

SECOND REGULAR SESSION

SENATE BILL NO. 602

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3454S.02I

AN ACT

To repeal sections 578.421, 578.423, and 578.425, RSMo, and to enact in lieu thereof five new sections relating to criminal street gang activities, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 578.421, 578.423, and 578.425, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 578.419,
3 578.421, 578.423, 578.425, and 578.439, to read as follows:

**578.419. Sections 578.419 to 578.439 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] **578.439**, the following
2 terms 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;

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

- 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 court's
17 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 [(3)] (2) Any person who violates this section in the commission of a
22 felony punishable by death or imprisonment for life shall not be paroled until a
23 minimum of fifteen calendar years have been served [in the custody of the
24 department of corrections].

**578.439. Upon receiving a referral from a law enforcement
2 agency alleging a violation of sections 578.423, 578.425, or 578.430, the
3 prosecuting attorney of any county with more than six hundred
4 thousand inhabitants or a circuit attorney of any city not within a
5 county shall, within sixty days, either commence a prosecution based
6 on the referral by the filing of a complaint, information, or indictment,
7 or decline prosecution. If the prosecuting attorney of any county with
8 more than six hundred thousand inhabitants or a circuit attorney of
9 any city not within a county fails to commence a prosecution within
10 sixty days or declines prosecution of a referral, upon a written request
11 of the law enforcement agency making the referral to reconsider, such
12 prosecuting or circuit attorney shall, within fifteen days, commence a
13 prosecution of the referral or decline prosecution. If such prosecuting
14 or circuit attorney fails to commence a prosecution within fifteen days
15 after receiving written request from the law enforcement agency that
16 made the referral to reconsider, the attorney general shall have**

17 **authority to commence a prosecution alleging a violation of sections**
18 **578.423, 578.425, or 578.430 based on the referral.**

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Unofficial

Bill

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