

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 600

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

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ADRIANE D. CROUSE, Secretary.

3178S.08P

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:

Section A. Sections 545.140, 556.061, 557.021, 562.014, 571.015, 571.070, 578.421, 578.423, and 578.425, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 545.140, 556.061, 557.021, 557.045, 562.014, 570.027, 571.015, 571.070, 578.419,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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 connected together or constituting parts of a common scheme or plan.

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

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

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

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

6 (2) "Affirmative defense":

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

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

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

12 (a) The issue referred to is not submitted to the trier of fact unless
13 supported by evidence; and

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

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

21 (5) "Computer", the box that houses the central processing unit (CPU),
22 along with any internal storage devices, such as internal hard drives, and
23 internal communication devices, such as internal modems capable of sending or
24 receiving electronic mail or fax cards, along with any other hardware stored or
25 housed internally. Thus, computer refers to hardware, software and data

26 contained in the main unit. Printers, external modems attached by cable to the
27 main unit, monitors, and other external attachments will be referred to
28 collectively as peripherals and discussed individually when appropriate. When
29 the computer and all peripherals are referred to as a package, the term "computer
30 system" is used. Information refers to all the information on a computer system
31 including both software applications and data;

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

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

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

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

54 (10) "Computer software", digital information which can be interpreted by
55 a computer and any of its related components to direct the way they
56 work. Software is stored in electronic, magnetic, optical or other digital
57 form. The term commonly includes programs to run operating systems and
58 applications, such as word processing, graphic, or spreadsheet programs, utilities,
59 compilers, interpreters and communications programs;

60 (11) "Computer-related documentation", written, recorded, printed or
61 electronically stored material which explains or illustrates how to configure or

62 use computer hardware, software or other related items;

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

65 (13) "Confinement":

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

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

70 b. The person is released on bail, bond, or recognizance, personal or
71 otherwise; or

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

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

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

77 b. The person is under sentence to serve a term of confinement which is
78 not continuous, or is serving a sentence under a work-release program, and in
79 either such case is not being held in a place of confinement or is not being held
80 under guard by a person having the legal power and duty to transport the person
81 to or from a place of confinement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

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

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

169 (a) Conduct or attendant circumstances, means a person is aware of the

170 nature of his or her conduct or that those circumstances exist; or

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

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

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

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

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

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

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

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

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

203 (40) "Public servant", any person employed in any way by a government
204 of this state who is compensated by the government by reason of such person's
205 employment, any person appointed to a position with any government of this

206 state, or any person elected to a position with any government of this state. It
207 includes, but is not limited to, legislators, jurors, members of the judiciary and
208 law enforcement officers. It does not include witnesses;

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

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

216 (43) "Serious emotional injury", an injury that creates a substantial risk
217 of temporary or permanent medical or psychological damage, manifested by
218 impairment of a behavioral, cognitive or physical condition. Serious emotional
219 injury shall be established by testimony of qualified experts upon the reasonable
220 expectation of probable harm to a reasonable degree of medical or psychological
221 certainty;

222 (44) "Serious physical injury", physical injury that creates a substantial
223 risk of death or that causes serious disfigurement or protracted loss or
224 impairment of the function of any part of the body;

225 (45) "Services", when used in relation to a computer system or network,
226 means use of a computer, computer system, or computer network and includes,
227 but is not limited to, computer time, data processing, and storage or retrieval
228 functions;

229 (46) "Sexual orientation", male or female heterosexuality, homosexuality
230 or bisexuality by inclination, practice, identity or expression, or having a
231 self-image or identity not traditionally associated with one's gender;

232 (47) "Vehicle", a self-propelled mechanical device designed to carry a
233 person or persons, excluding vessels or aircraft;

234 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
235 whether or not such motor or machinery is a principal source of propulsion used
236 or capable of being used as a means of transportation on water, or any boat or
237 craft more than twelve feet in length which is powered by sail alone or by a
238 combination of sail and machinery, and used or capable of being used as a means
239 of transportation on water, but not any boat or craft having, as the only means
240 of propulsion, a paddle or oars;

241 (49) "Voluntary act":

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

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

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

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

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

6 3. For the purpose of applying the extended term provisions of section
7 558.016 and the minimum prison term provisions of section 558.019 and for
8 determining the penalty for attempts [and conspiracies], offenses defined outside
9 of this code shall be classified as follows:

10 (1) If the offense is a felony:

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

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

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

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

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

21 (2) If the offense is a misdemeanor:

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

24 (b) It is a class B misdemeanor if the authorized imprisonment exceeds

25 thirty days but is not more than six months;

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

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

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

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

6 (1) **Second degree murder when a person knowingly causes the
7 death of another person or, with the purpose of causing serious
8 physical injury to another person, causes the death of another person,
9 as defined in subdivision (1) of subsection 1 in section 565.021;**

10 (2) **Any dangerous felony, as the term is defined in section
11 556.061, where the person has been previously found guilty of a class
12 A or B felony or a dangerous felony; or**

13 (3) **Any dangerous felony, as the term is defined in section
14 556.061, where the commission of the felony involves the use of a deadly
15 weapon, as that term is defined in section 556.061.**

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

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

15 3. If a person conspires to commit a number of offenses, he or she can be

16 found guilty of only one offense of conspiracy so long as such multiple offenses are
17 the object of the same agreement.

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

22 5.] (1) No person shall be convicted of [an offense based upon a]
23 conspiracy to commit an offense if, after conspiring to commit the offense, he or
24 she prevented the accomplishment of the objectives of the conspiracy under
25 circumstances manifesting a renunciation of his or her criminal purpose.

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

28 [6.] 5. For the purpose of time limitations on prosecutions:

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

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

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

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

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

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

6 **2. The offense of vehicle hijacking is a class B felony unless it**

7 **meets one of the criteria listed in subsection 3 of this section.**

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

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

12 **(2) Is armed with a deadly weapon;**

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

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

17 **(5) Seizes a vehicle, or attempts to seize a vehicle, in which a**
18 **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
2 person who commits any felony under the laws of this state by, with, or through
3 the use, assistance, or aid of a dangerous instrument or deadly weapon is also
4 guilty of the [crime] **offense** of armed criminal action and, upon conviction, shall
5 be punished by imprisonment by the department of corrections [and human
6 resources] for a term of not less than three years **and not to exceed fifteen**
7 **years, unless the person is unlawfully possessing a firearm, in which**
8 **case the term of imprisonment shall be for a term of not less than five**
9 **years.** The punishment imposed pursuant to this subsection shall be in addition
10 to **and consecutive to** any punishment provided by law for the crime committed
11 by, with, or through the use, assistance, or aid of a dangerous instrument or
12 deadly weapon. No person convicted under this subsection shall be eligible for
13 parole, probation, conditional release, or suspended imposition or execution of
14 sentence for a period of three calendar years.

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

25 suspended imposition or execution of sentence for a period of five calendar years.

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

37 [4. The provisions of this section shall not apply to the felonies defined
38 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
2 firearm if such person knowingly has any firearm in his or her possession and:

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

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

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

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

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

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

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

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

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

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

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

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

21 (e) Unlawful use of a weapon which is a felony pursuant to section
22 571.030;

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

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

25 (h) Sexual trafficking of a child in the first degree, as provided in section
26 566.210;

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

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

30 (k) Promoting prostitution in the first degree, as provided in section
31 567.050;

32 (l) Promoting prostitution in the second degree, as provided in section
33 567.060;

34 (m) Abuse or neglect of a child, as provided in subsection 6 of section
35 568.060;

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

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

38 (p) Promoting sexual performance by a child, as provided in section
39 573.205; or

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

578.423. Any person who actively participates in any criminal street gang
2 with knowledge that its members engage in or have engaged in a pattern of
3 criminal street gang activity, and who willfully promotes, furthers, or assists in
4 any felonious criminal conduct by gang members shall be [punished by

5 imprisonment in the county jail for a period not to exceed one year, or by
6 imprisonment in a state correctional facility for one, two, or three years] **guilty**
7 **of a class B felony.**

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

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

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

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

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

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