

SECOND REGULAR SESSION

# HOUSE BILL NO. 2682

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LOVASCO.

5616H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 211.321, 578.421, 578.427, 578.435, and 578.437, RSMo, and to enact in lieu thereof three new sections relating to declaring a weapon a nuisance.

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

Section A. Sections 211.321, 578.421, 578.427, 578.435, and 578.437, RSMo, are  
2 repealed and three new sections enacted in lieu thereof, to be known as sections 211.321,  
3 578.421, and 578.427, to read as follows:

211.321. 1. Records of juvenile court proceedings as well as all information obtained  
2 and social records prepared in the discharge of official duty for the court shall not be open to  
3 inspection or their contents disclosed, except by order of the court to persons having a  
4 legitimate interest therein, unless a petition or motion to modify is sustained which charges  
5 the child with an offense which, if committed by an adult, would be a class A felony under the  
6 criminal code of Missouri, or capital murder, first degree murder, or second degree murder or  
7 except as provided in subsection 2 of this section. In addition, whenever a report is required  
8 under section 557.026, there shall also be included a complete list of certain violations of the  
9 juvenile code for which the defendant had been adjudicated a delinquent while a juvenile.  
10 This list shall be made available to the probation officer and shall be included in the  
11 presentence report. The violations to be included in the report are limited to the following:  
12 rape, sodomy, murder, kidnapping, robbery, arson, burglary or any acts involving the  
13 rendering or threat of serious bodily harm. The supreme court may promulgate rules to be  
14 followed by the juvenile courts in separating the records.

15 2. In all proceedings under subdivision (2) of subsection 1 of section 211.031, the  
16 records of the juvenile court as well as all information obtained and social records prepared in

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.

17 the discharge of official duty for the court shall be kept confidential and shall be open to  
18 inspection only by order of the judge of the juvenile court or as otherwise provided by statute.  
19 In all proceedings under subdivision (3) of subsection 1 of section 211.031 the records of the  
20 juvenile court as well as all information obtained and social records prepared in the discharge  
21 of official duty for the court shall be kept confidential and may be open to inspection without  
22 court order only as follows:

23 (1) The juvenile officer is authorized at any time:

24 (a) To provide information to or discuss matters concerning the child, the violation of  
25 law or the case with the victim, witnesses, officials at the child's school, law enforcement  
26 officials, prosecuting attorneys, any person or agency having or proposed to have legal or  
27 actual care, custody or control of the child, or any person or agency providing or proposed to  
28 provide treatment of the child. Information received pursuant to this paragraph shall not be  
29 released to the general public, but shall be released only to the persons or agencies listed in  
30 this paragraph;

31 (b) To make public information concerning the offense, the substance of the petition,  
32 the status of proceedings in the juvenile court and any other information which does not  
33 specifically identify the child or the child's family;

34 (2) After a child has been adjudicated delinquent pursuant to subdivision (3) of  
35 subsection 1 of section 211.031, for an offense which would be a felony if committed by an  
36 adult, the records of the dispositional hearing and proceedings related thereto shall be open to  
37 the public to the same extent that records of criminal proceedings are open to the public.  
38 However, the social summaries, investigations or updates in the nature of presentence  
39 investigations, and status reports submitted to the court by any treating agency or individual  
40 after the dispositional order is entered shall be kept confidential and shall be opened to  
41 inspection only by order of the judge of the juvenile court;

42 (3) As otherwise provided by statute;

43 (4) In all other instances, only by order of the judge of the juvenile court.

44 3. Peace officers' records, if any are kept, of children shall be kept separate from the  
45 records of persons eighteen years of age or over and shall not be open to inspection or their  
46 contents disclosed, except by order of the court. This subsection does not apply to children  
47 who are transferred to courts of general jurisdiction as provided by section 211.071 or to  
48 juveniles convicted under the provisions of sections 578.421 to ~~578.437~~ **578.430**. This  
49 subsection does not apply to the inspection or disclosure of the contents of the records of  
50 peace officers for the purpose of pursuing a civil forfeiture action pursuant to the provisions  
51 of section 195.140.

52 4. Nothing in this section shall be construed to prevent the release of information and  
53 data to persons or organizations authorized by law to compile statistics relating to juveniles.

54 The court shall adopt procedures to protect the confidentiality of children's names and  
55 identities.

56 5. The court may, either on its own motion or upon application by the child or his or  
57 her representative, or upon application by the juvenile officer, enter an order to destroy all  
58 social histories, records, and information, other than the official court file, and may enter an  
59 order to seal the official court file, as well as all peace officers' records, at any time after the  
60 child has reached his or her eighteenth birthday if the court finds that it is in the best interest  
61 of the child that such action or any part thereof be taken, unless the jurisdiction of the court is  
62 continued beyond the child's eighteenth birthday, in which event such action or any part  
63 thereof may be taken by the court at any time after the closing of the child's case.

64 6. Nothing in this section shall be construed to prevent the release of general  
65 information regarding the informal adjustment or formal adjudication of the disposition of a  
66 child's case to a victim or a member of the immediate family of a victim of any offense  
67 committed by the child. Such general information shall not be specific as to location and  
68 duration of treatment or detention or as to any terms of supervision.

69 7. Records of juvenile court proceedings as well as all information obtained and  
70 social records prepared in the discharge of official duty for the court shall be disclosed to the  
71 child fatality review panel reviewing the child's death pursuant to section 210.192 unless the  
72 juvenile court on its own motion, or upon application by the juvenile officer, enters an order  
73 to seal the records of the victim child.

578.421. 1. Sections 578.421 to ~~[578.437]~~ **578.430** shall be known and may be cited  
2 as the "Missouri Criminal Street Gangs Prevention Act".

3 2. As used in sections 578.421 to ~~[578.437]~~ **578.430**, the following terms mean:

4 (1) "Criminal street gang", any ongoing organization, association, or group of three or  
5 more persons, whether formal or informal, having as one of its motivating activities the  
6 commission of one or more of the criminal acts enumerated in subdivision (2) of this  
7 subsection, whose members individually or collectively engage in or have engaged in a  
8 pattern of criminal gang activity;

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

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

16 (b) Robbery, arson and those offenses under chapter 569 which are related to robbery  
17 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 distribution,  
20 delivery or manufacture of a substance prohibited by chapter 579;
- 21 (e) Unlawful use of a weapon which is a felony pursuant to section 571.030;
- 22 (f) Tampering with witnesses and victims, as provided in section 575.270;
- 23 (g) Promoting online sexual solicitation, as provided in section 566.103;
- 24 (h) Sexual trafficking of a child in the first degree, as provided in section 566.210;
- 25 (i) Sexual trafficking of a child in the second degree, as provided in section 566.211;
- 26 (j) Patronizing prostitution, as provided in subsection 4 of section 567.030;
- 27 (k) Promoting prostitution in the first degree, as provided in section 567.050;
- 28 (l) Promoting prostitution in the second degree, as provided in section 567.060;
- 29 (m) Abuse or neglect of a child, as provided in subsection 6 of section 568.060;
- 30 (n) Sexual exploitation of a minor, as provided in section 573.023;
- 31 (o) Child used in sexual performance, as provided in section 573.200;
- 32 (p) Promoting sexual performance by a child, as provided in section 573.205; or
- 33 (q) Any dangerous felony, as defined in section 556.061.

578.427. 1. Sections 578.421 to ~~[578.437]~~ **578.430** shall not apply to employees  
2 engaged in concerted activities for their mutual aid and protection, or the activities of labor  
3 organizations or their members or agents.

4 2. Nothing in sections 578.421 to ~~[578.437]~~ **578.430** shall prevent a local governing  
5 body from adopting and enforcing laws consistent with sections 578.421 to ~~[578.437]~~  
6 **578.430** relating to gangs and gang violence. Where those local laws duplicate or supplement  
7 the provisions of sections 578.421 to ~~[578.437]~~ **578.430**, sections 578.421 to ~~[578.437]~~  
8 **578.430** shall be construed as providing alternative remedies and not as preempting the field.

~~[578.435. 1. As used in this section and section 578.437, the term  
2 "weapon" means any firearm, concealable firearm, blackjack, explosive  
3 weapon, gas gun, knife, knuckles, machine gun, projectile weapon, rifle, short  
4 barrel, shotgun, or switchblade knife, as defined in section 571.010.~~

~~5 2. Any weapon which is owned or possessed by a member of a  
6 criminal street gang for the purposes of the commission of an offense  
7 enumerated in subdivision (2) of section 578.421 may be confiscated by any  
8 law enforcement agency or peace officer as defined in section 590.100. If the  
9 law enforcement agency or peace officer believes that the return of the weapon  
10 confiscated has been or will be used in criminal street gang activity or that the  
11 return of the weapon would be likely to result in endangering the safety of  
12 others, the law enforcement agency or peace officer may initiate a petition in  
13 circuit court to determine if the weapon should be returned or declared a  
14 nuisance. If the court declares such weapon to be a nuisance, the weapon shall  
15 be destroyed.]~~

2           ~~[578.437. No weapon shall be declared a nuisance pursuant to section~~  
3           ~~578.435 and this section unless reasonable notice has been given to the lawful~~  
4           ~~owner thereof, if his or her identity and address can be reasonably ascertained.~~  
5           ~~The law enforcement agency shall inform the lawful owner at that person's last~~  
6           ~~known address by registered mail that the owner of the weapon has thirty days~~  
7           ~~from the date of receipt of the notice to respond to the clerk of the court to~~  
8           ~~confirm his or her desire for a hearing, and that the failure to respond shall~~  
9           ~~result in a default order and thereupon such weapon shall be declared a~~  
10           ~~nuisance. If the person requests a hearing the court shall set a hearing no later~~  
11           ~~than sixty days from the receipt of such request, and shall notify the person,~~  
12           ~~the law enforcement agency involved, and the prosecuting attorney of the date,~~  
13           ~~time, and place of the hearing. At such hearing the burden of proof shall be~~  
14           ~~upon the state to show by a preponderance of the evidence that the seized item~~  
15           ~~has been or will be used in criminal street gang activity, or that the return of~~  
              ~~the weapon would likely result in the endangering of the lives of others.]~~

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