

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.

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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,  
2 571.015, 571.070, 578.421, 578.423, and 578.425, RSMo, are  
3 repealed and twelve new sections enacted in lieu thereof, to be  
4 known as sections 545.140, 556.061, 557.021, 557.045, 562.014,  
5 570.027, 571.015, 571.070, 578.419, 578.421, 578.423, and  
6 578.425, to read as follows:

7           545.140. 1. Notwithstanding Missouri supreme court rule  
8 24.06, two or more defendants may be charged in the same  
9 indictment or information if they are alleged to have  
10 participated in the same act or transaction or in the same series  
11 of acts or transactions constituting an offense. Such defendants  
12 may be charged in one or more counts together or separately and  
13 all of the defendants need not be charged in each count.

14           2. Notwithstanding Missouri supreme court rule 24.07, two  
15 or more offenses may be charged in the same indictment or  
16 information in a separate count for each offense if the offenses  
17 charged, whether felonies or misdemeanors or infractions, or any

1 combination thereof, are of the same or similar character or are  
2 based on the same act or transaction or on two or more acts or  
3 transactions connected together or constituting parts of a common  
4 scheme or plan.

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

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

16 556.061. In this code, unless the context requires a  
17 different definition, the following terms shall mean:

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

21 (2) "Affirmative defense":

22 (a) The defense referred to is not submitted to the trier  
23 of fact unless supported by evidence; and

24 (b) If the defense is submitted to the trier of fact the  
25 defendant has the burden of persuasion that the defense is more  
26 probably true than not;

27 (3) "Burden of injecting the issue":

28 (a) The issue referred to is not submitted to the trier of

1 fact unless supported by evidence; and

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

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

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

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

28 (7) "Computer hardware", all equipment which can collect,

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

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

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

26 (10) "Computer software", digital information which can be  
27 interpreted by a computer and any of its related components to  
28 direct the way they work. Software is stored in electronic,

1 magnetic, optical or other digital form. The term commonly  
2 includes programs to run operating systems and applications, such  
3 as word processing, graphic, or spreadsheet programs, utilities,  
4 compilers, interpreters and communications programs;

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

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

11 (13) "Confinement":

12 (a) A person is in confinement when such person is held in  
13 a place of confinement pursuant to arrest or order of a court,  
14 and remains in confinement until:

15 a. A court orders the person's release; or

16 b. The person is released on bail, bond, or recognizance,  
17 personal or otherwise; or

18 c. A public servant having the legal power and duty to  
19 confine the person authorizes his release without guard and  
20 without condition that he return to confinement;

21 (b) A person is not in confinement if:

22 a. The person is on probation or parole, temporary or  
23 otherwise; or

24 b. The person is under sentence to serve a term of  
25 confinement which is not continuous, or is serving a sentence  
26 under a work-release program, and in either such case is not  
27 being held in a place of confinement or is not being held under  
28 guard by a person having the legal power and duty to transport

1 the person to or from a place of confinement;

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

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

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

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

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

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

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

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

27 (19) "Dangerous felony", the felonies of arson in the first  
28 degree, assault in the first degree, attempted rape in the first

1 degree if physical injury results, attempted forcible rape if  
2 physical injury results, attempted sodomy in the first degree if  
3 physical injury results, attempted forcible sodomy if physical  
4 injury results, rape in the first degree, forcible rape, sodomy  
5 in the first degree, forcible sodomy, assault in the second  
6 degree if the victim of such assault is a special victim as  
7 defined in subdivision (14) of section 565.002, kidnapping in the  
8 first degree, kidnapping, murder in the second degree, assault of  
9 a law enforcement officer in the first degree, domestic assault  
10 in the first degree, elder abuse in the first degree, robbery in  
11 the first degree, armed criminal action, conspiracy to commit an  
12 offense when the offense is a dangerous felony, vehicle hijacking  
13 when punished as a class A felony, statutory rape in the first  
14 degree when the victim is a child less than twelve years of age  
15 at the time of the commission of the act giving rise to the  
16 offense, statutory sodomy in the first degree when the victim is  
17 a child less than twelve years of age at the time of the  
18 commission of the act giving rise to the offense, child  
19 molestation in the first or second degree, abuse of a child if  
20 the child dies as a result of injuries sustained from conduct  
21 chargeable under section 568.060, child kidnapping, parental  
22 kidnapping committed by detaining or concealing the whereabouts  
23 of the child for not less than one hundred twenty days under  
24 section 565.153, and an "intoxication-related traffic offense" or  
25 "intoxication-related boating offense" if the person is found to  
26 be a "habitual offender" or "habitual boating offender" as such  
27 terms are defined in section 577.001;

28 (20) "Dangerous instrument", any instrument, article or

1 substance, which, under the circumstances in which it is used, is  
2 readily capable of causing death or other serious physical  
3 injury;

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

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

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

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

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

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

27 (27) "Forcible compulsion" either:

28 (a) Physical force that overcomes reasonable resistance; or



1 (b) A threat, express or implied, that places a person in  
2 reasonable fear of death, serious physical injury or kidnapping  
3 of such person or another person;

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

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

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

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

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

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

20  
21 Any such vehicle, vessel, or structure is inhabitable regardless  
22 of whether a person is actually present. If a building or  
23 structure is divided into separately occupied units, any unit not  
24 occupied by the actor is an inhabitable structure of another;

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

26 (a) Conduct or attendant circumstances, means a person is  
27 aware of the nature of his or her conduct or that those  
28 circumstances exist; or

1 (b) A result of conduct, means a person is aware that his  
2 or her conduct is practically certain to cause that result;

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

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

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

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

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

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

25 (38) "Possess" or "possessed", having actual or  
26 constructive possession of an object with knowledge of its  
27 presence. A person has actual possession if such person has the  
28 object on his or her person or within easy reach and convenient

1 control. A person has constructive possession if such person has  
2 the power and the intention at a given time to exercise dominion  
3 or control over the object either directly or through another  
4 person or persons. Possession may also be sole or joint. If one  
5 person alone has possession of an object, possession is sole. If  
6 two or more persons share possession of an object, possession is  
7 joint;

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

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

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

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

27 (43) "Serious emotional injury", an injury that creates a  
28 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":

1 (a) A bodily movement performed while conscious as a result  
2 of effort or determination. Possession is a voluntary act if the  
3 possessor knowingly procures or receives the thing possessed, or  
4 having acquired control of it was aware of his or her control for  
5 a sufficient time to have enabled him or her to dispose of it or  
6 terminate his or her control; or

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

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

16 557.021. 1. Any offense defined outside this code which is  
17 declared to be a misdemeanor without specification of the penalty  
18 therefor is a class A misdemeanor.

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

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

27 (1) If the offense is a felony:

28 (a) It is a class A felony if the authorized penalty

1 includes death, life imprisonment or imprisonment for a term of  
2 twenty years or more;

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

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

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

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

12 (2) If the offense is a misdemeanor:

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

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

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

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

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

24 557.045. No person found guilty of, or pleading guilty to,  
25 the following offenses shall be eligible for probation, suspended  
26 imposition or execution of sentence, or conditional release, and  
27 shall be sentenced to a term of imprisonment pursuant to  
28 subdivision (1) of subsection 2 of section 557.011:

1       (1) Second degree murder when a person knowingly causes the  
2 death of another person or, with the purpose of causing serious  
3 physical injury to another person, causes the death of another  
4 person, as defined in subdivision (1) of subsection 1 in section  
5 565.021;

6       (2) Any dangerous felony, as the term is defined in section  
7 556.061, where the person has been previously found guilty of a  
8 class A or B felony or a dangerous felony; or

9       (3) Any dangerous felony, as the term is defined in section  
10 556.061, where the commission of the felony involves the use of a  
11 deadly weapon, as that term is defined in section 556.061.

12       562.014. 1. [Guilt for an offense may be based upon a  
13 conspiracy to commit an offense when a person, with the purpose  
14 of promoting or facilitating the commission of an offense, agrees  
15 with another person or persons that they or one or more of them  
16 will engage in conduct which constitutes such offense] A person  
17 commits the offense of conspiracy to commit, in any manner or for  
18 any purpose, an offense if the person agrees, with one or more  
19 persons, to commit any class A, B, or C felony offense, or any  
20 unclassified felony offenses if the maximum term of imprisonment  
21 for such unclassified felony exceeds ten years or more, and one  
22 or more of such persons do any act in furtherance of such an  
23 agreement.

24       2. It is no defense to a prosecution for conspiring to  
25 commit an offense that a person, who knows that a person with  
26 whom he or she conspires to commit an offense has conspired with  
27 another person or persons to commit the same offense, does not  
28 know the identity of such other person or persons.

1           3. If a person conspires to commit a number of offenses, he  
2 or she can be found guilty of only one offense of conspiracy so  
3 long as such multiple offenses are the object of the same  
4 agreement.

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

9           5.] (1) No person shall be convicted of [an offense based  
10 upon a] conspiracy to commit an offense if, after conspiring to  
11 commit the offense, he or she prevented the accomplishment of the  
12 objectives of the conspiracy under circumstances manifesting a  
13 renunciation of his or her criminal purpose.

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

17           [6.] 5. For the purpose of time limitations on  
18 prosecutions:

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

24           (2) If an individual abandons the agreement, the conspiracy  
25 is terminated as to him or her only if he or she advises those  
26 with whom he or she has conspired of his or her abandonment or he  
27 or she informs the law enforcement authorities of the existence  
28 of the conspiracy and of his or her participation in it.



1           [7. A person shall not be charged, convicted or sentenced  
2 on the basis of the same course of conduct of both the actual  
3 commission of an offense and a conspiracy to commit that offense.

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

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

11           570.027. 1. A person commits the offense of vehicle  
12 hijacking when he or she knowingly uses or threatens the use of  
13 physical force upon another person to seize or attempt to seize  
14 possession or control of a vehicle, as defined in section  
15 302.010, from the immediate possession or control of another  
16 person.

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

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

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

25           (2) Is armed with a deadly weapon;

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

28           (4) Displays or threatens the use of what appears to be a

1 deadly weapon or dangerous instrument; or

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

5 571.015. 1. [Except as provided in subsection 4 of this  
6 section,] Any person who commits any felony under the laws of  
7 this state by, with, or through the use, assistance, or aid of a  
8 dangerous instrument or deadly weapon is also guilty of the  
9 [crime] offense of armed criminal action and, upon conviction,  
10 shall be punished by imprisonment by the department of  
11 corrections [and human resources] for a term of not less than  
12 three years and not to exceed fifteen years, unless the person is  
13 unlawfully possessing a firearm, in which case the term of  
14 imprisonment shall be for a term of not less than five years.

15 The punishment imposed pursuant to this subsection shall be in  
16 addition to and consecutive to any punishment provided by law for  
17 the crime committed by, with, or through the use, assistance, or  
18 aid of a dangerous instrument or deadly weapon. No person  
19 convicted under this subsection shall be eligible for parole,  
20 probation, conditional release, or suspended imposition or  
21 execution of sentence for a period of three calendar years.

22 2. Any person convicted of a second offense of armed  
23 criminal action under subsection 1 of this section shall be  
24 punished by imprisonment by the department of corrections [and  
25 human resources] for a term of not less than five years and not  
26 to exceed thirty years, unless the person is unlawfully  
27 possessing a firearm, in which case the term of imprisonment  
28 shall be for a term not less than fifteen years. The punishment

1 imposed pursuant to this subsection shall be in addition to and  
2 consecutive to any punishment provided by law for the crime  
3 committed by, with, or through the use, assistance, or aid of a  
4 dangerous instrument or deadly weapon. No person convicted under  
5 this subsection shall be eligible for parole, probation,  
6 conditional release, or suspended imposition or execution of  
7 sentence for a period of five calendar years.

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

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

24 571.070. 1. A person commits the offense of unlawful  
25 possession of a firearm if such person knowingly has any firearm  
26 in his or her possession and:

27 (1) Such person has been convicted of a felony under the  
28 laws of this state, or of a crime under the laws of any state or

1 of the United States which, if committed within this state, would  
2 be a felony; or

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

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

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

12 578.419. Sections 578.419 to 578.437 shall be known and may  
13 be cited as the "Missouri Criminal Street Gangs Prevention Act".

14 578.421. As used in sections 578.421 to 578.437, the  
15 following terms mean:

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

24 (2) "Pattern of criminal street gang activity", the  
25 commission, attempted commission, or solicitation of two or more  
26 of the following offenses, provided at least one of those  
27 offenses occurred after August 28, 1993, and the last of those  
28 offenses occurred within three years after a prior offense, and

1 the offenses are committed on separate occasions, or by two or  
2 more persons:

3 (a) Assault with a deadly weapon or by means of force  
4 likely to cause serious physical injury, as provided in sections  
5 565.050 and 565.052;

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

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

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

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

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

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

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

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

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

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

27 (l) Promoting prostitution in the second degree, as  
28 provided in section 567.060;

1 (m) Abuse or neglect of a child, as provided in subsection  
2 6 of section 568.060;

3 (n) Sexual exploitation of a minor, as provided in section  
4 573.023;

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

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

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

10 578.423. Any person who actively participates in any  
11 criminal street gang with knowledge that its members engage in or  
12 have engaged in a pattern of criminal street gang activity, and  
13 who willfully promotes, furthers, or assists in any felonious  
14 criminal conduct by gang members shall be [punished by  
15 imprisonment in the county jail for a period not to exceed one  
16 year, or by imprisonment in a state correctional facility for  
17 one, two, or three years] guilty of a class B felony.

18 578.425. Any person who is convicted of a felony [or a  
19 misdemeanor] which is committed for the benefit of, at the  
20 direction of, or in association with, any criminal street gang,  
21 with the [specific intent] purpose to promote, further, or assist  
22 in any criminal conduct by gang members, shall be punished in the  
23 following manner:

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

28 (2)] Any person who violates this section in the commission

1 of a felony shall, upon conviction of that felony, in addition  
2 and consecutive to the punishment prescribed for the felony of  
3 which he or she has been convicted, be punished by an additional  
4 term of [one,] two[, or three] years [at the court's discretion].  
5 If the underlying felony is committed on the grounds of, or  
6 within one thousand feet of a public or private elementary,  
7 vocational, junior high or high school, the additional term shall  
8 be [two,] three[, or four] years[, at the court's discretion].  
9 The court shall order the imposition of the middle term of the  
10 sentence enhancement, unless there are circumstances in  
11 aggravation or mitigation. The court shall state the reasons for  
12 its choice of sentence enhancements on the record at the time of  
13 sentencing];

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

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