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NOTE

Two Steps Forward, One Step...Back? Missouri Legislature Targets Rise in Violent Crime

*Sarah Walters**

I. INTRODUCTION

In May 2020, the Missouri Legislature passed Senate Bill 600, a controversial crime bill which made modifications to a handful of criminal provisions in an effort to tackle the violent crime plaguing the state's largest cities.¹ According to Senator Tony Luetkemeyer, the bill's sponsor, inspiration for the legislation stemmed from an August 2019 USA Today report ranking Kansas City and St. Louis as the fifth- and first-most-dangerous cities in the country, respectively, and Springfield as the twelfth-most-dangerous.² In a similar USA Today report ranking the most dangerous states, Missouri broke the top ten, coming in at number eight overall, with St. Louis and Kansas City being the most concentrated areas for violent crime.³ Prosecutors and law enforcement from both cities urged Governor Parson to address the increase in homicides and violent crime.⁴ In 2020, there were 262

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1. S.B. 600, 100th Gen. Assemb., Reg. Sess. 2 (Mo. 2020).

2. *25 of the Most Dangerous Cities in America*, USA TODAY (Aug. 14, 2019), <https://www.usatoday.com/picture-gallery/travel/experience/america/2018/10/17/25-most-dangerous-cities-america/1669467002/> [<https://perma.cc/2SDU-9D94>]. This report is based on data from the FBI's 2017 Uniform Crime Report and defines violent crime as "all offenses involving force or threat of force," including murder, nonnegligent manslaughter, rape, robbery, and aggravated assault. *Id.*

3. Samuel Stebbins, *Dangerous States: Which States Have the Highest Rates of Violent Crime and Most Murders?*, USA TODAY (Jan. 13, 2020), <https://www.usatoday.com/story/money/2020/01/13/most-dangerous-states-in-america-violent-crime-murder-rate/40968963/> [<https://perma.cc/2PYV-44R>].

4. Floor Debate on S.B. 600, 100th Gen. Assemb., Reg. Sess. 2 (Mo. 2020) (Statement of Senator Tony Luetkemeyer). The Mayor of Kansas City has also voiced a desire to address the violent crime in his city and was supportive of Senate Bill 600,

homicides in St. Louis, compared to 194 in 2019 and 186 in 2018.⁵ Similarly, Kansas City tallied 173 homicides in 2020, surpassing the 153 homicides in 1953 – the city’s deadliest year – and the 151 homicides in 2019.⁶ To address these staggering figures, the Missouri Legislature made targeted modifications to several criminal provisions, including modernizing the state’s conspiracy and gang-related statutes.⁷ The legislature aimed to achieve two goals: (1) to keep violent criminals and reoffenders off the streets, and (2) to provide prosecutors with the requisite tools to effectively prosecute gangs and violent criminals.⁸

This Note begins with a description of the historical development of the Missouri Criminal Code followed by data describing recent trends of violent crime in Missouri. Part III describes the development of the areas of law relevant to Senate Bill 600’s key modifications, including a detailed look at the progression and application of the federal Racketeer Influenced and Corrupt Organizations (“RICO”) statute, and outlines the bill’s most notable modifications to a handful of criminal provisions. Part III concludes with a summary of the data from Senate Bill 600’s fiscal note, which forms the basis of the bill’s strongest criticisms. Part IV analyzes one of the bill’s most significant stated intentions – to align Missouri’s gang-related provisions with the federal RICO statute – by comparing Missouri law to federal RICO and discussing the implications of their alignment. Finally, this Note argues that

saying he wants police and prosecutors to have all the tools they need to help keep people safe. Jeanette Browning Faubion, *Law Enforcement Officials Gather to Call for Change*, THE PLATTE CNTY CITIZEN (July 8, 2020), <http://www.plattecountycitizen.com/theplattecountycitizen/law-enforcement-officials-gather-to-call-for-change872020> [https://perma.cc/M5N6-BCRC].

5. *2020 UCR Homicide Analysis*, ST. LOUIS POLICE DEP’T (Nov. 20, 2020) https://www.slmpr.org/images/Homicide_Stats_for_Website.pdf [https://perma.cc/UA2C-LL5L]. While homicide numbers in St. Louis have increased each year since 2017, the city’s population has consistently decreased. *City and Town Population Totals: 2010-2019*, U.S. CENSUS BUREAU (Last revised May 2020) <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/cities/totals/SUB-IP-EST2019-ANNRES-29.xlsx> [https://perma.cc/2CCV-QDN7] (Missouri table). The population of St. Louis has decreased from 303,419 in 2018 to 300,576 in 2019. *Id.* While data regarding population estimates for 2020 are not yet available, it is anticipated that the declining trend over the past decade will continue, perhaps leaving the city with less than 300,000 people in 2020. Mark Schlinkmann, *St. Louis Again Drops in Latest Census Estimates, as St. Charles, Other Outer Counties Keep Gaining*, ST. LOUIS POST-DISPATCH (Mar. 26, 2020), https://www.stltoday.com/news/local/metro/st-louis-again-drops-in-latest-census-estimates-as-st-charles-other-outer-counties-keep/article_666c39a4-7bd9-5ddc-aa0e-c9487b1c4168.html [https://perma.cc/D67G-WS6H].

6. *Daily Homicide Analysis*, KANSAS CITY, MO POLICE DEP’T (Nov. 20, 2020) <https://www.kcpd.org/media/3204/daily-homicide-analysis-december-31-2020.pdf> [https://perma.cc/NXL3-NK5R].

7. Floor Debate on S.B. 600, *supra* note 4 (Statement of Senator Tony Luetkemeyer).

8. *Id.*

although alignment of Missouri law with federal RICO will allow state law enforcement and prosecutors to more effectively and efficiently address gang violence in the state's largest cities, the Legislature failed to address concerns regarding the costly nature of the bill and the state's already high incarceration rates.⁹

II. LEGAL BACKGROUND

This Part provides a brief outline of the historical progression of the Missouri Criminal Code and then summarizes recent trends of violent crime in Missouri.¹⁰

A. *A Brief History of the Missouri Criminal Code*

The origin of Missouri's Criminal Code dates back to 1835, when the state adopted a criminal statute that predominantly consisted of common law crimes.¹¹ Though just 57 pages long, this statute provided the foundation for Missouri's criminal law for the next 142 years.¹² However, the Code contained many "redundancies, inconsistencies, and needless distinctions and refinements" and did very little to effectively guide the courts with clear standards.¹³ Therefore, in 1968, representatives from the judiciary, law enforcement, the criminal bar, the Department of Corrections, and the General Assembly set out to produce an entirely new code.¹⁴ The objective was to "consolidate criminal offenses in one place in the statutes, employ plain language in place of hoary locution, and revise and simplify the range of

9. While Senate Bill 600 made changes to over half a dozen criminal provisions, some more minor than others, the discussion analysis within this Note focuses on the implications of what the author anticipates to be one of the most significant modifications. Mo. S.B. 600.

10. Floor Debate on S.B. 600, *supra* note 4 (Statement of Senator Tony Luetkemeyer).

11. See Norwin D. Houser, *Introduction to a Symposium on the Proposed New and Modern Criminal Code for Missouri*, 38 MO. L. REV. 364, 364 (1973); § 1:2 Criminal Code of 1835, 32 MO. PRAC., MO. CRIM. LAW § 1:2 (3d ed.).

12. § 1:2 Criminal Code of 1835, *supra* note 11.

13. Houser, *supra* note 11, at 364.

14. *Adoption of the 1979 Criminal Code*, 32 MO. PRAC., MO. CRIM. LAW § 1:3 (3d ed.).

penalties.”¹⁵ The completed version adopted by the General Assembly took effect in January 1979.¹⁶

Unlike the full-scale revision that took place in 1979, the Revised Code of 2017 represented a refinement of the 1979 Code, rather than a full recodification.¹⁷ Most of the revisions were technical in nature and were intended to make the language more uniform and gender-neutral, while also providing a clearer enumeration of elements and punishments.¹⁸ Similarly, the revisions enacted by Senate Bill 600 are on a much smaller scale than the 1979 revisions and are narrowly targeted toward reducing violent crime in Missouri.

B. The Current State of Violent Crime and Recent Trends in Missouri

The push for Senate Bill 600 was in part due to perceived spikes in violent crime rates in Missouri’s two largest cities.¹⁹ Therefore, insight into the current condition of violent crime in Missouri helps frame this Note’s discussion of Senate Bill 600’s key provisions. National crime data published by the FBI is derived from the Uniform Crime Reporting (“UCR”) Program, which was created in 1929 to provide “reliable uniform crime statistics for the nation.”²⁰ Missouri joined this uniform reporting system in 2001 with the creation of the Missouri Uniform Crime Reporting Program, which is now

15. *Id.*

16. Houser, *supra* note 11, at 365; S.B. 60, 79th Gen. Assemb., Reg. Sess. 1 (Mo. 1977).

17. *Revised Criminal Code of 2017*, 32 MO. PRAC., MO. CRIM. LAW § 1:4 (3d ed.); P. John Brady, *Department: The President’s Page: Revising Codes and Committees*, 70 J. MO. B. 125, 125 (2014).

18. *History*, 42 MO. PRAC., MO. DUI HANDBOOK § 18:1. This update included new punishment classifications, such as Class E felonies and Class D misdemeanors. *Revised Criminal Code of 2017*, 32 MO. PRAC., MO. CRIM. LAW § 1:4 (3d ed.). While the 2017 Code left most of the common criminal offenses untouched, it did make revisions to sexual offense and drug offense provisions. *Id.* It made several important changes to sentencing for drug offenses by substantially reducing punishments overall and eliminating sentences without probation or parole for prior and persistent drug offenders. *Id.*

19. Hearing on S.B. 600 before the Senate Committee on Judiciary and Civil and Criminal Jurisprudence, 100th Gen. Assemb., Reg. Sess. 2 (Mo. 2020) (Statement of Senator Tony Luetkemeyer, Chairman) [hereinafter *Luetkemeyer Committee Statement*].

20. *Criminal Justice Information Services*, FBI, <https://www.fbi.gov/services/cjis/ucr/> [https://perma.cc/ZVA5-S2G8]. Today, it consists of four annual publications, including the National Incident-Based Reporting System (“NIBRS”), the Summary Reporting System (“SRS”), the Law Enforcement Officers Killed and Assaulted Program, and the Hate Crime Statistics Program, which are based on data from more than 18,000 law enforcement agencies throughout the United States. *Id.*

responsible for reporting crime statistics to the National UCR on a monthly basis.²¹

The Missouri State Highway Patrol (“MSHP”) Statistical Analysis Center also provides its own annual reports which represent an overview of the activity reported to the National UCR.²² Although each of these sources are effectively based on the same data brought in from law enforcement in Missouri, each agency’s data summaries are based on slightly different definitions of violent crime. The violent crime index offenses referenced in the annual MSHP Executive Summary include murder, rape, robbery, aggravated assault, and human trafficking.²³ On the other hand, the National UCR takes the information reported by law enforcement agencies and develops summaries based on violent crime defined as murder, nonnegligent manslaughter, rape, robbery, and aggravated assault.

In 2001 – the first year that Missouri began reporting crime in a uniform, centralized manner – there were a total of 31,271 violent index offenses reported,²⁴ which is equivalent to a rate of 554 per 100,000 persons.²⁵ By 2010, the rate had decreased significantly to 453.²⁶ The rate steadily

21. *Crime in Missouri*, MO. STATE HIGHWAY PATROL STAT. ANALYSIS CTR., <http://www.mshp.dps.mo.gov/MSHPWeb/SAC/CIM/CrimeInMissouri.html> [<https://perma.cc/BWV6-EC68>]. The National UCR derives crime data from Missouri through both the NIBRS and the SRS. *Id.*

22. *Id.*

23. *Crime Data*, MO. STATE HIGHWAY PATROL STAT. ANALYSIS CTR., https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/crime_data_960grid.html [<https://perma.cc/YVD5-WX67>]. The offense of human trafficking was added to this list as of 2014. *Executive Summary 2014*, MSHP STAT. ANALYSIS CTR., <https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/CIM/PDF/ExecutiveSummary2014.pdf> [<https://perma.cc/NK36-S23W>].

24. *Crime in Missouri*, MSHP STAT. ANALYSIS CTR. (2001), <https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/pdf/2001CrimeInMO.pdf> [<https://perma.cc/7ZHA-YEUX>]. At this time, human trafficking was not yet included in the index analysis. There were 399 murders, 1,296 forcible rapes, 7,802 robberies, and 21,674 aggravated assaults reported in 2001. *Id.*

25. The summary provided by the MSHP did not yet analyze crime in terms of rate per 100,000 persons. This number was calculated by taking the total number of violent crime offenses multiplied by 100,000 and then divided by the 2001 population of Missouri, 5,641,172, to achieve a rate per 100,000 persons. *State Intercensal Tables: 2000-2010*, U.S. CENSUS BUREAU, (Last revised November 30, 2016) <https://www2.census.gov/programs-surveys/popest/tables/2000-2010/intercensal/state/st-est00int-02-29.xls> [<https://perma.cc/Y46Z-FFBB>] (Missouri Table). This calculation is intended to make the comparative analysis of current violent crime simpler.

26. *Executive Summary 2010*, MSHP STAT. ANALYSIS CTR., <https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/pdf/2010CrimeInMO.pdf>

decreased by 11.2% overall through the next several years.²⁷ The next significant change came in 2015, when the rate jumped 12.2%, landing at 497, and continued to increase over the next couple years, reaching a maximum violent crime rate of 529 in 2017.²⁸ After four years of increase, 2018 saw a notable decline, dropping the rate to 493, though it was still significantly higher than the 2014 rate of 432.²⁹ Overall, this data reveals that violent crime in Missouri decreased from 2010 to 2013, increased from 2014 to 2017, and decreased again in 2018.

Although based on slightly different definitions, the National UCR data can be helpful in comparing Missouri's violent crime rates to that of the national average. In 2010, the National UCR calculated Missouri's violent crime rate at 458 per 100,000 persons, while the average national rate was significantly lower at 405.³⁰ Similar to the trends disclosed by the MSHP Statistical Analysis Center, Missouri, as well as the national average, saw steady decreases over the next several years, dropping to 444 and 369 respectively.³¹ Both rates then saw steady increases over the next several years, with Missouri peaking at 531 in 2017 and the national rate peaking at 398 in 2016.³² Both experienced declines in 2018 and 2019, with the most recent publication of the 2019 data showing Missouri's rate at 495 and the national average at 379.³³ In sum, federal data shows that while Missouri's violent crime rates did experience a significant spike from 2014 to 2017, they have since decreased.

[<https://perma.cc/Z9KH-UEGA>]. This calculation was made in a similar manner as discussed in the text accompanying notes 30–33, and used the total number of violent index crimes reported in 2001, 27,105 and the 2010 Missouri population of 5,988,927. See *infra* text accompanying notes 30–33; *Missouri: 2010 – Census Bureau*, U.S. CENSUS BUREAU, <https://www.census.gov/prod/cen2010/cph-2-27.pdf> [<https://perma.cc/225M-GUVL>].

27. *Executive Summary 2014*, MSHP STAT. ANALYSIS CTR., <https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/CIM/PDF/ExecutiveSummary2014.pdf> [<https://perma.cc/HU4B-6FAF>].

28. *Executive Summary 2017*, MSHP STAT. ANALYSIS CTR., <http://www.mshp.dps.missouri.gov/MSHPWeb/SAC/CIM/PDF/ExecutiveSummary2017.pdf> [<https://perma.cc/M3SC-3N6F>].

29. *Executive Summary 2018*, MSHP STAT. ANALYSIS CTR., <https://www.mshp.dps.missouri.gov/MSHPWeb/SAC/CIM/PDF/ExecutiveSummary2018.pdf> [<https://perma.cc/6NQ4-Z25S>] see *Executive Summary 2014*, *supra* note 27.

30. *Missouri*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER, <https://crime-data-explorer.fr.cloud.gov/explorer/state/missouri/crime#about-the-data> [<https://perma.cc/UBY8-AQF7>].

31. *Id.*

32. *Id.*

33. *Id.*

Although violent crime overall is trending downward, 2020 showed a significant spike in homicides in Missouri's largest cities,³⁴ reflective of the trend in large cities across America.³⁵ In 2020, murder in twenty-five large American cities was up 16.1% in relation to 2019, though overall crime was down 5.3% in those same cities.³⁶ Specifically in Kansas City, homicide numbers for 2020 reached an all-time high at 176 homicides.³⁷ St. Louis also reported rising homicide rates, totaling 262 in 2020.³⁸ Additionally, 2020 marked the sixth straight year that St. Louis has had the nation's highest murder rate of any big city.³⁹ Experts have cited a wide variety of possible reasons for 2020's increase in homicides, ranging from "pandemic-related mental health and economic stresses,"⁴⁰ to changes in policing, mistrust of law enforcement, and a surge in gun purchases.⁴¹ Regardless of 2020's anomalies, the upward trend of violent crime over the last decade demanded action from state officials.

III. RECENT DEVELOPMENTS

This Part first describes the development and passage of Senate Bill 600 and summarizes the reaction from opponents to the legislation. It then details a brief history of each criminal provision pertinent to Senate Bill 600's most notable modifications, including dangerous felonies, vehicle hijacking, armed criminal action, conspiracy, and gang-related offenses, and explains how the

34. Glenn E. Rice & Luke Nozicka, *'Beyond Devastating': Why Kansas City Can't Stop the Bloodshed in Deadliest Year Ever*, THE KAN. CITY STAR (Oct. 17, 2020), <https://www.kansascity.com/news/local/crime/article246077040.html>.

35. Jeff Asher & Ben Horwitz, *It's Been 'Such a Weird Year.' That's Also Reflected in Crime Statistics.*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/07/06/upshot/murders-rising-crime-coronavirus.html> [<https://perma.cc/T7RQ-8C6T>].

36. *Id.*

37. *Daily Homicide Analysis*, KANSAS CITY, MO. POLICE DEP'T (Dec. 31, 2020) <https://www.kcpd.org/media/3204/daily-homicide-analysis-december-31-2020.pdf> [<https://perma.cc/G8Z8-DAYZ>].

38. *2020 UCR Homicide Analysis*, ST. LOUIS POLICE DEP'T., (Dec. 31, 2020), https://www.hoplofobia.info/wp-content/uploads/2020/07/St-Louis-UCR-Homicide-Analysis-2015_2020.pdf [<https://perma.cc/TH4L-APM4>].

39. Jeff Asher, *Murders are Rising. Blaming a Party Doesn't Add Up.*, N.Y. TIMES (Sept. 28, 2020), <https://www.nytimes.com/2020/09/28/upshot/murders-2020-election-debate.html> [<https://perma.cc/AQ3W-RWJ7>].

40. *Id.*

41. German Lopez, *The Rise in Murder in the US, Explained*, VOX (Sept. 28, 2020), <https://www.vox.com/2020/8/3/21334149/murders-crime-shootings-protests-riots-trump-biden> [<https://perma.cc/G4UX-ZQDF>].

bill modifies these specific provisions. Finally, this Part summarizes the findings of the Committee on Legislative Research Oversight Division and the Department of Corrections regarding Senate Bill 600's anticipated effect on Missouri's budget and incarceration rate.

A. Background on Senate Bill 600

Senator Tony Luetkemeyer, Chair of the Senate Committee on Judiciary and Civil and Criminal Jurisprudence, sponsored Senate Bill 600 in the 2020 legislative session.⁴² While this bill made changes to several different portions of the Missouri Criminal Code, Luetkemeyer stated the overall goal was to make Missouri's streets safer by "ending the catch-and-release of dangerous felons; cracking down on violent criminals who use weapons to commit violence; and giving prosecutors and law enforcement tools to dismantle gangs."⁴³ The bill drew support from a variety of law enforcement organizations, including the Missouri Association of Prosecuting Attorneys, the Missouri Police Chiefs Association, and the Missouri Sheriffs Association, each of which sent members to testify at the Senate committee hearing.⁴⁴ These organizations emphasized that the bill exclusively addressed violent and career criminals, leaving untouched the provisions relating to nonviolent and low-level offenses.⁴⁵ No witnesses testified against the bill at

42. Cameron Gerber, *SB 600, Missouri's Controversial Crime Bill, Explained*, MO. TIMES (June 25, 2020), <https://themissouritimes.com/sb-600-missouris-controversial-crime-bill-explained/> [<https://perma.cc/MG5N-F3LQ>]; *Judiciary and Civil and Criminal Jurisprudence*, MO. SENATE, <https://www.senate.mo.gov/judi/> [<https://perma.cc/G9RM-PR9S>].

43. Toney Luetkemeyer (@TonyForMissouri), TWITTER (Aug 28, 2020, 12:15 PM), <https://twitter.com/TonyForMissouri/status/1299395148707704834> [<https://perma.cc/ZP3W-5GH6>] ("Today, #SB600 goes into effect. My bill makes our streets safer by: Ending the catch-and-release of dangerous felons; Cracking down on violent criminals who use weapons to commit violence; and Giving prosecutors and law enforcement tools to dismantle gangs #MoLeg").

44. *Committee Minutes, SB 600 – Modifies Provisions Relating to Dangerous Felonies Before the S. Comm. on the Judiciary and Civil and Criminal Jurisprudence, 2020 – 100th Gen. Assemb., 2nd Reg. Sess.*, MO. SENATE (Jan. 13, 2020), https://www.senate.mo.gov/20info/BTS_BillMinutes/default?SessionType=R&BillID=26838053&BillPref=SB&BillNum=600 [<https://perma.cc/8YNY-SVQX>] (View Jan. 13, 2020 Bill Witnesses). Witnesses from the KCPD Board of Police Commissioners the MO State Troopers Association also testified in support at the Senate committee hearing as well as Robert Shockley. *Id.* The Missouri Department of Corrections testified for informational purposes only; it neither supported nor opposed the measure. *Id.*

45. *Letter Urging Governor Parson to Sign SB 600*, MO. ASS'N OF PROSECUTING ATTORNEYS, (June 23, 2020) <https://www.prosecutors.mo.gov/files/Press%20Release%20and%20Letter%20to%20Governor%20Parson%20on%20SB%20600.pdf>.

the Senate committee hearing.⁴⁶ However, after it passed through the legislature, opposed lobbying and nonprofit organizations sent a letter to Governor Mike Parson urging him to veto the bill. The organizations, including the ACLU of Missouri and Americans for Prosperity – Missouri (“AFP-MO”), , labeled the billan expensive and “flawed approach to combating crime.”⁴⁷

The bill passed out of Luetkemeyer’s committee by a six-to-one vote.⁴⁸ Senator Karla May, the only senator to vote no in Luetkemeyer’s committee, described Senate Bill 600 as yet another “tough-on-crime” bill that does not address the root cause of crime.⁴⁹ The Senate passed the bill with a bipartisan twenty-seven to two vote in the final hours of the 2020 regular session.⁵⁰ Governor Parson signed the bill on July 6, 2020, and the law went into effect on August 28, 2020.⁵¹

46. *Committee Minutes, SB 600, supra* note 44. Although representatives from the ACLU did not testify at the committee hearing on Senate Bill 600, the organization did send a witness to testify against Senate Bill 601, which contained the same provisions relating to the punishment for the offense of armed criminal action found in Senate Bill 600. *Committee Minutes, SB 600, supra* note 44; *Committee Minutes, SB 601—Modifies the Punishment For the Offense of Armed Criminal Action Before the S. Comm. on the Judiciary and Civil and Criminal Jurisprudence, 2020 – 100th Gen. Assemb., 2d Reg. Sess., MO. SENATE* (Jan. 21, 2020) https://www.senate.mo.gov/20info/BTS_BillMinutes/default?SessionType=R&BillID=26838054&BillPref=SB&BillNum=601 [<https://perma.cc/TSR5-8FXY>] (View Jan. 21, 2020 Bill Witnesses).

47. Letter from SB 600 Coal. to Governor Mike Parson (June 2, 2020) <https://mk0xituxemauaaa56cm7.kinstacdn.com/wp-content/uploads/2020/06/MO-SB-600-Coalition-Letter.pdf> [<https://perma.cc/FZT9-P6AM>].

48. Yes: Luetkemeyer (R-34), Onder (R-02), Emery (R-31), Koenig (R-15), White (R-32), Sifton (D-01). No: May (D-04). *Committee Minutes, SB 600, supra* note 44.

49. *Sen. Karla May’s “May Report” for the Week of Feb. 10, 2020, MO. SENATE* (Feb. 18, 2020), <https://www.senate.mo.gov/20web/sen-karla-mays-may-report-for-the-week-of-feb-10-2020/> [<https://perma.cc/5VEE-AQWF>].

50. Yes (27): Arthur (D-17), Bernskoetter (R-06), Brown (R-16), Burlison (R-20), Cierpiot (R-08), Crawford (R-28), Cunningham (R-33), Eigel (R-23), Emery (R-31), Hegeman (R-12), Hoskins (R-21), Hough (R-30), Koenig (R-15), Libla (R-25), Luetkemeyer (R-34), O’Laughlin (R-18), Onder (R-02), Riddle (R-10), Rizzo (D-11), Sater (R-29), Schatz (R-26), Schupp (D-24), Sifton (D-01), Wallingford (R-27), White (R-32), Wieland(R22), Williams (D-14); No (2): May (D-04), Nasheed (D-05); Absent with leave (2): Rowden (R-19), Walsh (D-13); Vacancies (3). S. JOURNAL, 100th Gen. Assemb., 2nd Reg. Sess. at 339 (Mo. 2020). <https://www.senate.mo.gov/20info/pdf-jrnl/DAY23.pdf#page=6> [<https://perma.cc/4BSV-WZX9>].

51. S.B. 600.

B. The Historical Development of the Provisions in Senate Bill 600 and Their Modifications

This Subpart outlines the historical development of five of the provisions and offenses modified by Senate Bill 600 and describes how the bill modified those particular provisions. This Part concludes with a summary of the fiscal note for Senate Bill 600, which served as the basis for the bill's most significant criticisms.

1. Dangerous Felonies

The list of felonies identified as “dangerous felonies” has significantly grown over the years. Although it originally included just the “seven deadly sins,”⁵² the list grew to seventeen in 2008,⁵³ twenty-one in 2013,⁵⁴ and twenty-five in 2017.⁵⁵ A dangerous felony conviction can have serious consequences with regard to sentencing. When an individual is found guilty of a dangerous felony, he is statutorily-required to serve no less than eighty-five percent of his prison sentence without parole.⁵⁶ Additionally, if the individual is found

52. *Practice and procedure notes*, 28 MO. PRAC., MO. CRIM. PRACTICE HANDBOOK.

53. MO. REV. STAT. § 556.061 (2008).

54. MO. REV. STAT. § 556.061 (2013).

55. MO. REV. STAT. § 556.061 (2017). In 2017, the list included:

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 V.A.M.S. § 565.002(14), 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, 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 V.A.M.S. § 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 V.A.M.S. § 565.153, and an “intoxication-related traffic offense” or “intoxication-related boating offense” if the person is found to be a “habitual offender” as such terms are defined in V.A.M.S. § 577.001.

Id.

56. MO. REV. STAT. § 558.019(3) (2019) (“Other provisions of the law to the contrary notwithstanding, any offender who has been found guilty of a dangerous felony as defined in section 556.061 and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served

guilty of a Class A felony, the court is permitted to choose any sentence authorized for Class A felonies and will not seek an advisory verdict from the jury.⁵⁷ Therefore, each addition to this list can have serious ramifications for those who are fighting such charges or considering a plea deal for a dangerous felony charge.

Senate Bill 600's additions to the list of dangerous felonies is a modification aimed at more severely sentencing violent criminals. The bill added the offenses of armed criminal action,⁵⁸ conspiracy to commit a dangerous felony,⁵⁹ and vehicle hijacking when punished as a Class A felony⁶⁰ to the definition of "dangerous felonies."⁶¹ As a result, conviction of or a guilty plea for any of those offenses now requires the individual serve at least eighty-five percent of his sentence without parole.⁶²

at least forty percent of the sentence imposed, whichever occurs first.”). “Found guilty” includes those individuals who plead guilty to the offense charged. *Wagner v. Bowyer*, 559 S.W.3d 26, 31 (Mo. Ct. App. 2018).

57. MO. REV. STAT. §§ 557.036.6(2), 557.036.7 (2016).

58. Mo. S.B. 600. The offense of armed criminal action, as modified by Senate Bill 600, is a sentence enhancer with mandatory minimums that are to be served in addition and consecutive to the sentence for the underlying offense. MO. REV. STAT. § 571.015 (2020). That modification, in combination with its classification as a dangerous felony, creates significant implications for an individual convicted of armed criminal action.

59. Mo. S.B. 600. Conspiracy to commit a dangerous felony is a Class C felony, punishable by a minimum of three years, but not more than ten years. MO. REV. STAT. § 558.011 (2017). Senate Bill 600 now classifies conspiracy to commit a dangerous felony as a dangerous felony in and of itself, meaning an individual convicted of such a conspiracy would now be required to serve no less than eighty-five percent of his three to ten year sentence without parole. § 558.019(3).

60. Mo. S.B. 600. A Class A felony carries a minimum sentence of ten years and a maximum of either thirty years or life imprisonment. § 558.011. Because vehicle hijacking punishable as a Class A felony is now classified as a dangerous felony, an individual convicted of that offense would be required to serve no less than eighty-five percent of the ten to thirty-year term. § 558.019(4)(1). Furthermore, in selecting the defendant's sentence, the court would be permitted to choose any sentence authorized for Class A felonies and would not seek an advisory verdict from the jury. MO. REV. STAT. §§ 557.036.6(2), 557.036.7.

61. Mo. S.B. 600 at 4-5.

62. § 558.019.

2. Vehicle Hijacking

As of 2019, Missouri was one of twenty-seven states without a specific carjacking statute.⁶³ Instead, prosecutors used other statutes, like theft or robbery, to prosecute carjackers.⁶⁴ In cases where the individual used a deadly weapon, the individual was also charged with armed criminal action.⁶⁵ Senate Bill 600 was not the first time members of the Missouri General Assembly considered creating a carjacking offense.⁶⁶ In 2019, Attorney General Eric Schmitt and Representative David Gregory, Chairman of the House Judiciary Committee, sought to create the offense of “vehicle hijacking.”⁶⁷ Gregory’s House Bill 966 defined vehicle hijacking as “knowingly using or explicitly or implicitly threatening the use of physical force upon another person to seize or attempt to seize possession of a vehicle from another person.”⁶⁸ The proposal added vehicle hijacking to the list of dangerous felonies and deemed it either a Class A or a Class B felony, depending on the circumstances.⁶⁹ Proponents of the bill emphasized that the current lack of a specific offense made it “tougher to prosecute, tougher to track and provide[d] no uniformity in sentencing for similar crimes.”⁷⁰ Opponents were concerned it “would remove the element of judicial discretion.”⁷¹ The legislature failed to pass House Bill 966 in 2019, and Representative Gregory introduced it again in 2020 as House Bill 1873.⁷² Likewise, Senator Bob Onder filed a companion bill, Senate Bill 561.⁷³ Neither bill received final approval from the

63. Alisha Shurr, *Gregory Presents Vehicle Hijacking Bill in Committee*, MO. TIMES (Mar. 6, 2019), <https://themissouritimes.com/gregory-presents-vehicle-hijacking-bill-in-committee/> [<https://perma.cc/7XVZ-P65G>].

64. *See State v. Hudson*, 574 S.W.3d 796, 800 (Mo. Ct. App. 2019) (Charging defendant with robbery in the first degree after forcing Victim out of the car and driving away).

65. *Nailor v. State*, 559 S.W.3d 413, 413 (Mo. Ct. App. 2018) (Charging defendant with first-degree robbery and armed criminal action arising out of a gunpoint robbery of a motor vehicle).

66. Shurr, *supra* note 63.

67. *Id.*

68. H.B. 966, 100th Gen. Assemb., Reg. Sess. 2 (Mo. 2020).

69. *Id.* If the person hijacking a vehicle used a deadly weapon, caused serious injury to another person, or the victim was a protected person, then the offense was deemed a Class A felony. *Id.*

70. Erin Achenbach, *New Carjacking Law Proposed by Gregory Seeks to Make it Easier to Prosecute*, CALL NEWSPAPERS (Mar. 6, 2019), <https://callnewspapers.com/new-carjacking-law-proposed-by-gregory/> [<https://perma.cc/HB3X-ULVZ>].

71. Anna Lewis, *Missouri House Passes Gregory’s Carjacking Law*, (Apr. 24, 2019), <https://callnewspapers.com/legislature-passes-gregorys-carjacking-law/> [<https://perma.cc/MCL9-7GFF>]. *See also* Shurr, *supra* note 63.

72. H.B. 1873, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

73. S.B. 561, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

Legislature in 2020, but their provisions related to vehicle hijacking were included in the final version of Senate Bill 600.⁷⁴

Senate Bill 600 successfully created the offense of vehicle hijacking, which is “committed when an individual knowingly uses or threatens the use of physical force upon another individual to seize or attempt to seize possession or control of a vehicle [. . .] from the immediate possession or control of another person.”⁷⁵ Vehicle hijacking is a Class B felony,⁷⁶ punishable by a minimum of five years and a maximum of fifteen years.⁷⁷ However, it is increased to a Class A felony if the person or another participant in the offense:

“causes serious physical injury to any person in immediate possession, control, or presence of the vehicle; is armed with a deadly weapon;⁷⁸ uses or threatens the immediate use of a dangerous instrument against any person;⁷⁹ displays or threatens the use of what appears to be a deadly weapon or dangerous instrument; or seizes a vehicle, or attempts to seize a vehicle, in which a child or special victim...is present.”⁸⁰

An individual convicted of vehicle hijacking as a Class A felony would be sentenced to a minimum of ten years and a maximum of thirty years, or life imprisonment.⁸¹

74. Mo. S.B. 600.

75. MO. REV. STAT. § 570.027 (2020). A “vehicle” is defined as “any mechanical device on wheels, designed primarily for use, or used on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons.” MO. REV. STAT. § 302.010(25) (2020).

76. § 570.027.

77. MO. REV. STAT. § 558.011 (2017).

78. A deadly weapon is defined as “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.” MO. REV. STAT. § 556.061(22) (2020).

79. A dangerous instrument is defined as “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.” § 556.061(20).

80. *Id.* at § 570.027.3(1)–(5) (2020).

81. § 558.011.1(1) (2017).

3. Sentencing Modifications for the Offense of Armed Criminal Action

The essence of the offense of armed criminal action has undergone minimal change in recent years and is defined as the commission of any felony “by, with, or through the use, assistance or aid of a dangerous instrument or deadly weapon.”⁸² The offense cannot stand on its own and must be in connection with a separate charge for the underlying felony.⁸³ If a defendant, armed with a dangerous instrument or deadly weapon, commits multiple felonies within the same criminal episode, a charge of armed criminal action can be paired with each individual felony charge.⁸⁴ Although these aspects of the offense have changed very little, Senate Bill 600 made significant changes to the sentencing for the offense.

Prior to the enactment of Senate Bill 600, the minimum sentence for a first offense was three years and was to be served “in addition to any punishment” for the underlying felony.⁸⁵ Under that language, although the punishment was cumulative, there was no requirement that it be served consecutive to the sentence for the underlying offense.⁸⁶ That determination was often left up to the judge.⁸⁷ A person who was convicted of a second offense of armed criminal action received an additional five years and, for any subsequent offense, the individual received an additional ten years.⁸⁸

Senate Bill 600 altered the prison term for the offense of armed criminal action to three to fifteen years for the first offense, five to thirty years for the second offense, and at least ten years for any subsequent offense.⁸⁹ It also requires these sentences be served consecutively to any punishment for the crime committed with the use of a deadly weapon, rather than concurrently.⁹⁰ Furthermore, if the person convicted of the offense was unlawfully possessing a firearm, the minimum prison term jumps to five years instead of three for the first offense and fifteen years for the second plus any subsequent offenses.⁹¹ Senator Luetkemeyer explained that this modification was

82. § 571.015.1 (2016).

83. *Id.*

84. *Id.*; see *Trotter v. State*, 443 S.W. 3d 621, 625 (Mo. Ct. App. 2014).

85. *Current Bill Summary*, MO. SENATE, https://www.senate.mo.gov/20info/BTS_Web/Bill.aspx?SessionType=R&BillID=26838053 [<https://perma.cc/GB8K-F2J6>].

86. *State v. Treadway*, 558 S.W.2d 646, 653 (Mo. 1977) (en banc) (“The words ‘in addition to’, standing alone, do not clearly mandate that a sentence under the armed criminal action statute be imposed consecutive to a sentence for the felony conviction upon which the armed criminal action charge is based.”).

87. *Id.* (same).

88. *Current Bill Summary*, *supra* note 85.

89. *Id.*, see also MO. REV. STAT. § 571.015(2)–(3) (2020).

90. *Current Bill Summary*, *supra* note 85; see also § 571.015(2)–(3).

91. *Current Bill Summary*, *supra* note 85; see also § 571.015(2)–(3).

intended to allow the offense of armed criminal action to be the sentence enhancer that the Legislature originally designed it to be.⁹²

4. The Offense of Conspiracy

The 2017 Missouri Criminal Code made minor revisions to the 1979 conspiracy statute, but it maintained the essence of the offense. Prior to Senate Bill 600, the offense was defined as an agreement with another person or persons “with the purpose of promoting or facilitating the commission of an offense” where one or more of them “will engage in conduct which constitutes an offense.”⁹³ Absent an overt act carried out in pursuance of the conspiracy, completed either by the individual charged with the offense or a coconspirator, the individual could not be convicted of the offense of conspiracy.⁹⁴ Additionally, a person was not to be charged, convicted, or sentenced for conspiracy to commit an offense when that offense was completed and charged, as both offenses would be based on the same course of conduct.⁹⁵ The offense was classified and punished at one step lower than the class of the felony or misdemeanor which constituted the completed offense.⁹⁶ Although Missouri’s conspiracy statute has been reworded and adjusted during the previous two major modifications to the Code, the Missouri statute prior to Senate Bill 600 contained several key distinctions from federal conspiracy statutes.

At the federal level, the United States Code (“U.S.C.”) contains dozens of criminal conspiracy statutes.⁹⁷ Several statutes outlaw conspiracy to commit certain types of offenses, while the overarching statute found in 18 U.S.C. 371 “outlaws conspiracy to commit any other federal crime.”⁹⁸ The federal offense of conspiracy is defined as when “two or more persons conspire either to commit any offense against the United States, or to defraud the United States [...] and one or more of such persons do any act to effect the object of the conspiracy.”⁹⁹ Individuals who are convicted under Section 371 are sentenced to not more than five years in prison, but punishments for

92. *Luetkemeyer Committee Statement*, *supra* note 19.

93. MO. REV. STAT. § 562.014.1 (2017).

94. § 562.014.4.

95. § 562.014.7.

96. § 562.014.8. For example, prior to Senate Bill 600, murder in the first degree is a Class A felony, while conspiracy to commit first degree murder would be a Class B felony. *Id.*; MO. REV. STAT. § 565.020.2 (2016).

97. *Federal Conspiracy Law: A Brief Overview*, CONG. RES. SERV. (Apr. 3, 2020), <https://fas.org/sgp/crs/misc/R41223.pdf> [<https://perma.cc/NM79-2J22>].

98. *Id.*

99. 18 U.S.C. § 371 (2018).

conspiracies to commit specific serious offenses can be much more severe.¹⁰⁰ A charge of conspiracy “does not merge with the substantive offense” at the federal level, meaning a conspirator may be charged and punished for both the predicate offense and conspiracy to commit that offense.¹⁰¹ However, the sentences for each would run concurrently, rather than consecutively.¹⁰²

One of the most controversial modifications made by Senate Bill 600 was to the offense of conspiracy.¹⁰³ The bill allows multiple defendants to be charged in a single indictment to encourage more efficient prosecution of gang members.¹⁰⁴ Senate Bill 600 also altered the wording of the offense, more clearly defining it as when “a person agrees, with one or more persons, to commit any Class A, B, or C felonies, or any unclassified felonies that exceed 10 years of imprisonment, and one or more persons do any act in furtherance of the agreement.”¹⁰⁵ This modification was intended to “modernize[] the state’s conspiracy statute to more closely mirror[] the federal conspiracy standard.”¹⁰⁶ While the rewording of the statute did not change the basis of the offense – an agreement between two or more persons – it did, however, narrow the types of agreements that may be charged under the statute.¹⁰⁷ Rather than simply requiring an agreement to promote or facilitate the commission of an offense, as the previous version of the statute did, Senate Bill 600 requires the agreement be to commit a Class A, B, or C felony, or an unclassified felony punishable by more than ten years imprisonment.¹⁰⁸ Senate Bill 600’s final modification to the offense of conspiracy was to

100. *Federal Conspiracy Law*, *supra* note 97, at 11, n.84.

101. *Id.* at *summary* (“Unlike attempt and solicitation, conspiracy does not merge with the substantive offense; a conspirator may be punished for both.”) (summarizing the report). Another interesting aspect of federal criminal conspiracy is that each member of a conspiracy can be held liable for foreseeable crimes committed by other members in furtherance of their joint criminal venture. *Id.* at 2. This theory of liability, what is commonly known as “*Pinkerton Liability*,” can bring substantive criminal liability to a large group of coconspirators, though only one member commits the crime. Though Missouri does not currently incorporate *Pinkerton Liability* in its criminal conspiracy statute, Senate Bill 600’s adjustments to the statute and substantive focus on efficient gang prosecution may indicate a pivot in this area of law in the coming years. MO. REV. STAT. § 562.014 (2020); *Luetkemeyer Committee Statement*, *supra* note 19, at 1.

102. *United States Sentencing Commission Guidelines Manual* 2018, 449 (Nov. 1, 2018), <https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/GLMFull.pdf> [<https://perma.cc/R2Z5-U678>].

103. *Luetkemeyer Committee Statement*, *supra* note 19, at 1–2.

104. *Id.* at 1; MO. REV. STAT. § 545.140 (2020) (reflecting text of the final bill); § 562.014.

105. MO. REV. STAT. § 562.014 (2020).

106. *Luetkemeyer Committee Statement*, *supra* note 19.

107. *Compare* § 562.014.1 (2020), *with* § 562.014.1 (2016).

108. *Compare* § 562.014.1 (2020), *with* § 562.014.1 (2016).

classify it as a Class C felony, regardless of the classification of the predicate offense.¹⁰⁹

5. Prosecution of Criminal Street Gangs and Federal RICO

Missouri first passed legislation to deter the formation and continuance of street gangs in 2016.¹¹⁰ The definitions associated with these statutes have undergone only minor changes prior to Senate Bill 600. A “criminal street gang” was previously defined as “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of [...]” one or more specified criminal offenses.¹¹¹ Additionally, a statutorily-defined criminal street gang had a “common name or common identifying sign or symbol,” and its members “individually or collectively engage in or have engaged in a pattern of criminal gang activity.”¹¹² The original version of the statute included a list of eight separate categories that would qualify as “criminal acts” sufficient to be part of a “pattern of criminal gang activity,” which grew to a list of eighteen in 2019.¹¹³ This “pattern” was defined as the “commission, attempted commission or solicitation...” of two or more specified criminal acts committed within three years of each other that are either on separate occasions, or committed by two or more persons.¹¹⁴

There are two substantive offenses associated with the prosecution of criminal street gangs. The first, codified in the Missouri Revised Statutes Section 578.423, makes it unlawful to actively participate in any criminal

109. Compare § 562.014.6 (2020), with § 562.014.8 (2016).

110. MO. REV. STAT. §§ 578.421–578.437 (2016).

111. MO. REV. STAT. § 578.421.2(1) (2019).

112. *Id.*

113. Compare § 578.421.2(2)(a)–(p) (2019), with § 578.421.2(2)(a)–(f) (2017). The additional categories include:

(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.

§ 578.421(2)(g)–(p) (2019).

114. § 578.421.2(2) (2016).

street gang with knowledge that the gang engages in a pattern of criminal street gang activity by willfully promoting, furthering, or assisting in any felonious criminal conduct by gang members.¹¹⁵ Under this section, the acts in such assistance may be any act which willfully promotes or furthers the gang's criminal conduct and need not be a crime in and of itself. Prior to Senate Bill 600, violation of this statute resulted in imprisonment for one, two, or three years, at the court's discretion.¹¹⁶ The second substantive offense, outlined in Section 578.425, involves the commission of any felony or misdemeanor¹¹⁷ that is "committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members."¹¹⁸ Prior to Senate Bill 600, violation of this statute included a term of imprisonment of up to three years, to be served in addition and consecutive to the term prescribed for the underlying offense.¹¹⁹ If the individual committed a felony as the underlying offense and did so within one thousand feet of a school,¹²⁰ the additional term bumped up to two, three or four years, at the court's discretion.¹²¹ If the underlying felony was one punishable by death or life imprisonment, the additional term was a minimum of fifteen years.¹²²

A motivating force behind Senate Bill 600's modifications to these gang-related provisions was to modernize and more closely align the statute with the federal RICO statute.¹²³ RICO was originally enacted to give prosecutors a more effective means of prosecuting members of the Mafia,¹²⁴ as it allowed them to join large numbers of defendants in a single trial.¹²⁵ Therefore, prosecutors were able to present a criminal enterprise's complete criminal history, even if those acts were committed by a variety of individuals, thus

115. MO. REV. STAT. §578.423 (2017).

116. *Id.*

117. Senate Bill 600 removes the commission of a misdemeanor from this statute. MO. REV. STAT. § 578.425 (2020).

118. § 578.425 (2019).

119. § 578.425(1)–(2).

120. This includes public or private elementary, vocational, junior high or high schools. MO. REV. STAT. § 578.425(2) (2019).

121. *Id.*

122. § 578.425(3) (2019).

123. *Luetkemeyer Committee Statement, supra* note 19, at 1–2.

124. Lesley Suzanne Bonney, *The Prosecution of Sophisticated Urban Street Gangs: A Proper Application of RICO*, 42 CATH. U. L. REV. 579, 590–91 (1993). The Mafia consisted of highly sophisticated criminal organizations that were infiltrating businesses and corrupting political institutions through the use of funds obtained through loan sharking, gambling, and narcotics activities. *Id.* at 591.

125. Susan W. Brenner, *Of Complicity and Enterprise Criminality: Applying Pinkerton Liability to RICO Actions*, 56 MO. L. REV. 931, 978 (1991).

ensuring both the judge and jury understood the full scope of the criminal activity.¹²⁶

As the government experienced great success in eradicating the Mafia through the use of RICO prosecutions, a new criminal alternative arose: the sophisticated urban street gang.¹²⁷ Although states had historically taken the lead in combating localized crime,¹²⁸ these gangs were no longer recognized as small, criminal groups, but had evolved into powerful organizations affecting both the nation's economy and its political structures.¹²⁹ Thus, the federal government began addressing this threat through the innovative and expansive use of RICO, an application that has since been the subject of critique and controversy.¹³⁰

The current federal RICO statute, codified at 18 U.S.C. Section 1962, outlines three substantive prohibited activities and outlaws conspiracy to commit any of those activities.¹³¹ The three prohibited activities include: (1) using income received from a pattern of racketeering activity to acquire an interest in an enterprise whose activities affect interstate or foreign commerce; (2) acquiring an interest in, through a pattern of racketeering activity, an enterprise whose activities affect interstate or foreign commerce; and (3) conducting or participating in, through a pattern of racketeering activity, the affairs of an enterprise whose activities affect interstate or foreign commerce.¹³² A “pattern of racketeering activity” requires proof of at least two predicate acts of racketeering activity that are “related to, or amount to,

126. Derek Keenan, *The Game of RICO: A Powerful Prosecutorial Tool Versus Strict Legislative Intent*, 69 DEPAUL L. REV. 827, 828 (2020).

127. Matthew Hardwick Blumenstein, *RICO Overreach: How the Federal Government's Escalating Offensive Against Gangs Has Run Afoul of the Constitution*, 62 VAND. L. REV. 211, 216 (2009).

128. *Id.*

129. Bonney, *supra* note 124, at 606.

130. *Id.*

131. OFFICE OF GENERAL COUNSEL, U.S. SENTENCING COMMISSION, PRIMER ON RICO GUIDELINE – RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS 1 (2018), https://www.ussc.gov/sites/default/files/pdf/training/primers/2018_Primer_RICO.pdf [<https://perma.cc/ZG2G-ZT8U>].

132. 18 U.S.C. § 1962(a)–(c) (2018); *see also* 18 U.S.C. § 1961(1) (2018) (“‘Racketeering activity’ means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year” as well as many other specific offenses that are listed out within the statute.”).

or pose a threat of, continued criminal activity,”¹³³ and are committed within ten years of one another. An individual can be charged with conspiracy to commit any of these acts as well as with the substantive offense itself and no “overt act” in furtherance of the conspiracy is necessary for conviction.¹³⁴

Additionally, the language of the statute requires two distinct entities, a “person” and an “enterprise.”¹³⁵ Under Section 1961, an “enterprise” is defined as either a legitimate legal entity, such as a partnership or corporation, but can also take the shape of a nonlegal entity referred to as an “association in fact.”¹³⁶ The term “association in fact” has proven to be the expansive term that allows for urban street gangs to be classified within reach of the RICO statute.¹³⁷ The United States Supreme Court has developed three basic characteristics that must be present in order for a group to be classified as an “association in fact” and thus fall within RICO’s provisions: (1) a common purpose; (2) “relationships among those associated with the enterprise” that are “calculated to effect that purpose;” and (3) “longevity sufficient to permit these associates to pursue the enterprise’s purpose.”¹³⁸ This expansive definition has allowed federal prosecutors to use the RICO statute against a variety of criminal street gangs.¹³⁹

A significant stated intention of Senate Bill 600 was to align Missouri’s gang-related provisions with the federal criminal RICO statute.¹⁴⁰ The first modification made by Senate Bill 600 was the designation of the title “Missouri Criminal Street Gang Prevention Act” to Sections 578.419 to 578.437 of the Missouri Revised Statutes.¹⁴¹ Next, the bill altered the definition of “criminal street gang” by requiring that the group have as its “motivating,” rather than “primary” purpose, the commission of one or more

133. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239–40 (1989) (“RICO’s legislative history tells us...that the relatedness of racketeering activities is not alone enough to satisfy § 1962’s pattern element. To establish a RICO pattern, it must also be shown that the predicate themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.”). The statute lists more than fifty-four specific predicate acts that constitute racketeering activity, such as murder, bribery, gambling, and even mail fraud. § 1961(1).

134. 18 U.S.C. § 1962(d) (2018). OFFICE OF GENERAL COUNSEL, U.S. SENTENCING COMMISSION, *supra* note 131, at 3.

135. § 1962. The enterprise cannot simply be the same person referred to by a different name. However, a corporate employee is considered distinct from that corporation, even if the employee is the sole owner, as these are considered to be “legally different entit[ies] with different rights and responsibilities.” OFFICE OF GENERAL COUNSEL, U.S. SENTENCING COMMISSION, *supra* note 131, at 3.

136. 18 U.S.C. § 1961(4) (2018).

137. Bonney, *supra* note 124, at 594; Blumenstein, *supra* note 127, at 219.

138. *United States v. Rodriguez-Torres*, 939 F.3d 16, 24 (1st Cir. 2019), *cert. denied sub nom. Viggio-Aponte v. United States*, 140 S. Ct. 972 (2020).

139. *See* Blumenstein, *supra* note 127, at 219.

140. *Luetkemeyer Committee Statement*, *supra* note 19, at 1–2.

141. MO. REV. STAT. § 578.421.1 (2020).

enumerated predicate acts and removed the requirement that the gang have a “common name or common identifying sign or symbol.”¹⁴² Senate Bill 600 also made a slight alteration to the definition of “pattern of criminal street gang activity” by adding “dangerous felonies” as one of the offenses that would constitute a pattern.¹⁴³ While the two substantive offenses related to criminal street gangs remained the same, Senate Bill 600 significantly modified the punishments associated with each.¹⁴⁴ While the courts were previously allotted discretion in issuing prison terms for both offenses, Senate Bill 600 removed the element of discretion and included specific classifications and mandatory sentence enhancements.¹⁴⁵ For example, a violation of Section 578.423, which involves knowingly participating in a criminal street gang by committing any act to willfully promote or assist the criminal conduct by the gang, is now strictly classified as a Class B felony, carrying a mandatory minimum sentence of five years, rather than allowing the judge to choose a sentence of one, two, or three years.¹⁴⁶

Senate Bill 600 also modified the second substantive offense related to criminal street gangs, found in Section 578.425, by changing the wording of the requisite intent from “specific intent” to commit a felony for the benefit of, at the direction of, or in association with a criminal street gang, to having the “purpose” of promoting, furthering or assisting in criminal conduct by gang members when committing the felony.¹⁴⁷ While punishment for violating this statute was previously reserved for the court’s discretion, Senate Bill 600 mandated the additional term be two years, or three years if committed within one thousand feet of a school.¹⁴⁸ Senate Bill 600 also added that if the felony committed in violation of Section 578.425 was a dangerous felony, the additional term will be five years.¹⁴⁹ Each of these prison terms are still to be served in addition and consecutive to the punishment prescribed for the underlying felony.¹⁵⁰

142. MO. REV. STAT. § 578.419 (2020).

143. MO. REV. STAT. § 578.421.2(2) (2020).

144. Mo. S.B. 600 (modifying provision relating to dangerous felonies).

145. *Id.*

146. MO. REV. STAT. § 578.423 (2020).

147. MO. REV. STAT. § 578.425 (2020).

148. This includes public or private elementary, vocational, junior high or high schools. MO. REV. STAT. § 578.425 (2019).

149. MO. REV. STAT. § 578.425(2) (2020).

150. § 578.425.

*C. Senate Bill 600's Projected Effects on State Funds and
Incarceration Rate*

Because Senate Bill 600 reduces judges' discretion in sentencing, limits probation opportunities, and enhances certain sentences by requiring they be served consecutively rather than concurrently, it will likely have an impact on Missouri's already high incarceration rate, potentially costing the state a significant amount of money. While Missouri saw consistent increases in its incarceration rate from 2007 to 2016, ranking eighth nationally in 2016, the past three years have seen a reduction of nearly 5000 inmates in Missouri's prisons.¹⁵¹ These reductions were in part due to the passing of a series of bills which eliminated mandatory minimum sentences for some nonviolent offenses and removed additional prison time as a punishment when individuals could not afford to pay jail debts.¹⁵²

The nonpartisan fiscal note for Senate Bill 600 prepared by the Committee on Legislative Research Oversight Division ("Research Committee"), which gathered data from almost a dozen government agencies, including the Missouri Department of Corrections ("DOC"), projected that the bill will result in an increase of more than 2500 prisoners by its full implementation in 2038.¹⁵³ As the annual cost of incarceration per inmate is about \$6,386, the Research Committee anticipated the increase will cost more than \$16 million per year.¹⁵⁴ These projections were the key source of criticism for Senate Bill 600 and add perspective when considering whether Senate Bill 600's harsher sentencing provisions will have the intended effect on Missouri's elevated violent crime rates.

IV. DISCUSSION

151. *Profile of the Institutional and Supervised Offender Population*, MO. DEP'T. OF CORRECTIONS (June 30, 2016), <https://doc.mo.gov/sites/doc/files/2018-01/Offender-Profile-FY16.pdf> [<https://perma.cc/Y59H-VDBH>]; *Profile of the Institutional and Supervised Offender Population*, MO. DEP'T. OF CORRECTIONS (June 30, 2018), <https://doc.mo.gov/media/pdf/2018-offender-profile> [<https://perma.cc/23SM-H3YB>]; *Profile of the Institutional and Supervised Offender Population*, MO. DEP'T. OF CORRECTIONS (June 30, 2019), https://doc.mo.gov/sites/doc/files/media/pdf/2020/03/Offender_Profile_2019_0.pdf [<https://perma.cc/3SPV-SF3F>]. From 2007 to 2016, Missouri's incarceration rate increased 5.3%, compared to a decrease of 11.1% in the national rate. *Id.*

152. Crystal Thomas, 'A Step in the Wrong Direction.' *Parson Urged to Veto Crime Bill that Harshens Sentences*, THE KAN. CITY STAR (June 10, 2020), <https://www.kansascity.com/news/politics-government/article243414601.html>.

153. *Fiscal Note*, COMM. ON LEGIS. RESEARCH OVERSIGHT DIV. (Feb. 19, 2020), <https://www.senate.mo.gov/FiscalNotes/2020-1/3178-08P.UPD.PDF> [<https://perma.cc/F24N-FJEZ>].

154. *Id.*

The predominant focus of Senate Bill 600, as articulated by its sponsor and supporters, was to ensure violent criminals are kept off the streets.¹⁵⁵ This bill seeks to further that end by modifying a handful of criminal provisions.¹⁵⁶ The creation of the Missouri Criminal Street Gang Prevention Act and the modernization of the corresponding statutes on gang activity represent Senate Bill 600's most targeted attempt at tackling one of the state's top sources of violence – criminal street gangs.¹⁵⁷ This Part compares Missouri's updated street gang provisions with the corresponding federal RICO provisions and discusses the implications of aligning Missouri law with RICO. This Note concludes that alignment may permit state law enforcement agencies and prosecutors to more effectively and efficiently address gang violence in the state's largest cities. However, the Legislature failed to address concerns regarding the costly nature of the bill and its potential impact on Missouri's already high incarceration rates.

A. Comparing the "Missouri Criminal Street Gang Prevention Act" to the Federal RICO Statute

The Missouri Criminal Street Gang Prevention Act was designed to modernize and update Missouri's narrower version of federal RICO, in order to systematically address gang violence.¹⁵⁸ The Missouri statute is far more limited than RICO in that it is designed to target a specific form of criminal organization – the criminal street gang.¹⁵⁹ Thus, the key organizational definition within the Missouri statute is that of a "criminal street gang,"¹⁶⁰ whereas the comparable organization under RICO is that of an "enterprise."¹⁶¹ As discussed previously, an "enterprise" may be either a legal entity or a nonlegal "association in fact," which consists of a formal or nonformal ongoing organization that functions as a continuing unit for a common purpose.¹⁶² Under the Missouri statute, a "criminal street gang" consists of "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its motivating activities the commission of [. . .]" one or more specific criminal acts, "whose members

155. Mo. S.B. 600.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. 18 U.S.C. § 1961 (2016).

162. *Boyle v. United States*, 556 U.S. 938, 944–45 (2009) (quoting *United States v. Tukette*, 452 U.S. 576, 580 (1981)).

individually or collectively engage in or have engaged in a pattern of criminal gang activity.”¹⁶³

Although the two statutes operate similarly and are designed to deter similar behavior, there are several key definitional distinctions that should be discussed.¹⁶⁴ First, there must be an organization, association, or group of at least three persons, which can be formal or informal.¹⁶⁵ Similar to RICO, the Missouri statute does not require a formal grouping and can consist of something similar to RICO’s “association in fact.”¹⁶⁶ Second, the Missouri statute requires that a criminal street gang have as one of its motivating activities the commission of any criminal act which is specified in the subsequent section of the statute.¹⁶⁷ As RICO is designed to include a much broader category of criminals than street gangs, its definition encompasses any group which functions for a common purpose, without any restrictions as to what that common purpose must be.¹⁶⁸ Third, the Missouri statute requires that the members of the group either be engaging in or have already engaged in a pattern of criminal gang activity, which involves the commission, or attempted commission, of two or more specified offenses occurring within three years of one another and either on separate occasions or by two or more persons.¹⁶⁹ The federal statute, on the other hand, requires a “pattern of racketeering activity,” which involves proof of at least two predicate acts of racketeering activity that are in some way related to continued criminal activity and are committed within ten years of one another.¹⁷⁰ Each statute involves a list of predicate offenses sufficient to constitute a pattern.¹⁷¹ The main distinctions between these two types of patterns are the timing of the offenses and their relatedness.¹⁷² The federal RICO statute is much broader in scope, thus the lengthier time period allows for the investigation into deeply rooted and sophisticated criminal organizations that may span generations, while Missouri’s statute targets more localized criminal street gangs.¹⁷³

163. MO. REV. STAT. § 578.421.2(1) (2020).

164. Another distinction not mentioned here is that federal RICO requires that the enterprise activities must be of a type that affects interstate commerce. 18 U.S.C. § 1962 (2016). As Missouri’s statute is a state statute, it has no such requirement.

165. MO. REV. STAT. § 578.421.2(1) (2020).

166. *Id.*

167. *Id.*

168. 18 U.S.C. § 1961 (2016).

169. § 578.421.2(1)

170. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 240 (1989) (“RICO’s legislative history tells us . . . that the relatedness of racketeering activities is not alone enough to satisfy § 1962’s pattern element. To establish a RICO pattern, it must also be shown that the predicate themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.”).

171. *See* 18 U.S.C. § 1961 (2016).

172. *Id.*

173. *See* 18 U.S.C. § 1961; MO. REV. STAT. § 578.421.

Notwithstanding the definitional distinctions referenced above, the two statutes have two important similarities. First, both penalize an individual who knowingly and actively participates in either a criminal street gang or enterprise under federal RICO.¹⁷⁴ Although the federal statute articulates several forms of participation, including using income received from the outlawed behavior, acquiring an interest in such criminal organization, or generally participating in the affairs of the organization,¹⁷⁵ the Missouri statute broadly encompasses any form of active participation and willful promotion of criminal street gang activity. Regardless, both statutes are intended to deter individuals both from joining in or simply assisting criminal organizations in furthering their criminal enterprise.

Second, both statutes offer heightened punishment compared to the typical penalties associated with the underlying criminal acts. The Missouri statute, for example, classifies any active participation or form of willfully promoting criminal street gang activity as a Class B felony, punishable by a minimum of five years and a maximum of fifteen years,¹⁷⁶ even though the act of assistance or promotion may not even be a crime in and of itself.¹⁷⁷ Similarly, the federal RICO statute includes punishments of fines and imprisonment of up to twenty years, as well as hefty forfeiture provisions.¹⁷⁸ Although the Missouri statute represents a far narrower version of federal RICO with important definitional distinctions, the operation of the Missouri Criminal Street Gang Prevention Act traces closely with that of federal RICO.¹⁷⁹

B. Implications of Moving Toward RICO for Gang Prosecution

More than thirty-three states now have state RICO statutes, some of which are crafted more broadly than federal RICO, while others – known as “little RICO” statutes – are more limited in scope and focus purely on gang-related crime.¹⁸⁰ Those opposing state adoption of RICO point to the statute’s complexity and possibility for abuse as two major concerns.

The federal RICO statute is extremely complex, and if states adopt an expansive statute directed toward all organized crime, similar to the federal version, they run the risk of burdening state law enforcement and prosecutors with a similarly complex application. The complexity of the statute could

174. *See* 18 U.S.C. § 1961; MO. REV. STAT. § 578.421.

175. 18 U.S.C. § 1962 (2016).

176. MO. REV. STAT. § 558.011.1(2) (2017).

177. MO. REV. STAT. § 578.423 (2020).

178. 18 U.S.C. § 1963(a) (2016).

179. *See* 18 U.S.C. § 1962 (2016); MO. REV. STAT. § 578.421 (2020).

180. Keenan, *supra* note 126, at 831.

create issues both leading up to trial – for law enforcement gathering evidence or prosecutors preparing the case – but also during trial – for jurors and judges applying the statute to the facts of the case.¹⁸¹ This risk of confusion may lead state prosecutors to avoid the state RICO statute altogether out of fear of losing the case.¹⁸²

Another concern is that although the powerful prosecutorial tool embodied in these statutes may be designed for narrow application by the state legislature, they may result in a more expansive interpretation by prosecutors and state courts. Because the statutory description of a criminal organization is often based on a set of characteristics, rather than an explicit definition, this can create wide discretion for prosecutors seeking to label a group of individuals as a “criminal enterprise” and their conduct as a “pattern of criminal behavior.”¹⁸³ Furthermore, review of these decisions made by state prosecutors is not as extensive as it is at the federal level.¹⁸⁴ State district attorneys and the attorneys general typically do not have the same level of experience as federal prosecutors who work on greater numbers of RICO prosecutions. Therefore, a state district attorney’s review of a prosecutor’s decisions in handling RICO cases will afford greater discretion to the state prosecutor.¹⁸⁵

On the other hand, proponents of state adoption of RICO argue four main points.¹⁸⁶ First, they argue that federal RICO prosecutions are most often focused on larger and more sophisticated criminal organizations than the localized gang crime experienced by states.¹⁸⁷ At the state level, curbing organized gang violence may not always involve large or particularly sophisticated organizations, yet they operate much the same as the larger enterprises and cause similarly significant amounts of damage.¹⁸⁸ States could more effectively handle this violence through prosecution of a greater number of smaller criminal enterprises, rather than relying on federal authorities to target larger, but fewer criminal entities.¹⁸⁹

A second benefit of moving toward RICO is that state agencies would no longer be forced to choose between individually charging the underlying

181. Donald J. Rebovich, et al., *Local Prosecution of Organized Crime: The Use of State RICO Statutes*, U.S. DEP’T. OF JUSTICE, at 14 (Oct. 1993), <https://www.ncjrs.gov/pdffiles1/Digitization/143502NCJRS.pdf> [<https://perma.cc/CQ93-75SB>].

182. *Id.*

183. See Russell D. Leblang, *Controlling Prosecutorial Discretion Under State RICO*, 24 SUFFOLK U. L. REV. 79, 83 (1990).

184. Keenan, *supra* note 126, at 831.

185. *Id.*

186. See Jason D. Reichelt, *Stalking the Enterprise Criminal: State RICO and the Liberal Interpretation of the Enterprise Element*, 81 CORNELL L. REV. 224, 230–32 (1995).

187. *Id.* at 231.

188. Keenan, *supra* note 126, at 831.

189. See Reichelt, *supra* note 186, at 232.

crimes or turning the entire case over to federal authorities.¹⁹⁰ A state RICO statute would allow state prosecutors to pursue criminal organizations by prosecuting patterns of criminal activity committed both by direct and indirect participants, rather than by prosecuting individual members based on discrete acts.¹⁹¹ Furthermore, submission of the case to federal authorities runs the risk that the enterprise may not be charged at all, as federal authorities generally do not bring RICO charges if the predicate acts consist only of state offenses.¹⁹² Although federal resources continue to be expended for the prosecution of large criminal organizations throughout the nation, the less sophisticated and more localized gangs continue to plague individual cities while not necessarily drawing the attention or resources of federal authorities.¹⁹³ Therefore, giving state prosecutors the power to address these localized gangs as a whole, rather than individually, allows states to more effectively eradicate gang violence.

Finally, state RICO statutes often entail evidentiary and administrative advantages for prosecutors, as well as more severe punishments.¹⁹⁴ When prosecuted at the state level, even though predicate acts may have been committed in multiple different counties, state prosecutors can consolidate the cases and try them in a single county, effectively bypassing any venue challenges.¹⁹⁵ Furthermore, it allows prosecutors to present a more extensive picture of the evidence against the organization as a whole, rather than limiting them to “act-by-act prosecution.”¹⁹⁶ For example, evidence related to the existence and structure of the enterprise itself, if not sufficiently related to the underlying predicate acts, may ordinarily be considered unfairly prejudicial.¹⁹⁷ A RICO prosecution, on the other hand, permits that evidence and allows state prosecutors to paint a clearer picture of the organization’s criminal conduct to the jury.¹⁹⁸

V. CONCLUSION

Senate Bill 600 modifies a handful of criminal provisions in a notable effort to address Missouri’s violent crime by enhancing sentencing for violent criminals and providing prosecutors with more effective tools to handle gang

190. Keenan, *supra* note 126, at 831.

191. Rebovich, et al., *supra* note 181, at 11.

192. *See* Keenan, *supra* note 126, at 832.

193. *See* Leblang, *supra* note 183, at 83–84.

194. Reichelt, *supra* note 186, at 232.

195. *Id.*

196. Leblang, *supra* note 183, at 84.

197. *Id.*

198. *Id.*

violence. While these modifications may curb violence throughout the state, the Legislature failed to address the bill's effect on Missouri's well-above-average incarceration rate, and as a result, its cost. Regardless of the approach chosen by the Legislature, it must first address a fundamental issue in Missouri's criminal justice system – a top-ten nationally-ranked incarceration rate in a nation where incarceration rates are already well above its international peers. Until that issue is addressed, bills designed to put more criminals behind bars – whether they be violent or non-violent – without adequately offsetting its effect on incarceration figures, will continue to drive those numbers up and waste tax-payer dollars.