 51, at 341.

52. Goal Six was noted in the original statute. See 20 U.S.C. § 5961, n.1 (2012). But reference to Goal Seven was probably intended as the language is listed as the seventh goal in the statute. See 20 U.S.C. § 5812(7) (2012). Thus, some sources refer to this goal as “Goal Six” and others refer to it as “Goal Seven.”

53. 20 U.S.C. § 5961(b) (2012).

United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.”<sup>54</sup> While the panel tasked with developing the National Education Goals was terminated in 2002, the established objectives still remain relevant today.<sup>55</sup>

This Act<sup>56</sup> authorizes the Secretary of Education to use reserved funds to conduct activities such as research, program development, and data collection on a national level.<sup>57</sup> Eligible local school systems are also able to carry out projects and activities designed to achieve Goal Six through the use of grant money awarded by the Secretary of Education.<sup>58</sup> Educational agencies may use the funds:

to conduct studies assessing violence, develop strategies to combat that violence, train school personnel, conduct community education programs to promote safety and reduce school violence, teach students conflict resolution skills[,] . . . create “safe zones of passage” through increased law enforcement and neighborhood patrols, educate students and parents on the dangers of guns, counsel victims, purchase metal detectors, hire security personnel and reimburse local law enforcement personnel for participation in activities permitted under the statute.<sup>59</sup>

Before receiving a grant from the funds reserved under this Act, an educational agency must apply to the Secretary of Education.<sup>60</sup> To be eligible, an

54. 20 U.S.C. § 5812(7)(A) (2012).

55. See *National Education Goals Panel*, FED. REG., <https://www.federalregister.gov/agencies/national-education-goals-panel> (last visited Feb. 5, 2018).

56. 20 U.S.C. § 5966(a)(1) specifically states:

To carry out the purpose of this subchapter, the Secretary –  
 (A) is authorized to use funds reserved under section 5962(b)(2) of this title to –  
 (i) conduct national leadership activities such as research, program development and evaluation, data collection, public awareness activities, training and technical assistance, dissemination (through appropriate research entities assisted by the Department of Education) of information on successful projects, activities, and strategies developed pursuant to this subchapter . . . .

20 U.S.C. § 5966(a)(1) (2012).

57. See Eckland, *supra* note 30, at 311.

58. *Id.*; see also 20 U.S.C. § 5962(a)(1) (2012) (stating: “[f]rom funds appropriated pursuant to the authority of subsection (b)(1), the Secretary shall make competitive grants to eligible local educational agencies to enable such agencies to carry out projects and activities designed to achieve Goal Six of the National Education Goals by helping to ensure that all schools are safe and free of violence”).

59. Chamberlin, *supra* note 51, at 341; accord 20 U.S.C. § 5965(a) (2012).

60. 20 U.S.C. § 5964(a) (2012); Eckland, *supra* note 30, at 312.



agency must demonstrate that it serves an area with a high rate of homicides committed by youths; youths involved in the juvenile courts; expulsions and suspensions from school; or victimization of youths by abuse, crime, and violence.<sup>61</sup> The agency must also provide appropriate data evidencing “a serious problem with school crime, violence, and student discipline.”<sup>62</sup>

Preference goes to local schools with “strong community involvement in projects designed to reduce school violence.”<sup>63</sup> Agencies with an increased level of youth participation in organized projects and activities also receive priority.<sup>64</sup> The Secretary looks to the agency’s written policies dealing with school safety and student discipline.<sup>65</sup> This portion of the application demonstrates whether there is administrative fault for the high level of violence the applicants are experiencing.<sup>66</sup> The existence of the written set of policies focused on student discipline and school safety proves the agency is likely seeking the funds as a last resort.<sup>67</sup>

After receiving approval and funds, an agency must meet certain obligations to receive funds again for the following year.<sup>68</sup> The school must submit an extensive, long-term school safety plan to the Secretary of Education outlining how it will reduce and prevent school violence and solve discipline problems.<sup>69</sup> Schools are also encouraged to develop a contingency plan for dealing with emergency situations.<sup>70</sup> This fosters the development and assurance of an effective mechanism for handling school difficulties.<sup>71</sup>

Many state governments have mimicked the efforts of the federal government.<sup>72</sup> In furtherance of Congress’s efforts to reduce violence and promote safety in schools nationwide, several state legislatures secured students’ constitutional right to a healthy learning environment by enacting their own “safe schools” acts.<sup>73</sup> Most state safe schools “acts provide local schools and districts with money to help create safer school environments.”<sup>74</sup>

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61. 20 U.S.C. § 5963(a)(1) (2012); Eckland, *supra* note 30, at 312.

62. Eckland, *supra* note 30, at 312; *accord* § 5963(a)(2).

63. Eckland, *supra* note 30, at 312; *accord* § 5963(b)(1).

64. § 5963(b)(2); Eckland, *supra* note 30, at 312.

65. § 5964(a)(2); Eckland, *supra* note 30, at 313.

66. Eckland, *supra* note 30, at 313.

67. *Id.*

68. § 5964(b); Eckland, *supra* note 30, at 313–14.

69. § 5964(b); Eckland, *supra* note 30, at 314.

70. Eckland, *supra* note 30, at 314.

71. *Id.*

72. *Id.*

73. See Kraetzer, *supra* note 31, at 125–26 & n.23 (citing ALA. CODE § 16-1-24.2 (2017); ARK. CODE ANN. § 6-15-1301 (2017); CAL. EDUC. CODE § 32261 (West 2017); CONN. GEN. STAT. ANN. § 46b-133e (West 2017); FLA. STAT. ANN. § 229.8347 (West 2002) (repealed 2003); GA. CODE ANN. § 20-2-1185 (2017); MICH. COMP. LAWS ANN. § 380.1308 (West 2017)).

74. Eckland, *supra* note 30, at 314.

### B. Missouri's Safe Schools Act

While some state legislatures perhaps established their safe schools acts to receive federal grant money,<sup>75</sup> Missouri's motivation came as the result of a particularly violent attack in one of its schools.<sup>76</sup> On June 14, 1996, Governor Mel Carnahan signed the Missouri Safe Schools Act into law "partly in response to the rape and murder of a St. Louis student in her high school by another student."<sup>77</sup>

On January 24, 1995, McClellan North High School freshman Christine Smetzer left her fifth-hour class around 1:35 p.m. and failed to return to that class or attend the next one.<sup>78</sup> At the end of the school day, a fellow student found her battered body wedged between the wall and toilet of a restroom stall.<sup>79</sup> It was later determined that Christine had been severely beaten and raped and that her assailant had held her head in the toilet while flushing repeatedly.<sup>80</sup>

In February 1998, a St. Louis County Circuit Court convicted a fifteen-year-old fellow student for the beating, rape, and drowning of Christine Smetzer.<sup>81</sup> Her attacker, "who had 'behavioral problems,' had transferred to Christine's high school the day before the murder [after] his suspension from another school in the district."<sup>82</sup> In fact, the attacker's permanent school record showed he had been suspended from his previous school for being caught in the girls' restroom.<sup>83</sup> Teachers and administrators claimed they never knew that the accused had a juvenile record or that he had been suspended from his former high school.<sup>84</sup>

Under the provisions of the Missouri Act, as amended today, "discipline records and information would have followed Christine's murderer to his

75. See Alexander Volokh, *A Brief Guide to School-Violence Prevention*, 2 J.L. & FAM. STUD. 99, 103 (2000) ("Much school-violence legislation consists of targeting grant money to politically favored programs, thereby encouraging these activities at the expense of other alternatives.").

76. See Kraetzer, *supra* note 31, at 124.

77. Susan Anderson, *The Safe Schools Act Protects Missouri Students*, 55 J. MO. B. 264, 264 (1999); accord Phyllis Brasch Librach, *Community Is Still Haunted by the Brutal School Crime: Laws for Transfer Students Were Changed After the Killing*, ST. LOUIS POST-DISPATCH, Feb. 15, 1998, at A1 (recounting Christine Smetzer's murder).

78. Joe Holleman, *Youth Arrested in School Murder*, ST. LOUIS POST-DISPATCH, January 26, 1995, at A6.

79. *Id.*

80. *Id.*

81. Kraetzer, *supra* note 31, at 126.

82. *Id.* at 126–27.

83. William C. Lhotka, *Trial Set in Slaying at School; Judge Finds Defendant Mentally Competent*, ST. LOUIS POST-DISPATCH, July 9, 1997, at B1.

84. Librach, *supra* note 78.

new school.”<sup>85</sup> Therefore, school staff with a “need to know” would have received warning of his propensity for violence.<sup>86</sup>

The Missouri Safe Schools Act<sup>87</sup> standardized the response of school districts across the state to acts of violence committed by students.<sup>88</sup> One key feature is increased information sharing between the state actors involved in education.<sup>89</sup> “[L]ike the . . . federal safe schools legislation passed two years before, the [Missouri Act] impacted . . . both schools and courts [] with the goal of bringing them closer together.”<sup>90</sup> In fact, Missouri’s Act has been noted as among the most expansive in the country due to its interconnected web of protective features linking juvenile courts and school administrators.<sup>91</sup> For example, “the [Missouri] Act mandates disclosure to school officials if and when a student is charged in juvenile court with any one of several crimes, ranging from first degree murder to property damage.”<sup>92</sup> Regardless of whether the alleged offense occurs on school grounds or not, the juvenile court must report this information to school officials within five days of the petition’s filing.<sup>93</sup> Even before a student is found innocent or guilty, the school is provided “a complete description of the conduct the pupil is alleged to have committed and the dates the conduct occurred.”<sup>94</sup> However, irrespective of whether the school expels or suspends the student following the prohibited conduct, the state and the student’s parents maintain a responsibility to educate the student.<sup>95</sup> Pursuant to the statute as enacted,<sup>96</sup> the Missouri State Board of Education established a grant program wherein schools receive financial assistance to aid in providing alternative education programs for those students removed from regular classroom activities.<sup>97</sup>

The Missouri Safe Schools Act requires that all school districts create a written policy on student discipline to be distributed to students and parents or guardians at the beginning of each school year.<sup>98</sup> The policy must require

85. Anderson, *supra* note 78, at 264.

86. *Id.*

87. MO. REV. STAT. § 160.261 (Cum. Supp. 2017).

88. *Missouri’s Safe Schools Act: A Well-Meaning Statute Without an Enforcement Mechanism*, MO. NEA (Aug. 22, 2013), [https://www.mnea.org/Missouri/News/Missouris\\_Safe\\_Schools\\_Act\\_A\\_WellMeaning\\_Statute\\_W\\_40.aspx](https://www.mnea.org/Missouri/News/Missouris_Safe_Schools_Act_A_WellMeaning_Statute_W_40.aspx) [hereinafter *Missouri’s Safe Schools Act*].

89. Mae C. Quinn, *The Other “Missouri Model”*: Systemic Juvenile Injustice in the Show-Me State, 78 MO. L. REV. 1193, 1208–09 (2013).

90. *Id.* at 1209.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 1209–10 (quoting MO. REV. STAT. § 167.115(2) (Cum. Supp. 2017)).

95. Kraetzer, *supra* note 31, at 128.

96. *See* MO. REV. STAT. § 167.335 (2016).

97. Kraetzer, *supra* note 31, at 128.

98. MO. REV. STAT. § 160.261(1) (Cum. Supp. 2017); *see Missouri’s Safe Schools Act*, *supra* note 89.

that when a student commits an “act of school violence,”<sup>99</sup> all teachers at the student’s attendance center and all school employees with a “need to know”<sup>100</sup> be notified.<sup>101</sup> The statutory definition of “act of violence” involves the intent to “do serious physical injury,” which, according to Missouri Revised Statute section 568.060(7), includes an 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.”<sup>102</sup> Accordingly, “not all physical altercations will fall under the required policy definition even if [they] result in bumps, bruises, or . . . scrapes and cuts.”<sup>103</sup> The intended injury would need to be “serious,” such as a broken bone or concussion, in order to have a lasting physical effect on the student.<sup>104</sup>

“At a minimum the policy shall require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any felony or act that if committed by an adult would be a felony.”<sup>105</sup> The following crimes are included if committed on school property, including while on the school bus or while participating in school activities:<sup>106</sup> first-degree assault,<sup>107</sup> second-degree assault,<sup>108</sup> and harassment.<sup>109</sup> Although this is not a change to the policy, the levels of offenses have changed as a result of the criminal code revisions.<sup>110</sup> A lawyer with the Missouri School Boards’ Association noted that these crimes were not “written with children in mind” but “[t]he mandatory reporting laws have forced school districts to apply this to children, which is going to be really hard.”<sup>111</sup> The policy must also “re-

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99. § 160.261(2) (“[T]he phrase ‘act of school violence’ or ‘violent behavior’ means the exertion of physical force by a student with the intent to do serious physical injury as defined in section 556.061 to another person while on school property . . . .”)

100. *Id.* (“For the purposes of this chapter or chapter 167, ‘need to know’ is defined as school personnel who are directly responsible for the student’s education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties.”)

101. *Id.*

102. MO. REV. STAT. § 568.060(7) (Cum. Supp. 2017); *see also Missouri’s Safe Schools Act*, *supra* note 89.

103. *Missouri’s Safe Schools Act*, *supra* note 89.

104. *Id.*

105. *See* MO. PARENTS ACT, MISSOURI’S SAFE SCHOOL’S ACT (2014), <http://missouriparentsact.org/wp-content/uploads/2015/11/SafeSchoolsAct-FS-7.2014.pdf>; *accord* § 160.261(2).

106. § 160.261(2).

107. MO. REV. STAT. § 565.050 (Cum. Supp. 2017).

108. MO. REV. STAT. § 565.052 (Cum. Supp. 2017).

109. MO. REV. STAT. § 565.090 (Cum. Supp. 2017).

110. *See, e.g.*, § 565.090.

111. Alejandra Matos, *In Missouri, Students Who Bully Could Be Charged with a Felony*, *WA. POST* (Jan. 6, 2017), <https://www.washingtonpost.com/local/education/in-missouri-students-who-bully->

quire that any portion of a student’s [individualized program] that is related to [proven] or potentially violent behavior shall be provided to any teacher or other school district employee who [is] directly responsible for the student’s education or who otherwise interact[s] with the student.”<sup>112</sup>

As soon as reasonably practical, a juvenile officer or other appropriate law enforcement authority must notify the superintendent or the designee upon the filing of a petition alleging a student has committed one of the listed acts.<sup>113</sup> Finally, the discipline policy for a student who brings a weapon to school must provide for either expulsion or suspension for at least one year.<sup>114</sup> The term “school” includes, but is not limited to, “a school playground, parking lot, school bus, [and any] school activity on or off school property.”<sup>115</sup>

### C. Zero Tolerance Policies

School discipline policies that create mandatory punishments for specific offenses are often referred to as “zero tolerance policies.”<sup>116</sup> Under these policies, schools refuse to make exceptions or substitute punishments under any circumstances.<sup>117</sup> As a result, schools ultimately give severe punishments for any breach of a rule, regardless of how minor the offense or the circumstances surrounding it.<sup>118</sup> The recent changes to Missouri’s criminal code seem to enact a zero tolerance policy that schools are required to follow statewide, irrespective of their desire to institute such increased punitive measures.

Zero tolerance policies started at the federal level “with the passage of the Gun-Free Schools Act of 1994, which required states to enact laws mandating that schools expel any student found on school property with a gun.”<sup>119</sup> Gradually, schools started adding infractions unrelated to weapons, such as possession of alcohol or drugs and truancy.<sup>120</sup> In addition to maintaining a safe school climate, “zero tolerance policies assume that removing students who engage in disruptive behavior will deter others from disruption[] and . . .

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could-be-charged-with-a-felony/2017/01/06/0e71f17e-d1e2-11e6-945a-76f69a399dd5\_story.html?utm\_term=.c05c981d8464.

112. MO. PARENTS ACT, *supra* note 106, at 1–2; *accord* § 160.261(2).

113. MO. PARENTS ACT, *supra* note 106, at 2.

114. § 160.261(5); MO. PARENTS ACT, *supra* note 106, at 2.

115. MO. PARENTS ACT, *supra* note 106, at 2; *accord* § 160.261(5).

116. S. David Mitchell, *Zero Tolerance Policies: Criminalizing Childhood and Disenfranchising the Next Generation of Citizens*, 92 WASH. U. L. REV. 271, 277 (2014).

117. *Id.*

118. *Id.*

119. *See Stop Tolerating Zero Tolerance*, EDUC. WORLD, [http://www.educationworld.com/a\\_issues/issues303.shtml](http://www.educationworld.com/a_issues/issues303.shtml) (last visited Feb. 6, 2018).

120. *See id.*

create an improved climate for those students who remain.”<sup>121</sup> Missouri also provides zero tolerance for weapons at schools.<sup>122</sup> As noted above, the school’s discipline policy must dictate that a student who has brought a weapon to school be suspended for at least one year or expelled,<sup>123</sup> likely as a result of the Gun Free Schools Act of 1994, which required states to enact zero tolerance laws for weapons at school.<sup>124</sup> A version of this act currently remains in effect.<sup>125</sup>

#### *D. Missouri’s Anti-bullying Statute*

Every school district in Missouri is statutorily required to have an anti-bullying policy;<sup>126</sup> however, student bullies could now face criminal charges under the new harassment law that considers the infliction of “emotional distress” a felony.<sup>127</sup> Bullying is defined as:

[I]ntimidation, unwanted aggressive behavior, or harassment that is repetitive or is substantially likely to be repeated and causes a reasonable student to fear for his or her physical safety or property; substantially interferes with the educational performance, opportunities, or benefits of any student without exception; or substantially disrupts the orderly operation of the school.<sup>128</sup>

Acts that may be considered bullying include physical actions such as gestures or oral remarks, cyberbullying, electronic or written communication, and any threat of retaliation for reporting such acts.<sup>129</sup> The statute prohibits bullying on school property, at any school function, and on the school bus.<sup>130</sup> Cyberbullying, a new concept to a lot of school administrators, “means bullying . . . through the transmission of a communication including, but not limited to, a message, text, sound, or image by means of an electronic device including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.”<sup>131</sup>

Each district’s anti-bullying policy must be founded on the assumption that a safe learning environment is necessary for all students.<sup>132</sup> Policies are required to treat all students equally and shall not contain specific lists of

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121. SKIBA ET AL., *supra* note 19, at 2.

122. *See* MO. REV. STAT. § 160.261(5) (Cum. Supp. 2017).

123. *Id.*

124. *See* Mitchell, *supra* note 118, at 278.

125. *See* 20 U.S.C.A. § 7961 (West 2018).

126. MO. REV. STAT. § 160.775(1) (Cum. Supp. 2017).

127. Matos, *supra* note 112.

128. § 160.775(2).

129. *Id.*

130. *Id.*

131. *Id.*

132. § 160.775(3).

protected students who are to receive special treatment.<sup>133</sup> However, policies are permitted to include age-appropriate differences for schools based on the grade levels.<sup>134</sup> Each policy must also contain a statement of the consequences of bullying.<sup>135</sup>

Each district must include its anti-bullying policy in the student handbook.<sup>136</sup> The following minimum components are required in each policy: (1) a statement prohibiting bullying; (2) a statement requiring district employees to report any instance of bullying of which the employee has firsthand knowledge; (3) a procedure for reporting an act of bullying; (4) a procedure for prompt investigation of reported violations and complaints; (5) a statement that prohibits reprisal or retaliation against any person who reports an act of bullying; (6) a statement of how the policy is to be publicized; and (7) a process for discussing the district's anti-bullying policy with students.<sup>137</sup>

### *E. New Criminal Code Fuels School-to-Prison Pipeline*

Given the addition of criminal harassment in the first degree<sup>138</sup> to schools' reporting requirements, plus the low threshold for emotional distress, school personnel will likely be required to report more acts of student-on-student misconduct to law enforcement.<sup>139</sup> This does not necessarily "mean all children who violate the law will be charged as adults, but it can trigger a response from the juvenile justice system."<sup>140</sup> Educators statewide "worry that the new definition of harassment as a crime" and the change to the felony assault scheme "could draw police and the courts into situations that are commonly considered school disciplinary matters."<sup>141</sup> As a result, students ultimately could face more "serious legal repercussions, and even jail time,

133. *Id.*

134. *Id.*

135. *Id.*

136. § 160.775(4).

137. § 160.775(4)(1)–(7).

138. MO. REV. STAT. § 565.090 defines harassment in the first degree as:

1. A person commits the offense of harassment in the first degree if he or she, without good cause, engages in any act with the purpose to cause emotional distress to another person, and such act does cause such person to suffer emotional distress.

2. The offense of harassment in the first degree is a class E 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.

MO. REV. STAT. § 565.090 (Cum. Supp. 2017).

139. EDCOUNSEL, *supra* note 2, at 1–2.

140. Matos, *supra* note 112.

141. *Id.*

for school misconduct.”<sup>142</sup> Funneling more students into the criminal justice system would lead to inflation in the school-to-prison pipeline.<sup>143</sup>

The school-to-prison pipeline is “a disturbing national trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems.”<sup>144</sup> Students are regularly suspended, expelled, or even arrested for minor offenses that bypass repetitive visits to the principal’s office, landing them right back in the negative home environments or neighborhoods where their angst and unhappiness originated.<sup>145</sup> “Statistics reflect that these policies disproportionately target students of color and those with a history of abuse, neglect, poverty or learning disabilities.”<sup>146</sup>

The disparity begins as early as preschool, as studies show that forty-eight percent of preschool children suspended more than once are black.<sup>147</sup> “[S]tudents with disabilities are also suspended more frequently than students without disabilities.”<sup>148</sup> This can also have a racial component.<sup>149</sup> In 2014, a Columbia University researcher discovered that five-year-old boys with fathers who had been incarcerated were markedly less behaviorally “ready” for school than five-year-old boys with non-incarcerated fathers, increasing the likelihood of their placement in special education classes for their behavioral disabilities.<sup>150</sup>

### III. RECENT DEVELOPMENTS

As noted above, substantial revisions to Missouri’s criminal code took effect on January 1, 2017.<sup>151</sup> Of importance to Missouri’s schools are those changes to the harassment and assault statutes. Sections A and B of this Part provide a detailed explanation of those changes, including the possible criminal prosecutions related to student misconduct and bullying.

#### A. Harassment – Class E Felony

The change in Missouri’s criminal code elevates harassment from a misdemeanor offense to a felony.<sup>152</sup> Prior to January 1, 2017, harassment

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142. *Id.*

143. See Carla Amurao, *Fact Sheet: How Bad Is the School-to-Prison Pipeline?*, TAVIS SMILEY REP., <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/> (last visited Feb. 6, 2018).

144. *School-to-Prison Pipeline*, *supra* note 17.

145. Amurao, *supra* note 145.

146. *Id.*

147. Libby Nelson & Dara Lind, *The School to Prison Pipeline, Explained*, JUST. POL’Y INST. (Feb. 24, 2015), <http://www.justicepolicy.org/news/8775>.

148. *Id.*

149. *Id.*

150. *Id.*

151. See EDCOUNSEL, *supra* note 2, at 1.

152. Matos, *supra* note 112.



was defined under section 565.090 in six specific ways.<sup>153</sup> Specifically, according to section 565.090, a person commits the crime of harassment when he or she (1) “[k]nowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person”; (2) “[w]hen 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”; (3) “[k]nowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication”; (4) “[k]nowingly 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”; (5) “[k]nowingly makes repeated unwanted communication to another person”; or (6) “[w]ithout 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.”<sup>154</sup>

As of January 1, 2017, school districts must report<sup>155</sup> not only “criminal harassment in the first degree,” an offense broadly defined as engaging in *any act* with the purpose to cause *emotional distress* to another person,<sup>156</sup> but also criminal harassment under the pre-2017 framework. Further, emotional distress is defined as “something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living.”<sup>157</sup> While schools take bullying seriously, many administrators consider it “worrisome that educators now must call police when a child is in emotional distress.”<sup>158</sup> The revised definition of harassment affects school districts’ reporting requirements since criminal harassment is on the long list of offenses administrators are required to report to law enforcement under section 160.261(2)(24).<sup>159</sup>

The expansive definition of the new felony harassment offense under section 565.090 “could apply to many student interactions and incidents of misconduct.”<sup>160</sup> However, the amended statute contains two notable limiting factors: the conduct must have been “without good cause,” and it must have

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153. MO. REV. STAT. § 565.090 (2016); Matos, *supra* note 112.

154. MO. REV. STAT. § 565.090.1(1)–(6) (Cum. Supp. 2008).

155. *See* MO. REV. STAT. § 160.261(2)(24) (Cum. Supp. 2017) (requiring administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency harassment under section 565.090 as it existed prior to January 1, 2017, or harassment in the first degree under section 565.090).

156. EDCOUNSEL, *supra* note 2, at 1.

157. MO. REV. STAT. § 565.002(7) (Cum. Supp. 2017).

158. Matos, *supra* note 112.

159. EDCOUNSEL, *supra* note 2, at 1.

160. *Id.*

resulted in distress that is experienced day-to-day.<sup>161</sup> A determination of when “criminal harassment” happens hinges upon the resulting emotional distress.<sup>162</sup> The emotional distress must be “markedly greater” than that commonly experienced in day-to-day living.<sup>163</sup> Therefore, while distress that results in crying is unlikely to be commonly experienced in day-to-day living, it may not be “markedly greater” so as to be considered felony harassment, especially for elementary students who likely show distress by crying on a daily basis.<sup>164</sup> Conversely, “if the distress rises to the level that a student is terrified to be in the same room as another student or refuses to come to school at all, it may be markedly greater and could be considered criminal harassment.”<sup>165</sup> Generally, school officials will have to make a case-by-case determination based on each circumstance and the students involved.<sup>166</sup>

### B. Assault

Changes to the felony assault and harassment rules in the Missouri Criminal Code have stirred confusion and alarm in the state’s schools.<sup>167</sup> “Under the new law, if a student inflicts an injury on another student, that now can be considered felony assault,” of which those classified in the third degree must be reported to law enforcement.<sup>168</sup> However, many of the offenses classified as third-degree assault under the old code (such as attempt to cause physical injury, offensive touching, and causing apprehension of immediate injury) are now categorized under the new misdemeanor fourth-degree assault statute and no longer have to be reported under Missouri’s Safe Schools Act.<sup>169</sup> Following the code change, third-degree assault occurs

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161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 2.

166. *Id.*

167. Bott, *supra* note 3.

168. Matos, *supra* note 112.

169. MO. REV. STAT. § 565.056.1 states:

A person commits the offense of assault in the fourth degree if:

- (1) The person attempts to cause or recklessly causes physical injury, physical pain, or illness to another person;
- (2) With criminal negligence the person causes physical injury to another person by means of a firearm;
- (3) The person purposely places another person in apprehension of immediate physical injury;
- (4) The person recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person;
- (5) The person knowingly causes or attempts to cause physical contact with a person with a disability, which a reasonable person, who does not have a disability, would consider offensive or provocative; or

when a person knowingly causes physical injury to another person.<sup>170</sup> The definition of “physical injury” used to include pain; however, it is now defined as “slight impairment of any function of the body or temporary loss of use of any part of the body.”<sup>171</sup> Therefore, while third-degree assault under the new criminal code is a felony, the offense now applies to different conduct than before, such as serious assaults with tangible injuries.<sup>172</sup>

Behaviors such as “pushing, shoving, and other offensive contact would not meet [the revised] definition absent some tangible injury.”<sup>173</sup> For example, “if a student pushes another student and nothing else happens, then this would not qualify as assault in the third degree.”<sup>174</sup> However, if the pushed student happened to trip over a desk and sprain his ankle, there would be sufficient physical injury.<sup>175</sup> The student would have a slight impairment and temporary loss of the use of his ankle.<sup>176</sup> Likewise, if a student punched another student in the eye but there was no bruising or swelling, there would not be a “physical injury.”<sup>177</sup> Yet, if the victim’s eye started to bruise and/or swell, the threshold for a physical injury would be met because the student would have a slight impairment of his ability to see with the injured eye.<sup>178</sup>

Further, the new criminal code states that a person acts “knowingly,” regarding the result of his or her actions if he or she is “aware that his or her conduct is practically certain to cause that result.”<sup>179</sup> Therefore, “[i]n the context of third-degree assault . . . , there must be awareness that the act is practically certain to cause physical injury.”<sup>180</sup> Accordingly, accidental or simply reckless behavior does not rise to the level of “knowingly.”<sup>181</sup> “While

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(6) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative.

MO. REV. STAT. § 565.056.1(1)–(6) (Cum. Supp. 2017); *see also* EDCOUNSEL, *supra* note 2, at 2–3.

170. MO. REV. STAT. § 565.054 (Cum. Supp. 2017) (“1. A person commits the offense of assault in the third degree if he or she knowingly causes physical injury to another person. 2. The offense of assault in the third degree is a class E felony, unless the victim of such assault is a special victim, as the term ‘special victim’ is defined under section 565.002, in which case it is a class D felony.”).

171. MO. REV. STAT. § 556.061(36) (Cum. Supp. 2017).

172. EDCOUNSEL, *supra* note 2, at 2–3.

173. *Id.* at 3.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. MO. REV. STAT. § 556.061(31)(b) (Cum. Supp. 2017); EDCOUNSEL, *supra* note 2, at 3.

180. EDCOUNSEL, *supra* note 2, at 3.

181. *Id.*

the threshold [for] third-degree assaults will be higher, there will [undoubtedly] be challenges applying the new definition in each case.”<sup>182</sup>

#### IV. DISCUSSION

According to the EdCounsel School Attorneys, “[t]here has been significant media attention regarding whether the new criminal code may result in students being charged with felonies for relatively minor misconduct or bullying.”<sup>183</sup> “The fear is that the [Missouri Act] requires incidents of assault in the third degree and first degree harassment to be reported to law enforcement, and those offenses are now felonies.”<sup>184</sup> Accordingly, the revisions to the criminal code expose students to increased liability in that the expanded list of offenses for which they could be found guilty now appears endless. Students face the possibility of being charged with a felony for merely getting into a fight on the playground or making fun of a classmate. This is not the kind of behavior that warrants a felony conviction. Granted, prosecutorial discretion will likely play a big role in the way the controversial “charges” are handled at the initial stage. Parents and school administrators will undoubtedly vote against the hyper-criminalization of childhood behaviors. However, even if parents and school administrators discourage the criminalization of such behaviors and prosecutors respond to these concerns by deciding not to criminalize the minor acts, potential involvement in criminal proceedings still inflict latent effects on both the student and school district. Court proceedings and discussions with the prosecutor will require a great deal of time for the student, his family, and the school officials, likely causing undue stress to all parties involved.

The ambiguity in the statutory language may present challenges when teachers, administrators, and prosecutors attempt to interpret what exactly legislators intended by the terms “emotional distress” and “physical injury.” Namely, emotional distress could be anything a student, or more realistically, a parent, considers “markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living.”<sup>185</sup> It is unclear what legislators considered “day-to-day living.” Each student’s day-to-day is likely different. Thus, emotional distress is a somewhat squishy concept that can be interpreted in different ways based on the person experiencing it. The same problem applies when trying to determine whether a physical injury can be considered a “slight impairment of any function of the body or temporary loss of use of any part of the body.”<sup>186</sup> Again, everyone is different and handles pain and injury to varying degrees. A slight impairment for one person could be negligible for another. This concern

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182. *Id.*

183. *Id.* at 4.

184. *Id.*

185. MO. REV. STAT. § 565.002(7) (Cum. Supp. 2017).

186. MO. REV. STAT. § 556.061(36) (Cum. Supp. 2017).

heightens considering that certain victims might be hypersensitive in some situations and an overreaction could leave an otherwise innocent child with a felony conviction. The language is also very broad in its “*any* function of the body or temporary loss of use of *any* part of the body” distinction.<sup>187</sup> This is not distinctive at all because a simple punch on the arm could temporarily render the arm useless or a kick in the shin could cause the leg to hurt badly enough to result in a limp. While serious to some degree, these types of injuries are not of the level that should warrant a felony conviction.

As mentioned, the revisions to the criminal code could be viewed as zero tolerance policies of a sort, in that they are strict rules that apply to specific behaviors with precise consequences. The concern here is that, like zero tolerance policies, the new code provisions will target racial minorities and disabled students, leading to a swelling of the school-to-prison pipeline. Teachers and administrators are afforded discretion when determining whether to refer the offenses to law enforcement, and discrimination undoubtedly could enter the equation when these decisions are made. Therefore, minority and disabled students, already considered disadvantaged by some, would be more likely to enter the criminal justice system unnecessarily at an early age simply for exhibiting behaviors some might categorize as normal child’s play or roughhousing. These kids, some who are mimicking actions they learned at home from poor role models, could be slapped with felony convictions and robbed of any chance to avoid prison and become productive members of society.

Finally, balancing the need to eliminate the bullying problem with the desire to reduce the number of “bullies” funneled into the criminal justice system presents a major hurdle to those tasked with protecting the students’ best interests. News outlets across the country seem to report daily on horrific incidents resulting from bullying among schoolchildren, specifically suicides by students who have reached a breaking point. This is a serious problem requiring increased attention from lawmakers, school administrators, and parents. However, the new law is concerning because students who bully can now be charged as felons. Difficulty abounds when an attempt is made to find a way to balance anti-bullying statutes with attempts to decrease the number of students transformed into prisoners with the slip of an insult.

## V. CONCLUSION

For decades, school districts and educational agencies across the country have struggled to reduce violence among their students. Federal and state legislators passed acts and amended laws to alleviate the burden faced by both students and educators who fear returning to school each day. These well-intentioned policies often strive to create safe havens for students but repeatedly result in overcriminalization of young minority students by instituting discipline for small offenses, pushing them closer to prison and further

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187. *Id.* (emphasis added).

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from educational opportunities. Further, Missouri legislators attempted to simplify the state's criminal code and ultimately created additional offenses that could possibly result in more youths being prosecuted under the newly-revised laws. School districts around the state are waiting to see if and how the changes will affect their students.

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