SENATE SUBSTITUTE
FOR
SENATE BILL NO. 600

AN ACT
To repeal sections 545.140, 556.061, 557.021, 562.014, 571.015, 571.070, 578.421, 578.423 and 578.425, RSMo, and to enact in lieu thereof twelve new sections relating to dangerous felonies, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 545.140, 556.061, 557.021, 562.014, 571.015, 571.070, 578.421, 578.423, and 578.425, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 545.140, 556.061, 557.021, 557.045, 562.014, 570.027, 571.015, 571.070, 578.419, 578.421, 578.423, and 578.425, to read as follows:

545.140. 1. Notwithstanding Missouri supreme court rule 24.06, two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

2. Notwithstanding Missouri supreme court rule 24.07, two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or infractions, or any
combination thereof, are of the same or similar character or are
based on the same act or transaction or on two or more acts or
transactions connected together or constituting parts of a common
scheme or plan.

3. Two or more defendants shall not be charged in the same
indictment or information if substantial prejudice should result.
For purposes of this section, "substantial prejudice" shall mean
a bias or discrimination against one or more defendants or the
state which is actually existing or real and not one which is
merely imaginary, illusionary or nominal.

4. If two or more defendants are charged with being joint
participants in a conspiracy charged under section 562.014, it
shall be presumed that there is no substantial prejudice from
them being charged in the same indictment or information or from
them being tried together.

556.061. In this code, unless the context requires a
different definition, the following terms shall mean:

(1) "Access", to instruct, communicate with, store data in,
retrieve or extract data from, or otherwise make any use of any
resources of, a computer, computer system, or computer network;

(2) "Affirmative defense":
(a) The defense referred to is not submitted to the trier
of fact unless supported by evidence; and
(b) If the defense is submitted to the trier of fact the
defendant has the burden of persuasion that the defense is more
probably true than not;

(3) "Burden of injecting the issue":
(a) The issue referred to is not submitted to the trier of
fact unless supported by evidence; and

(b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue;

(4) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(5) "Computer", the box that houses the central processing unit (CPU), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally. Thus, computer refers to hardware, software and data contained in the main unit. Printers, external modems attached by cable to the main unit, monitors, and other external attachments will be referred to collectively as peripherals and discussed individually when appropriate. When the computer and all peripherals are referred to as a package, the term "computer system" is used. Information refers to all the information on a computer system including both software applications and data;

(6) "Computer equipment", computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network;

(7) "Computer hardware", all equipment which can collect,
analyze, create, display, convert, store, conceal or transmit
electronic, magnetic, optical or similar computer impulses or
data. Hardware includes, but is not limited to, any data
processing devices, such as central processing units, memory
typewriters and self-contained laptop or notebook computers;
internal and peripheral storage devices, transistor-like binary
devices and other memory storage devices, such as floppy disks,
removable disks, compact disks, digital video disks, magnetic
tape, hard drive, optical disks and digital memory; local area
networks, such as two or more computers connected together to a
central computer server via cable or modem; peripheral input or
output devices, such as keyboards, printers, scanners, plotters,
video display monitors and optical readers; and related
communication devices, such as modems, cables and connections,
recording equipment, RAM or ROM units, acoustic couplers,
automatic dialers, speed dialers, programmable telephone dialing
or signaling devices and electronic tone-generating devices; as
well as any devices, mechanisms or parts that can be used to
restrict access to computer hardware, such as physical keys and
locks;

(8) "Computer network", two or more interconnected
computers or computer systems;

(9) "Computer program", a set of instructions, statements,
or related data that directs or is intended to direct a computer
to perform certain functions;

(10) "Computer software", digital information which can be
interpreted by a computer and any of its related components to
direct the way they work. Software is stored in electronic,
magnetic, optical or other digital form. The term commonly
includes programs to run operating systems and applications, such
as word processing, graphic, or spreadsheet programs, utilities,
compilers, interpreters and communications programs;
(11) "Computer-related documentation", written, recorded,
printed or electronically stored material which explains or
illustrates how to configure or use computer hardware, software
or other related items;
(12) "Computer system", a set of related, connected or
unconnected, computer equipment, data, or software;
(13) "Confinement":
(a) A person is in confinement when such person is held in
a place of confinement pursuant to arrest or order of a court,
and remains in confinement until:
   a. A court orders the person's release; or
   b. The person is released on bail, bond, or recognizance,
      personal or otherwise; or
   c. A public servant having the legal power and duty to
      confine the person authorizes his release without guard and
      without condition that he return to confinement;
(b) A person is not in confinement if:
   a. The person is on probation or parole, temporary or
      otherwise; or
   b. The person is under sentence to serve a term of
      confinement which is not continuous, or is serving a sentence
      under a work-release program, and in either such case is not
      being held in a place of confinement or is not being held under
      guard by a person having the legal power and duty to transport
the person to or from a place of confinement;

(14) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(15) "Controlled substance", a drug, substance, or immediate precursor in schedules I through V as defined in chapter 195;

(16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(17) "Custody", a person is in custody when he or she has been arrested but has not been delivered to a place of confinement;

(18) "Damage", when used in relation to a computer system or network, means any alteration, deletion, or destruction of any part of the computer system or network;

(19) "Dangerous felony", the felonies of arson in the first degree, assault in the first degree, attempted rape in the first...
degree if physical injury results, attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical injury results, attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of such assault is a special victim as defined in subdivision (14) of section 565.002, kidnapping in the first degree, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, armed criminal action, conspiracy to commit an offense when the offense is a dangerous felony, vehicle hijacking when punished as a class A felony, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, child molestation in the first or second degree, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section 568.060, child kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153, and an "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such terms are defined in section 577.001;

(20) "Dangerous instrument", any instrument, article or
substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(21) "Data", a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer or computer network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic storage media, punched cards and as may be stored in the memory of a computer;

(22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal knuckles;

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

(24) "Disability", a mental, physical, or developmental impairment that substantially limits one or more major life activities or the ability to provide adequately for one's care or protection, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings;

(25) "Elderly person", a person sixty years of age or older;

(26) "Felony", an offense so designated or an offense for which persons found guilty thereof may be sentenced to death or imprisonment for a term of more than one year;

(27) "Forcible compulsion" either:

(a) Physical force that overcomes reasonable resistance; or
(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of such person or another person;

(28) "Incapacitated", a temporary or permanent physical or mental condition in which a person is unconscious, unable to appraise the nature of his or her conduct, or unable to communicate unwillingness to an act;

(29) "Infraction", a violation defined by this code or by any other statute of this state if it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction;

(30) "Inhabitable structure", a vehicle, vessel or structure:

(a) Where any person lives or carries on business or other calling; or

(b) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(c) Which is used for overnight accommodation of persons.

Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually present. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an inhabitable structure of another;

(31) "Knowingly", when used with respect to:

(a) Conduct or attendant circumstances, means a person is aware of the nature of his or her conduct or that those circumstances exist; or
(b) A result of conduct, means a person is aware that his or her conduct is practically certain to cause that result;

(32) "Law enforcement officer", any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(33) "Misdemeanor", an offense so designated or an offense for which persons found guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year or less;

(34) "Of another", property that any entity, including but not limited to any natural person, corporation, limited liability company, partnership, association, governmental subdivision or instrumentality, other than the actor, has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement;

(35) "Offense", any felony or misdemeanor;

(36) "Physical injury", slight impairment of any function of the body or temporary loss of use of any part of the body;

(37) "Place of confinement", any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(38) "Possess" or "possessed", having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient
control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(39) "Property", anything of value, whether real or personal, tangible or intangible, in possession or in action;

(40) "Public servant", any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(41) "Purposely", when used with respect to a person's conduct or to a result thereof, means when it is his or her conscious object to engage in that conduct or to cause that result;

(42) "Recklessly", consciously disregarding a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation;

(43) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or
1 psychological damage, manifested by impairment of a behavioral,  
2 cognitive or physical condition. Serious emotional injury shall  
3 be established by testimony of qualified experts upon the  
4 reasonable expectation of probable harm to a reasonable degree of  
5 medical or psychological certainty;  
6 (44) "Serious physical injury", physical injury that  
7 creates a substantial risk of death or that causes serious  
8 disfigurement or protracted loss or impairment of the function of  
9 any part of the body;  
10 (45) "Services", when used in relation to a computer system  
11 or network, means use of a computer, computer system, or computer  
12 network and includes, but is not limited to, computer time, data  
13 processing, and storage or retrieval functions;  
14 (46) "Sexual orientation", male or female heterosexuality,  
15 homosexuality or bisexuality by inclination, practice, identity  
16 or expression, or having a self-image or identity not  
17 traditionally associated with one's gender;  
18 (47) "Vehicle", a self-propelled mechanical device designed  
19 to carry a person or persons, excluding vessels or aircraft;  
20 (48) "Vessel", any boat or craft propelled by a motor or by  
21 machinery, whether or not such motor or machinery is a principal  
22 source of propulsion used or capable of being used as a means of  
23 transportation on water, or any boat or craft more than twelve  
24 feet in length which is powered by sail alone or by a combination  
25 of sail and machinery, and used or capable of being used as a  
26 means of transportation on water, but not any boat or craft  
27 having, as the only means of propulsion, a paddle or oars;  
28 (49) "Voluntary act":
(a) A bodily movement performed while conscious as a result of effort or determination. Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his or her control for a sufficient time to have enabled him or her to dispose of it or terminate his or her control; or

(b) An omission to perform an act of which the actor is physically capable. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law;

(50) "Vulnerable person", any person in the custody, care, or control of the department of mental health who is receiving services from an operated, funded, licensed, or certified program.

557.021. 1. Any offense defined outside this code which is declared to be a misdemeanor without specification of the penalty therefor is a class A misdemeanor.

2. Any offense defined outside this code which is declared to be a felony without specification of the penalty therefor is a class E felony.

3. For the purpose of applying the extended term provisions of section 558.016 and the minimum prison term provisions of section 558.019 and for determining the penalty for attempts [and conspiracies], offenses defined outside of this code shall be classified as follows:

   (1) If the offense is a felony:

   (a) It is a class A felony if the authorized penalty
includes death, life imprisonment or imprisonment for a term of
twenty years or more;

(b) It is a class B felony if the maximum term of
imprisonment authorized exceeds ten years but is less than twenty
years;

(c) It is a class C felony if the maximum term of
imprisonment authorized is ten years;

(d) It is a class D felony if the maximum term of
imprisonment exceeds four years but is less than ten years;

(e) It is a class E felony if the maximum term of
imprisonment is four years or less;

(2) If the offense is a misdemeanor:

(a) It is a class A misdemeanor if the authorized
imprisonment exceeds six months in jail;

(b) It is a class B misdemeanor if the authorized
imprisonment exceeds thirty days but is not more than six months;

(c) It is a class C misdemeanor if the authorized
imprisonment is thirty days or less;

(d) It is a class D misdemeanor if it includes a mental
state as an element of the offense and there is no authorized
imprisonment;

(e) It is an infraction if there is no authorized
imprisonment.

557.045. No person found guilty of, or pleading guilty to,
the following offenses shall be eligible for probation, suspended
imposition or execution of sentence, or conditional release, and
shall be sentenced to a term of imprisonment pursuant to
subdivision (1) of subsection 2 of section 557.011:
(1) Second degree murder when a person knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person, as defined in subdivision (1) of subsection 1 in section 565.021;

(2) Any dangerous felony, as the term is defined in section 556.061, where the person has been previously found guilty of a class A or B felony or a dangerous felony; or

(3) Any dangerous felony, as the term is defined in section 556.061, where the commission of the felony involves the use of a deadly weapon, as that term is defined in section 556.061.

562.014. 1. Guilt for an offense may be based upon a conspiracy to commit an offense when a person, with the purpose of promoting or facilitating the commission of an offense, agrees with another person or persons that they or one or more of them will engage in conduct which constitutes such offense] A person commits the offense of conspiracy to commit, in any manner or for any purpose, an offense if the person agrees, with one or more persons, to commit any class A, B, or C felony offense, or any unclassified felony offenses if the maximum term of imprisonment for such unclassified felony exceeds ten years or more, and one or more of such persons do any act in furtherance of such an agreement.

2. It is no defense to a prosecution for conspiring to commit an offense that a person, who knows that a person with whom he or she conspires to commit an offense has conspired with another person or persons to commit the same offense, does not know the identity of such other person or persons.
3. If a person conspires to commit a number of offenses, he or she can be found guilty of only one offense of conspiracy so long as such multiple offenses are the object of the same agreement.

4. [No person may be convicted of an offense based upon a conspiracy to commit an offense unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or her or by a person with whom he or she conspired.]

5. (1) No person shall be convicted of [an offense based upon a conspiracy to commit an offense if, after conspiring to commit the offense, he or she prevented the accomplishment of the objectives of the conspiracy under circumstances manifesting a renunciation of his or her criminal purpose.]

(2) The defendant shall have the burden of injecting the issue of renunciation of criminal purpose under subdivision (1) of this subsection.

[6.] 5. For the purpose of time limitations on prosecutions:

(1) A conspiracy to commit an offense is a continuing course of conduct which terminates when the offense or offenses which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he or she conspired;

(2) If an individual abandons the agreement, the conspiracy is terminated as to him or her only if he or she advises those with whom he or she has conspired of his or her abandonment or he or she informs the law enforcement authorities of the existence of the conspiracy and of his or her participation in it.
7. A person shall not be charged, convicted or sentenced on the basis of the same course of conduct of both the actual commission of an offense and a conspiracy to commit that offense.

8. Unless otherwise set forth in the statute creating the offense, when guilt for a felony or misdemeanor is based upon a conspiracy to commit that offense, the felony or misdemeanor shall be classified one step lower than the class provided for the felony or misdemeanor in the statute creating the offense.

6. The offense of conspiracy to commit an offense is a class C felony.

570.027. 1. A person commits the offense of vehicle hijacking when he or she knowingly uses or threatens the use of physical force upon another person to seize or attempt to seize possession or control of a vehicle, as defined in section 302.010, from the immediate possession or control of another person.

2. The offense of vehicle hijacking is a class B felony unless it meets one of the criteria listed in subsection 3 of this section.

3. The offense of vehicle hijacking is a class A felony if, in the course thereof, a person or another participant in the offense:

   (1) Causes serious physical injury to any person in immediate possession, control, or presence of the vehicle;

   (2) Is armed with a deadly weapon;

   (3) Uses or threatens the immediate use of a dangerous instrument against any person;

   (4) Displays or threatens the use of what appears to be a
deadly weapon or dangerous instrument; or

(5) Seizes a vehicle, or attempts to seize a vehicle, in which a child or special victim as defined in section 565.002 is present.

571.015. 1. [Except as provided in subsection 4 of this section,] Any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the [crime] offense of armed criminal action and, upon conviction, shall be punished by imprisonment by the department of corrections [and human resources] for a term of not less than three years and not to exceed fifteen years, unless the person is unlawfully possessing a firearm, in which case the term of imprisonment shall be for a term of not less than five years. The punishment imposed pursuant to this subsection shall be in addition to and consecutive to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of three calendar years.

2. Any person convicted of a second offense of armed criminal action under subsection 1 of this section shall be punished by imprisonment by the department of corrections [and human resources] for a term of not less than five years and not to exceed thirty years, unless the person is unlawfully possessing a firearm, in which case the term of imprisonment shall be for a term not less than fifteen years. The punishment
imposed pursuant to this subsection shall be in addition to and consecutive to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.

3. Any person convicted of a third or subsequent offense of armed criminal action subsection 1 of this section shall be punished by imprisonment by the department of corrections for a term of not less than ten years, unless the person is unlawfully possessing a firearm, in which case the term of imprisonment shall be no less than fifteen years. The punishment imposed pursuant to this subsection shall be in addition to and consecutive to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of ten calendar years.

[4. The provisions of this section shall not apply to the felonies defined in sections 564.590, 564.610, 564.620, 564.630, and 564.640.]

571.070. 1. A person commits the offense of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:

(1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or
of the United States which, if committed within this state, would be a felony; or

(2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

2. Unlawful possession of a firearm is a class D felony, unless a person has been convicted of a dangerous felony as defined in section 556.061, in which case it is a class C felony.

3. The provisions of subdivision (1) of subsection 1 of this section shall not apply to the possession of an antique firearm.

578.419. Sections 578.419 to 578.437 shall be known and may be cited as the "Missouri Criminal Street Gangs Prevention Act".

578.421. As used in sections 578.421 to 578.437, the following terms mean:

(1) "Criminal street gang", any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its [primary] motivating activities the commission of one or more of the criminal acts enumerated in subdivision (2) of this section, [which has a common name or common identifying sign or symbol,] whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity;

(2) "Pattern of criminal street gang activity", the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after August 28, 1993, and the last of those offenses occurred within three years after a prior offense, and
the offenses are committed on separate occasions, or by two or
more persons:

(a) Assault with a deadly weapon or by means of force
likely to cause serious physical injury, as provided in sections
565.050 and 565.052;

(b) Robbery, arson and those offenses under chapter 569
which are related to robbery and arson;

(c) Murder or manslaughter, as provided in sections 565.020
to 565.024;

(d) Any violation of the provisions of chapter 579 which
involves the distribution, delivery or manufacture of a substance
prohibited by chapter 579;

(e) Unlawful use of a weapon which is a felony pursuant to
section 571.030;

(f) Tampering with witnesses and victims, as provided in
section 575.270;

(g) Promoting online sexual solicitation, as provided in
section 566.103;

(h) Sexual trafficking of a child in the first degree, as
provided in section 566.210;

(i) Sexual trafficking of a child in the second degree, as
provided in section 566.211;

(j) Patronizing prostitution, as provided in subsection 4
of section 567.030;

(k) Promoting prostitution in the first degree, as provided
in section 567.050;

(l) Promoting prostitution in the second degree, as
provided in section 567.060;
(m) Abuse or neglect of a child, as provided in subsection 6 of section 568.060;

(n) Sexual exploitation of a minor, as provided in section 573.023;

(o) Child used in sexual performance, as provided in section 573.200; [or]

(p) Promoting sexual performance by a child, as provided in section 573.205; or

(q) Any dangerous felony, as defined in section 556.061.

578.423. Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal street gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years guilty of a class B felony.

578.425. Any person who is convicted of a felony [or a misdemeanor] which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the [specific intent] purpose to promote, further, or assist in any criminal conduct by gang members, shall be punished in the following manner:

(1) [Any person who violates this section in the commission of a misdemeanor shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years;]

(2) Any person who violates this section in the commission
of a felony shall, upon conviction of that felony, in addition
and consecutive to the punishment prescribed for the felony of
which he or she has been convicted, be punished by an additional
term of [one,] two[, or three] years [at the court's discretion].
If the underlying felony is committed on the grounds of, or
within one thousand feet of a public or private elementary,
vocational, junior high or high school, the additional term shall
be [two,] three[, or four] years[, at the court's discretion.
The court shall order the imposition of the middle term of the
sentence enhancement, unless there are circumstances in
aggravation or mitigation. The court shall state the reasons for
its choice of sentence enhancements on the record at the time of
sentencing];

(2) Any person who violates this section in the commission
of a dangerous felony shall, upon conviction of that dangerous
felony, in addition and consecutive to the punishment prescribed
for the dangerous felony of which he or she has been convicted,
be punished by an additional term of five years.

(3) Any person who violates this section in the commission
of a felony punishable by death or imprisonment for life shall
not be paroled until a minimum of fifteen calendar years have
been served [in the custody of the department of corrections].