

## **Summary of SC89473, *State of Missouri v. Jacob R. Pribble***

Appeal from the St. Louis County circuit court, Judge Steven H. Goldman

**Attorneys:** Pribble was represented by Matthew A. Radefeld, Daniel A. Juengel, Anthony Muhlenkamp and Julie Brothers of Frank, Juengel & Radefeld of Clayton, (314) 725-7777. The state was represented by James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man convicted of attempted enticement of a child and sentenced to six years in prison challenges the constitutional validity of the statute under which he was convicted and sentenced. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the conviction and sentence. The statute is not unconstitutional because its penalty is not grossly disproportionate to the seriousness and potential societal harm of the crime; is not vague because it is clear that only convictions, and not suspended impositions of sentence, are available as penalties; and does not infringe on constitutionally protected speech because the statute criminalizes conduct and not mere sexual fantasy. The penalty provisions of the statute properly were enacted through an emergency clause. This Court gives great weight to the legislature's determination that an emergency existed here. There are many reasons that support such a determination of an emergency here, and this Court finds no reason to question them.

**Facts:** During an undercover online investigation in August 2006 by the Maryland Heights police department, Jacob Pribble contacted someone he thought was a 14-year-old girl but who really was an undercover police officer. He sent the officer explicit photographs of himself and suggested they perform particular sexual acts together. A week later, he made further sexual suggestions and arranged to meet the "girl" at a particular time in a particular location in a park. When he arrived at the designated time and place, police arrested Pribble. In a written statement he provided police, Pribble said he believed he was meeting a 14-year-old female and was hoping "to teach someone something new." He was charged with violating section 566.151, RSMo Supp. 2008 ( as amended in 2006), for attempted enticement of a child. Under this statute, it is a crime for a person over the age of 21 to lure, solicit or entice, through words or actions, any person under the age of 15 for the purpose of engaging in sexual conduct. Under the amendments to the statute – which went into effect when signed by the governor on June 5, 2006, pursuant to an emergency provision the legislature invoked – both enticement and attempted enticement are felonies that require a minimum of five years in prison with no eligibility for probation, parole or conditional release. Pribble was convicted of attempted enticement of a child and was sentenced to six years in prison. He appeals.

## **AFFIRMED.**

**Court en banc holds:** (1) Section 566.151 is not unconstitutional.

(a) In light of the seriousness and potential societal harm of the crime, the statute's imposition of a minimum sentence of five years with no possibility of parole cannot be said to be disproportionate, much less grossly disproportionate, as required for a penalty to constitute cruel and unusual punishment. The same also must be said for Pribble's actual sentence of six years. Matching prison terms with particular crimes generally is the legislature's province, and this Court will not question such determinations beyond this narrow inquiry.

(b) The statute is not unconstitutionally vague in providing that no person "convicted" under the statute is eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for at least five years. Reading the statutory sentence in context, however, it is clear that a suspended imposition of sentence – which does not result in a conviction – is not available for this crime.

(c) The statute does not infringe on constitutionally protected speech. A person cannot be convicted under this statute for mere sexual fantasy or for speech advocating the merits of sexual relations with children. Rather, the statute requires an act of persuasion, solicitation or enticement for the purpose of engaging in sexual conduct. Similarly, the statute is not unconstitutionally overbroad because it does not make any protected conduct unlawful.

(2) The amendment to section 566.151 validly was enacted as an emergency measure. Without the emergency provision, the amendment would not have become effective until 11 days after the date of his offense. To determine whether a legislative declaration – in the preamble or body of an act, as required by article III, section 29 of the Missouri Constitution – is an emergency measure, courts must determine whether an actual crisis or emergency exists requiring quick or immediate legislative action to preserve the public peace, property, health, safety or morals. Here, the emergency clause expresses an immediate need for protection from sexual offenders for the public health, welfare, peace and safety. There are many reasons that support an emergency here, including a legislative belief that those found guilty of enticement were receiving relatively light penalties as well as a legislative desire to deter even one more instance of a dangerous crime that is becoming more prevalent with children's increased use of the Internet. Accordingly, this Court gives great weight to the legislative determination of an emergency and finds no reason to question it.