

SECOND REGULAR SESSION

# HOUSE BILL NO. 1610

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (97).

3926H.011

DANA RADEMAN MILLER, Chief Clerk

### 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Section A. Sections 578.421, 578.423, and 578.425, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 578.419, 578.421, 578.423, 578.425, and 578.439, to read as follows: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 cited as the "Missouri Criminal Street Gangs Prevention Act".**

578.421. As used in sections 578.421 to ~~[578.437]~~ **578.439**, 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;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 15 (c) Murder or manslaughter, as provided in sections 565.020 to 565.024;
- 16 (d) Any violation of the provisions of chapter 579 which involves the distribution,  
17 delivery or manufacture of a substance prohibited by chapter 579;
- 18 (e) Unlawful use of a weapon which is a felony pursuant to section 571.030;
- 19 (f) Tampering with witnesses and victims, as provided in section 575.270;
- 20 (g) Promoting online sexual solicitation, as provided in section 566.103;
- 21 (h) Sexual trafficking of a child in the first degree, as provided in section 566.210;
- 22 (i) Sexual trafficking of a child in the second degree, as provided in section 566.211;
- 23 (j) Patronizing prostitution, as provided in subsection 4 of section 567.030;
- 24 (k) Promoting prostitution in the first degree, as provided in section 567.050;
- 25 (l) Promoting prostitution in the second degree, as provided in section 567.060;
- 26 (m) Abuse or neglect of a child, as provided in subsection 6 of section 568.060;
- 27 (n) Sexual exploitation of a minor, as provided in section 573.023;
- 28 (o) Child used in sexual performance, as provided in section 573.200; ~~or~~
- 29 (p) Promoting sexual performance by a child, as provided in section 573.205; **or**
- 30 **(q) Any "dangerous felony", as defined in section 556.061.**

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

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

- 5 (1) ~~[Any person who violates this section in the commission of a misdemeanor shall be~~  
6 ~~punished by imprisonment in the county jail not to exceed one year, or by imprisonment in a~~  
7 ~~state correctional facility for one, two, or three years;~~
- 8 ~~——(2)]~~ Any person who violates this section in the commission of a felony shall, upon  
9 conviction of that felony, in addition and consecutive to the punishment prescribed for the felony  
10 of which he or she has been convicted, be punished by an additional term of ~~[one, two, or]~~ three  
11 years ~~[at the court's discretion]~~. If the underlying felony is committed on the grounds of, or  
12 within one thousand feet of a public or private elementary, vocational, junior high or high school,  
13 the additional term shall be ~~[two, three, or]~~ four years~~], at the court's discretion. The court shall~~  
14 ~~order the imposition of the middle term of the sentence enhancement, unless there are~~

15 ~~circumstances in aggravation or mitigation. The court shall state the reasons for its choice of~~  
16 ~~sentence enhancements on the record at the time of sentencing];~~

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

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

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