

AN ORDINANCE DIRECTING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE NORTH KANSAS CITY SCHOOL DISTRICT NO. 74 FOR A SCHOOL RESOURCE OFFICER AT ANTIOCH MIDDLE SCHOOL.

LEGISLATIVE FINDINGS

1. Gladstone and the North Kansas City School District seek to continue a full-time School Resource Officer program at the Antioch Middle School.
2. The program serves to reduce incidents of delinquency in school by combining law enforcement with educational professionals to address drug and alcohol abuse, youth violence, truancy and other youth issues in an educational environment.
3. The School Resource Officer fulfills three valuable roles as Educator, Counselor or Problem Solver, and Law Enforcement Officer.
4. The Cooperative Agreement is in the best interests of the residents of the City of Gladstone.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GLADSTONE, MISSOURI AS FOLLOWS:


1. The City of Gladstone hereby enters into a Cooperative Agreement with the North Kansas City School District No. 74 to provide a School Resource Officer at Antioch Middle School; and
2. The City Manager is directed to execute the Cooperative Agreement in substantially the form presented to the City Council.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 25TH DAY OF AUGUST 2014.



J. Brian Hill, Mayor

ATTEST:



Ruth E. Bocchino, City Clerk

First Reading: August 25, 2014

Second Reading: August 25, 2014



Gladstone

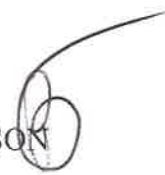


All-America City

2008

OFFICE OF THE CITY COUNSELOR

TO: MAYOR J. BRIAN HILL
MAYOR PRO TEM BILL GARNOS
COUNCILMEMBER CAROL SUTER
COUNCILMEMBER JEAN MOORE
COUNCILMAN R.D. MALLAMS
CITY MANAGER KIRK DAVIS

FROM: CITY COUNSELOR RANDALL THOMPSON 

RE: SCHOOL RESOURCE OFFICER AGREEMENT

DATE: AUGUST 19, 2014, 2014

The August 25 Agenda includes an ordinance approving a cooperative agreement with the North Kansas City School District for a school resource officer (SRO) at Antioch Middle School. This agreement is the same as last year including a \$40,000 contribution from the school district toward the officer's salary.

The SRO program has been a successful collaboration with the school district. Having a uniformed officer at the middle school not only enhances the safety and security of students, faculty, and staff but it also creates an opportunity to enhance the image of public safety officers to young students.

*P.O. BOX 10719
GLADSTONE, MISSOURI 64188-0719*

*7010 NORTH HOLMES
GLADSTONE, MISSOURI 64118-2646*

*816-436-2200
816-436-2228 FAX*

Memo

To: Kirk L. Davis, City Manager

From: Chief Michael J. Hasty, Director of Public Safety *mjh*

CC: Randall Thompson, City Attorney
Cathy Swenson, City Clerk
Captain William L. Willoughby, Police Field Services Division Commander
PO LeAnn Smith, School Resource Officer

Date: August 7, 2013

Re: SCHOOL RESOURCE OFFICER PROGRAM/NKC SCHOOL DISTRICT AGREEMENT

The Public Safety Department School Resource Officer Program has been a partnership with the North Kansas City School District for several years. PO LeAnn Smith has served as the School Resource Officer (SRO) at Antioch Middle School since 2008. Before PO Smith, PO Ronnie Shatswell served as the SRO at the middle school since the program started more than twenty years ago.

The last agreement with the school district was executed in December 2008 and pursuant to that agreement, the district agreed to pay the City of Gladstone \$35,000.00 annually as its share of the SRO's annual salary. The City agreed to pay the remaining share of the officer's annual salary.

Earlier in the year, our department approached the school district and informed them of our intent to increase the district's share of the SRO's annual salary to \$40,000.00. It is my understanding the district has agreed to this increase and a new agreement has been crafted and reviewed by City Attorney Randall Thompson.

The SRO program has been a successful collaboration with the school district and I recommend we continue to participate. Having a uniformed officer at the middle school not only enhances the safety and security of students, faculty, and staff; it creates opportunities to introduce children in our community to our officers and department in a comfortable environment.

An ordinance has been placed on the August 12, 2013 City Council Meeting Agenda authorizing you to sign the agreement. Please advise if you have any questions.

SCHOOL RESOURCE OFFICER PROGRAM COOPERATIVE AGREEMENT

CITY OF GLADSTONE, MISSOURI
Gladstone, Missouri

NORTH KANSAS CITY SCHOOLS
District #74

This Agreement is entered into by and between the City of Gladstone, Missouri hereinafter referred to as the "City", the North Kansas City School District #74, a state accredited, school district located within Clay County, Missouri hereinafter referred to as the "District", and Antioch Middle School, a public, state-accredited, educational facility located in Gladstone, Missouri hereinafter referred to as the "School".

I. PURPOSE:

- A. The purpose of this Agreement is to establish a formalized relationship between the City, the District, and the School; and
- B. To guide and direct the School Resource Officer Program, which provides for the assignment of a full-time Gladstone Police Officer at Antioch Middle School, which shall serve as the School Resource Officer, hereinafter referred to as the "SRO".

II. MISSION AND GOALS:

- A. The mission of the School Resource Officer Program is to reduce incidents of delinquency in or around school by combining law enforcement with educational professionals to address drug and alcohol abuse, youth violence, truancy and other youth issues in an educational environment.
- B. The following goals are shared between the District and the City with regard to the School Resource Officer Program:
 - 1. Provide a safe and respectful school;
 - 2. Enhance the relationship between law enforcement officers and students in middle school; and
 - 3. Foster educational programs, which will address tobacco, alcohol, and other drug issues, violence diffusion and prevention, and other safety issues as needed.
 - 4. Provide DARE education to all fifth graders in the District at the four elementary schools located in Gladstone, Missouri: Meadowbrook Elementary School, Chapel Hill Elementary School, Oakwood Manor Elementary School, and Linden West Elementary School.

III. EMPLOYMENT AND ASSIGNMENT OF THE SCHOOL RESOURCE OFFICER:

A. The City shall provide one (1) SRO to Antioch Middle School, 2100 NE 65th Street Gladstone, Missouri.

B. Regular Duty Hours of the School Resource Officer

1. The SRO shall be assigned to the school on a full-time basis during those days and hours the school is in regular session. The SRO shall be on campus from one-half hour prior to the start of classes until one-half hour after the end of the regularly scheduled school day.
2. On early release days, the SRO may be required to attend District meetings or training during the remainder of the day.
3. During the SRO's daily tour of duty, the SRO may be off campus performing such tasks that may be required by their assignments.
4. The SRO may be temporarily reassigned by the City during school holidays and vacations, and/or during the periods of police emergency.
5. Regular working hours may be adjusted on situational basis with the consent of the SRO's supervisor. These adjustments should be approved prior to their being required and should be to cover scheduled school related activity requiring the presence of a law enforcement officer.

C. EXTRA DUTY HOURS OF THE SCHOOL RESOURCE OFFICER

1. The District may request the City to provide a School Resource Officer for summer programs, not to exceed thirty (30) days beyond the normal academic calendar.
2. The District may request the City to provide a School Resource Officer for Before- and After-School Programs, not to exceed three (3) hours per day.

D. The Role of the School Resource Officer

The role of the School Resource Officer is based on a "triad" approach adopted from training developed and presented by the National Association of School Resource Officers (NASRO) and/or the Missouri School Resource Officers Association (MSROA). The triad philosophy

defines a School Resource Officer as fulfilling three main roles: Educator, Counselor or Problem Solver, and Law Enforcement Officer.

1. Educator - The School Resource Officer shall provide educational information in the form of classroom presentations, parent or public presentations, or in-service school staff presentations. Formal presentations shall be made available to these groups on any topic concerning public safety, law related issues, crime prevention, drug abuse prevention, gang prevention, or other topics as appropriate. The School Resource Officer will act as an instructor, or arrange for another SRO or certified public safety instructor, for these respective presentations when invited to do so by the principal or member of the faculty. These presentations shall be conducted in a professional manner and shall be pre-approved by the District's Director of Safety & Security with input from the respective school administrator.
2. Counselor/Problem Solver - The School Resource Officer is not a substitute for school counselors. The SRO may give advice or guidance to students and the education staff within the context of the officer's knowledge, training and experience. The SRO counsels students on a variety of issues, which may range from dealing with anger, personal conflicts, drug and alcohol issues, abuse and neglect, and other issues related to public safety or the law.

The School Resource Officer shall work closely with the District's Director of Safety & Security, school administrators and counselors, social workers, juvenile officers, and other organizations, which service youth in order to provide support to students in need.

3. Law Enforcement Officer - The School Resource Officer shall conduct criminal investigations and make arrests utilizing the same criteria as any other certified law enforcement officer of the City. However, the effective SRO will often work with the District's Director of Safety & Security, school administrators, parents, social service agencies, and perhaps the Clay County Juvenile Office to explore effective ways to hold juvenile offenders accountable for their actions.

The School Resource Officer shall also gather intelligence information regarding criminal activities involving school aged or juvenile offenders. This information is then shared with the appropriate resources.

E. Additional Duties of the School Resource Officer

1. The SRO shall coordinate all of his/her activities with the City, the District's Director of Safety & Security, the principal and staff members concerned, and will seek permission, advice, and guidance prior to enacting any programs within the School.
2. The SRO shall develop expertise in presenting various subjects to the students. Such subjects shall include a basic understanding of the laws, the role of the police, and the police mission.
3. The SRO shall encourage individual and small group discussions with students based on material presented in class to further establish rapport with the students.
4. When requested by the District's Director of Safety & Security or by the respective principal, the SRO shall attend parent/faculty meetings to solicit support and understanding of the SRO program. Each year, the SRO will provide faculty members, especially new members, an overview of the SRO program.
5. The SRO shall make himself/herself available for conferences with students, parents, and faculty members in order to assist them with problems of law enforcement, crime prevention, or violence prevention topics. Confidential information shall not be disclosed except as provided by law or court order.
6. The SRO shall become familiar with all community agencies that offer assistance to youth and their families such as mental health clinics, drug treatment centers, etc. The SRO shall make referrals to such agencies and liaise when necessary, thereby acting as a resource person to the students, faculty and staff of the school.
7. The SRO shall assist the District's Director of Safety & Security and principal(s) in developing plans and strategies to prevent and/or minimize dangerous situations that may occur on campus or during school sponsored events.
8. The SRO shall adhere to School Board policy, City policy and legal requirements should it become necessary to conduct formal police activities with the students.
9. If the SRO becomes aware of any criminal investigation at the SRO's respective school(s), the SRO should help coordinate that investigation, even though the SRO may not be the lead investigator. For example, when the SRO becomes aware of a child abuse case, they may not be the lead investigator; however, the

SRO will make the necessary contacts with the appropriate investigating agency to facilitate the investigation.

10. The SRO shall take law enforcement action as required. As soon as practical, the SRO shall make the District's Director of Safety & Security, along with the respective principal, aware of such action. At the request of District's Director of Safety & Security or the respective school principal, the SRO shall take appropriate law enforcement action for violations of the law on school property or at related school functions as allowed by Missouri Statutes.
11. The SRO shall give assistance to other law enforcement officers and/or other local law enforcement departments in matters regarding his/her school assignment, whenever necessary.
12. The SRO shall, whenever possible, and in accordance with established overtime procedures, participate in and/or attend school functions.
13. The SRO may be assigned non-campus investigations relating to runaways or truant students that attend the school to which the SRO is assigned.
14. The SRO shall maintain detailed and accurate records of the operation of the School Resource Officer Program, and shall make them available to the City, the District's Director of Safety & Security, principal, or superintendent as required by law.
15. The SRO shall not act as a school disciplinarian or conduct searches or frisks on behalf of an administrator for issues only related to school discipline. However, if there is a safety risk; or the District's Director of Safety & Security or the principal believes a violation of law has occurred, and the school district intends to pursue the matter criminally; then the SRO shall be contacted. The SRO shall determine whether law enforcement action is appropriate. If the District's Director of Safety & Security disagrees, then the SRO's supervisor at the City shall be consulted.
16. The SRO is not to be used for regularly assigned lunchroom duties, hall monitor, bus monitor, in school suspension monitor, or any other regularly assigned duties that are filled by a School or District employee. If there is a problem in one of these areas, the SRO should be actively involved and help the school solve the problem. These solutions will vary, but may include the presence of the SRO in these areas. Even though the SRO is not to be assigned regular

duties of another School or District member in these high traffic areas, the SRO should make a consistent and regular practice to be visible in these areas. The SRO's presence will provide great opportunities to make positive contacts with students and to help deter negative issues from occurring.

17. The SRO or City should ensure the respective principal and the District's Director of Safety & Security are notified when the SRO is sick or injured prior to the start of the school day.

F. Access to Education Records

1. School officials shall allow the SRO to inspect and copy any public records maintained by the School District, including student directory information. However, law enforcement officials may not inspect and/or copy confidential student education records except in accordance with Board of Education Policy and Regulations.
2. If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety.
3. A full explanation as to the need of the information to handle the emergency and the extent to which time is of the essence shall be articulated in the SRO's official policy report.
4. If confidential student record information is needed, but no emergency exists, the information may be released only upon the issuance of a search warrant or subpoena to produce the records, or with consent of the student's parent or guardian as required by Board Policy.

IV. RIGHTS, DUTIES AND RESPONSIBILITIES OF THE DISTRICT

- A. District Administration shall provide to all the full-time SRO's the following materials and facilities, which are deemed necessary to the performance of the SRO duties:
 1. Access to an air-conditioned and properly lighted private office, which shall contain a telephone to be used for general business purposes. This office may be shared by another SRO, but shall be for SRO use only.

2. A location for files and records, which can be properly locked and secured.
 3. A desk with drawers, a desk chair, additional guest chair(s), filing cabinet office supplies.
 4. Access to a computer and/ or secretarial assistance.
- B. The School Principal will report student acts to the SRO in the time and manner required by § 167.117 RSMo. and the attached Third Degree Assault Reporting agreement:
1. The School Principal will immediately report to the SRO student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the first or second degree if committed by an adult, sexual assault, or deviate sexual assault against a pupil or school employee. (See § 167.117 RSMo.).
 2. The School Principal will report to the SRO student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the third degree pursuant to the attached Third Degree Assault Reporting agreement.

V. FINANCING OF THE SCHOOL RESOURCE OFFICER PROGRAM

- A. The District agrees to pay Forty Thousand Dollars (\$40,000.00) to the City of Gladstone, Missouri as its share of the Officer's salary in the School Resource Officer Program.
- B. The City agrees to pay the remaining share of the Officer's salary for the same time period.

VI. TERM OF THE SCHOOL RESOURCE OFFICER PROGRAM

This program is effective for the twelve-month period beginning on July 1st, 20143, for the academic school year, and shall remain in effect until either June 30, 20154, or a party provides written notice to the other party indicating a request for either amendment or termination as indicated in section IX, entitled TERMINIATION OF AGREEMENT.

VII. EMPLOYMENT STATUS OF THE SCHOOL RESOURCE OFFICER

- A. The School Resource Officer shall remain an employee of the City of Gladstone, Missouri, and shall not be an employee of the District.

- B. The District and the City acknowledge that the School Resource Officer shall remain responsible to the chain of command of the Department. However, the School Resource Officer shall coordinate efforts and activities with the District's Director of Safety & Security and respective school principal.

VIII. DISMISSAL OF SCHOOL RESOURCE OFFICER; REPLACEMENT

- A. In the event the principal of the school to which the SRO is assigned feels that the particular SRO is not effectively performing his or her duties and responsibilities, the principal shall discuss the matter with School District's Director of Safety & Security. The School District's Director of Safety & Security will try and resolve any issues. However, if the principal and the School District's Director of Safety & Security agree that the respective SRO should be removed from the program then the School District's Director of Safety & Security shall then give this written recommendation to the Assistant Superintendent of Student Services.
- B. The Assistant Superintendent of Student Services will exhaust all avenues in an attempt to resolve the situation. If resolution cannot be gained, the recommendation to remove the SRO from the program will be forwarded to the Superintendent of the District. Within a reasonable time after receiving the recommendation to remove the SRO from the program, the Superintendent or his/her designee shall advise the City of the request.
- C. If the City so desires, the Superintendent and the City Manager or his/her designees, shall meet with the SRO to mediate or resolve any problems, which may exist. At such a meeting, specific members of the respective school, along with the School District's Director of Safety & Security and Assistant Superintendent of Student Services may be required to be present. If, within a reasonable amount of time after commencement of such mediation, the problem cannot be resolved or mediated or in the event the City does not seek mediation, then the SRO shall be removed from the program and the school. The City shall then provide a replacement SRO.
- D. The City may dismiss or reassign an SRO based upon City Rules, Regulations and/or General Orders and when it is in the best interest of the people of the City of Gladstone, Missouri, and the District.
- E. In the event of the resignation, dismissal, reassignment or long-term absence of an SRO, the City shall provide a temporary replacement for the SRO within thirty (30) calendar days of receiving notice of such resignation, dismissal, reassignment or long-term absence.

IX. TERMINATION OF AGREEMENT

- A. This agreement may be terminated by either party upon ninety (90) days written notice that any other party has failed to substantially perform in accordance with the terms and conditions of this Agreement.
- B. Either party upon one hundred eighty (180) days written notice may terminate this Agreement without cause.
- C. Termination of this Agreement may only be accomplished as provided herein.
- D. In the event this Agreement is terminated, compensation will be made to the Department for all services performed to the date of the termination and the School District shall be entitled to a pro-rated refund for that period of time when SRO services are not provided because of the termination of the Agreement.

IV. EVALUATION OF PROGRAM

- A. It is mutually agreed that the City, the School, and the District shall annually evaluate the School Resource Officer Program and implement recommendations and changes as needed and agreed upon.
- B. The School shall also evaluate the performance of the School Resource Officer, however, this evaluation is advisory in nature, and the City retains the final authority to evaluate the performance of the School Resource Officer.

V. NOTICES

Any and all notices or any other communication herein required or permitted shall be deemed to have been given when deposited in the United States postal service as regular mail, postage prepaid and addressed as follows:

Todd White, Superintendent
North Kansas City School District
2000 NE 46th Street
Kansas City, Missouri 64116

Kirk L. Davis
City Manager
7010 North Holmes
Gladstone, Missouri 64118

X. GOOD FAITH

- A. The District, the City, their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement.
- B. Unforeseen difficulties or questions will be resolved by negotiation between the District Superintendent and the City Manager, or their designees.

XI. MODIFICATION

This document constitutes the full understanding of the parties and not terms, conditions, understandings or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be charged.

XII. NON-ASSIGNMENT

This Agreement, and each and every covenant herein, shall not be capable of assignment, unless the express written consent of the Principal and the City is obtained.

XIII. MERGER

This agreement constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms.

XIV. INSURANCE

It is understood that both the City and the School District are governmental bodies and maintain appropriate insurance coverage.

XV. LEGAL CONTINGENCIES

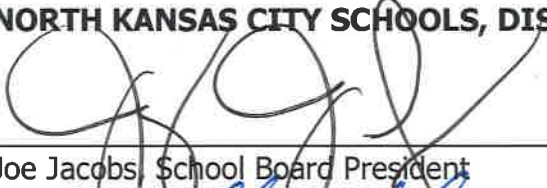
It is understood and agreed that this agreement is entered into solely for the benefit of the parties hereto and gives no right to any other party. Without waiving any governmental immunity, sovereign immunity, or official immunity, each party agrees to be responsible and assumes liability for its own actions and omissions and those of its Officers, teachers, staff or any other agent for any incident arising out of or in connection with this agreement, to the fullest extent required by the law and agrees to save, indemnify, defend and hold the other party harmless from such liability for its own actions

XVI. NO WAIVER OF IMMUNITY

Nothing in this Agreement waives any governmental immunity including sovereign immunity or official immunity available to the parties or their agents. The parties hereby expressly reserve all immunities available under Missouri law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duty-authorized officers.

NORTH KANSAS CITY SCHOOLS, DISTRICT #74



Joe Jacobs, School Board President

6/25/14

Date



Todd White, Superintendent

6/25/14

Date

CITY OF GLADSTONE, MISSOURI



Kirk L. Davis, City Manager

6-25-14

Date

Section 167.117 Third-Degree Assault Reporting Agreement

The school environment can provide an opportunity for third degree assaults to be perceived that can lead to increased caseload for the Gladstone Department of Public Safety and can detract from classroom instruction time. Knowing this, the Gladstone Department of Public Safety and the North Kansas City School District enter into the following written agreement for reporting third degree assaults.

1. The school district will immediately report to the Gladstone Department of Public Safety School Resource Officer student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the first or second degree if committed by an adult, sexual assault, or deviate sexual assault against a pupil or school employee pursuant to § 167.117 RSMo.
2. The school district will report to the Gladstone Department of Public Safety School Resource Officer student acts that occur on school property, on a school bus in service on behalf of the District, or during school activities that would be assault in the third degree by providing the officer an internal school district report when prepared in the regular course of business or by any other time and manner.
3. The School Resource Officer has discretion not to file criminal charges or otherwise further act on a report of third-degree assault when no victim or parent of the victim (in the cases of juveniles) requests charges and no injury requiring medical attention has occurred.
4. Both the Gladstone Department of Public Safety and the North Kansas City School District realize that in a majority of cases criminal charges will not be filed and arrests will not be made. However, the Gladstone Department of Public Safety will consider filing charges if appropriate after reviewing each incident on a case-by-case basis.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duty-authorized officers:

NORTH KANSAS CITY SCHOOLS, DISTRICT #74



Joe Jacobs, School Board President



Date



Todd White, Superintendent



Date

CITY OF GLADSTONE, MISSOURI

Michael J. Hasty, Director of Public Safety

Date

AUTHORITIES

Mo. Rev. Stat. § 167.117. Principal, teachers, school employees to report certain acts, to whom, exceptions--limit on liability--penalty

1. In any instance when any person is believed to have committed an act which if committed by an adult would be assault in the first, second or third degree, sexual assault, or deviate sexual assault against a pupil or school employee, while on school property, including a school bus in service on behalf of the district, or while involved in school activities, the principal shall immediately report such incident to the appropriate local law enforcement agency and to the superintendent, except in any instance when any person is believed to have committed an act which if committed by an adult would be assault in the third degree and a written agreement as to the procedure for the reporting of such incidents of third degree assault has been executed between the superintendent of the school district and the appropriate local law enforcement agency, the principal shall report such incident to the appropriate local law enforcement agency in accordance with such agreement.
2. In any instance when a pupil is discovered to have on or about such pupil's person, or among such pupil's possessions, or placed elsewhere on the school premises, including but not limited to the school playground or the school parking lot, on a school bus or at a school activity whether on or off of school property any controlled substance as defined in section 195. 010, RSMo, or any weapon as defined in subsection 6 of section 160. 261, RSMo, in violation of school policy, the principal shall immediately report such incident to the appropriate local law enforcement agency and to the superintendent.
3. In any instance when a teacher becomes aware of an assault as set forth in subsection 1 of this section or finds a pupil in possession of a weapon or controlled substances as set forth in subsection 2 of this section, the teacher shall immediately report such incident to the principal.
4. A school employee, superintendent or such person's designee who in good faith provides information to law enforcement or juvenile authorities pursuant to this section or section 160.261, RSMo, shall not be civilly liable for providing such information.
5. Any school official responsible for reporting pursuant to this section or section 160.261, RSMo, who willfully neglects or refuses to perform this duty shall be subject to the penalty established pursuant to section 162.091, RSMo.

Mo. Rev. Stat. § 565.070. Assault in the third degree

1. A person commits the crime of assault in the third degree if:

(1) The person attempts to cause or recklessly causes physical injury to another person;
or

(2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon; or

(3) The person purposely places another person in apprehension of immediate physical injury; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or

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

(6) The person knowingly causes physical contact with an incapacitated person, as defined in section 475.010, RSMo, which a reasonable person, who is not incapacitated, would consider offensive or provocative.

2. Except as provided in subsections 3 and 4 of this section, assault in the third degree is a class A misdemeanor.

3. A person who violates the provisions of subdivision (3) or (5) of subsection 1 of this section is guilty of a class C misdemeanor.

4. A person who has pled guilty to or been found guilty of the crime of assault in the third degree more than two times against any family or household member as defined in section 455.010, RSMo, is guilty of a class D felony for the third or any subsequent commission of the crime of assault in the third degree when a class A misdemeanor. The offenses described in this subsection may be against the same family or household member or against different family or household members.