

HCS SS SCS SB 755 -- PUBLIC SAFETY

SPONSOR: Mayer (Cookson)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 14 to 0.

This substitute changes the laws regarding public safety.

SALE OF SURPLUS WATER PATROL PROPERTY

Currently, the State Highway Patrol is authorized to sell surplus patrol motor vehicles. The substitute allows the patrol to also sell surplus watercraft, watercraft motors, and trailers.

The Highway Patrol's Motor Vehicle and Aircraft Revolving Fund is renamed the Highway Patrol's Motor Vehicle, Aircraft, and Watercraft Revolving Fund and allows it to be used to purchase watercraft, watercraft motors, and trailers as well as vehicles.

PEACE OFFICER SAFETY ALERTS

The Amber Alert System Oversight Committee must adopt, prior to January 1, 2013, the criteria and procedures necessary to expand the current Amber Alert System to provide peace officer safety alerts for the location and identification of any person who has assaulted or injured a licensed peace officer and has fled the scene.

EMERGENCY INFORMATION DATABASE

The Department of Revenue is allowed to create an emergency information database for instruction permit and driver's and nondriver's license holders to record, if the holder chooses to provide to the department, any known allergies of the holder and to enter the name and contact information for no more than two emergency contact persons he or she wishes to be contacted if involved in a motor vehicle accident or other emergency when the person is unable to communicate. All information in the database must be made available upon request to law enforcement and other emergency personnel, and law enforcement may share the information with other law enforcement or emergency personnel when necessary. The department, law enforcement, and other emergency personnel cannot incur liability for sharing the information or if the applicant fails to provide or to keep the information updated.

FAIR FARE PASSENGER SAFETY ACT

The Fair Fare Passenger Safety Act of 2012 is established which

prohibits any person who is operating a moving motor vehicle upon the highways or public roadways of the state and receiving compensation for the transportation of one or more passengers who are currently occupying the motor vehicle from using a hand-held electronic wireless communications device to send, read, or write a text or electronic message or from making or taking part in a telephone call.

Certain individuals are exempt from the provisions of the substitute including:

- (1) A person operating an authorized emergency vehicle or a law enforcement officer, a member of a fire department, or the operator of an ambulance while performing official duties;
- (2) A person using the device to report illegal activity, summon medical or other emergency help, prevent injury to a person or property, or relay information between a transit or for-hire operator and that operator's dispatcher when the device is permanently affixed to the vehicle;
- (3) An operator of a vehicle that is lawfully parked or stopped;
- (4) A person using a global positioning (GPS) or wireless communications device used to transmit or receive data as part of a digital dispatch system;
- (5) A person using a voice-operated technology device to make or take part in a telephone call;
- (6) A person using a two-way radio transmitter or receiver by a licensee of the Federal Communications Commission in the Amateur Radio Service; and
- (7) A person using a hand-held mobile telephone in conjunction with a voice-operated or hands-free device.

Anyone violating the provisions of the substitute will be guilty of an infraction which will be deemed a moving violation for the purpose of assessing points against a person's driver's license. Any city or county has the authority to adopt ordinances or regulations that are equivalent to, but not more restrictive than, these provisions.

WATER PATROL DIVISION PERMITS

Any person who holds a permit issued by the Water Patrol Division within the State Highway Patrol to host a regatta, motorboat, or other watercraft race; marine parade; tournament; or parasail operation or exhibition on any waters of the state is prohibited

from knowingly violating any term of the permit.

PURCHASE OF COMMODITY METALS

The substitute requires a purchaser of commodity metals to register with the scrap theft alert system maintained by the Institute of Scrap Recycling Industries, Inc., or its successor organization, to receive alerts regarding thefts of commodity metals in his or her geographic area and keep copies of all alerts received for 90 days. The purchaser must share the alerts with his or her employees and use the alerts to identify potentially stolen commodity metals. Commodity metal is a metal that contains brass, copper, copper alloy, aluminum, stainless steel, magnesium, or other tradeable metal, that sells for 50 cents per pound or greater. It also includes precious metals such as gold, silver, or platinum. A purchaser is a person who purchases only small commodities and does not include salvage yards or pawnbrokers. The substitute establishes the 10-member Commodity Metals Theft Task Force which must hold its first meeting by January 1, 2013, and then on a regular basis, convening at least every October to discuss specific issues regarding the theft of commodity metals. A member of the task force must annually report task force meetings, findings, and recommendations to the judiciary committees of the House of Representatives and the Senate.

These provision will expire July 1, 2017.

ORDERS OF PROTECTION

The substitute allows a court to enter an ex parte order of protection to a petitioner or child on whose behalf a petition is filed where there is an immediate and present danger of domestic violence. The court must deny the ex parte order and dismiss the petition if the petitioner is not an individual authorized to seek relief under Section 455.020, RSMo. An ex parte order of protection must be served upon a custodial parent or guardian if the respondent is younger than 17 years of age.

Any electronic public case information system, such as Casenet, is prohibited from posting a name change if the petitioner is a victim of child abuse, domestic violence, or a crime that includes an underlying act of domestic violence.

Currently, a person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic nature with the actor. The substitute revises the offense to include only those acts that involve family or household members.

DNA PROFILING ANALYSIS

The substitute changes the laws regarding DNA profiling analysis. The substitute:

(1) Changes when a surcharge is assessed for deposit into the DNA Profiling Analysis Fund to include all criminal cases, except traffic violations, in which the defendant pleads guilty, is found guilty, or is convicted. Currently, it is assessed in all criminal cases, except traffic violations, in which the defendant pleads guilty or nolo contendere to or is convicted of a felony;

(2) Removes the provision requiring the moneys collected by the surcharge to be deposited into the General Revenue Fund if the state's general revenue did not increase by 2% or more and removes the expiration date of August 28, 2013, regarding the assessment of the surcharge;

(3) Specifies that the moneys deposited into the DNA Profiling Analysis Fund are to be used by the State Highway Patrol Crime Laboratory for the purposes of the DNA Profiling System;

(4) Specifies that when the state accepts a person from another state under any interstate compact, other reciprocal agreement, or law, the acceptance is conditional on the person providing a DNA sample if the person was convicted of, found guilty of, or pled guilty to a felony offense. Currently, the acceptance is conditional on the person providing a DNA sample if the person was convicted of, pled guilty to, or pled nolo contendere to an offense in any other jurisdiction which would be considered a qualifying offense if committed in this state;

(5) Requires any person subject to DNA collection and profiling analysis to provide a DNA sample at the time of registering as a sexual offender;

(6) Specifies that when a DNA sample is taken of an arrestee for any offense under Section 650.055.1 and the warrant is refused, the arresting agency must notify the crime laboratory within 60 days of warrant refusal and the crime laboratory must expunge from the database all DNA records and destroy the DNA sample taken at the arrest for which the warrant was refused unless the crime laboratory determines that the person is otherwise obligated to submit a DNA sample for any other qualifying offense or arrest that would require a sample to be taken and retained; and

(7) Defines "expungement" as the destruction of an individual's DNA sample and the removal of the DNA record from the state DNA database.

FEDERAL SEIZURE PROCEEDS

Currently, a law enforcement agency involved in using the federal forfeiture system under federal law is required each fiscal year to acquire an independent audit of the federal seizures and proceeds therefrom and provide the audit to its governing body, the Department of Public Safety, and the Office of the State Auditor. The substitute removes the audit requirement and requires the law enforcement agency to file an annual report by January 31 regarding federal seizures and proceeds for the previous year with the department and the auditor's office. The detailed information that the report must contain is specified.

CRIMES AGAINST THE ELDERLY

Currently, a person commits the crime of elder abuse in the second degree, a class B felony, if he or she recklessly and purposely causes serious physical injury to a person 60 years of age or older or an adult with a disability. The substitute revises the provision so that if a person recklessly or purposely causes serious physical injury, he or she will be guilty of the crime.

The crime of financial exploitation of an elderly or disabled person is revised to include if a person knowingly by undue influence obtains control over the elderly or disabled person's property with the intent to permanently deprive the person of the use, benefit, or possession thereby benefitting the person or detrimentally affecting the elderly or disabled person. As used in these provisions, "undue influence" means the use of influence by someone who exercises authority over an elderly or disabled person in order to take unfair advantage of the person's vulnerable state of mind, neediness, pain, or agony and includes the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.

The substitute specifies that it is a violation of these provisions for any person receiving or in the possession of funds of a Medicaid eligible elderly or disabled person residing in a licensed facility to fail to remit to the facility all moneys owed to the facility resident from any source. The Family Support Division within the Department of Social Services is authorized to release information from its records containing the resident's income or assets to any prosecuting or circuit attorney for the purposes of investigating or prosecuting any suspected violation of these provisions. The prosecuting or circuit attorney, upon successful prosecution, may request the circuit court to order restitution of all amounts unlawfully withheld from a facility. Any order of restitution must provide that 10% of any restitution amount paid must be paid to the

prosecuting or circuit attorney successfully prosecuting the violation to compensate for the costs of prosecution with the remaining amount to be paid to the facility.

HOUSE OF WORSHIP PROTECTION ACT

The House of Worship Protection Act is established which specifies that a person commits the crime of disrupting a house of worship if he or she intentionally and unreasonably disturbs, interrupts, or disquiets any house of worship by using profane discourse, rude or indecent behavior, or making noise either within the house or so near it as to disturb the order and solemnity of the worship services; intentionally injures, intimidates, or interferes with or attempts to injure, intimidate, or interfere with any person lawfully exercising the right of religious freedom in or outside of a house of worship; or seeks access to a house of worship by force, threat, or physical destruction. Disrupting a house of worship is a class B misdemeanor for a first offense, a class A misdemeanor for a second offense, and a class D felony for any third or subsequent offense. "House of worship" means any church, synagogue, mosque, other building or structure, or public or private place used for religious worship, religious instruction, or other religious purpose.

FALSE IDENTIFICATION

A person commits the crime of false identification to a law enforcement officer, a class B misdemeanor, if he or she falsely represents or identifies himself or herself as another person or as a fictitious person to a law enforcement officer upon a lawful stop or detention or upon an arrest for the purpose of evading the process of the court or the proper identification of the person if the false information is given while the officer is engaged in the performance of his or her duties and the person providing the false information knows or should have known that the person receiving the information is an officer. It is a defense to a prosecution if the person retracted the false statement or report before the officer or any other person took substantial action in its reliance.

The substitute expands the crime of making a false declaration with the purpose to mislead a public servant in the performance of his or her duty, a class B misdemeanor, to include when a person provides any verbal false statement regarding his or her identity which the person believes or knows not to be true.

MAKING A FALSE REPORT

Currently, the crime of making a false report is a class B

misdemeanor. The substitute increases the penalty to a class D felony if the person makes a false report to a law enforcement officer, with an intent to deceive, that a felony crime has occurred or is about to occur.

FAILURE TO REPORT ILLEGAL CONDUCT REGARDING PRESCRIPTION MEDICATIONS

The substitute requires any person involved in the production, sale, distribution, or administration of prescription medications who has specific information or evidence that the conduct related to the production, sale, distribution, or administration of prescription medications of a pharmacist or any other licensed health care professional is illegal and could cause death or serious physical injury to another person to immediately report or cause a report to be made to the federal Food and Drug Administration; the Board of Pharmacy within the Department of Insurance, Financial Institutions and Professional Registration; or any law enforcement organization. A person who knowingly fails to make a report of misconduct within a reasonable period of time will be guilty of a class A misdemeanor. Any person who knowingly conceals any illegal conduct resulting in death or serious physical injury is guilty of a class D felony.

The substitute requires a person involved in the production, sale, distribution, or administration of prescription medications who has reason to suspect that counterfeit, fake, diluted, or black market drugs are in the distribution channel to make a report or cause a report to be made to the federal Food and Drug Administration; the Board of Pharmacy within the Department of Insurance, Financial Institutions and Professional Registration; or any law enforcement agency. A person who fails to make a report or cause a report to be made within seven days is guilty of a class A misdemeanor. Any employee of a drug or pharmaceutical company that attempts to conceal information about suspected counterfeit, fake, diluted, or black market drugs or any other drug in the distribution channel that could result in serious physical injury or death to a person is guilty of a class D felony.

CRIME SCENE PHOTOGRAPHS AND VIDEOS

The substitute requires certain specified crime scene photographs and video recordings, including those produced by a state or local agency or by a perpetrator or suspect at a crime scene, to be considered open records for inspection but closed records for the purposes of copying. The provisions of the substitute cannot prohibit disclosure of the material to the deceased's next of kin or to an individual who has secured a written release from the next of kin. Under specified situations a circuit court judge

may order the disclosure, with or without conditions, of the photographs or video recordings upon a written finding that disclosure is in the public interest and outweighs any privacy interest that may be asserted by the deceased's next of kin. Prior to releasing any crime scene material under these provisions, the custodian of the material must give the deceased's next of kin at least two weeks' notice, which cannot be disregarded or shortened by a court. These provisions apply to all undisclosed material which is or comes into the custody of a state or local agency and cannot apply to the disclosure of crime scene material to any counsel representing a defendant. Defense counsel may disclose the materials to his or her client and any expert or investigator assisting counsel and may use them for exhibits in a court proceeding but cannot otherwise disseminate the materials.

CYBER CRIME LAW ENFORCEMENT TASK FORCES

Currently, the provisions regarding Internet cyber crime law enforcement task forces and the Cyber Crime Investigation Fund expire on June 5, 2012. The substitute extends these provisions to August 28, 2022.

The provisions of the substitute regarding the Department of Revenue emergency information database become effective July 1, 2013, or on the date the department director begins accepting the emergency information, whichever occurs first.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$3,025,530 to \$4,292,196 in FY 2013, \$3,000,000 to \$3,333,333 in FY 2014, and \$3,000,000 to \$3,100,000 in FY 2015. Estimated Net Effect on Other State Funds of a cost of \$11,875 or an income of \$1,154,791 in FY 2013, an income of \$1,166,666 or \$1,400,000 in FY 2014, and an income of \$1,400,000 in FY 2015.

PROPOSERS: Supporters say that the bill creates the crime of disturbing a house of worship, which is similar to the current crimes of disturbing a judicial proceeding and disturbing the peace. The penalties for this new crime are similar to those for disturbing the peace. The provisions of the bill require a person to intentionally and unreasonably disturb a worship service, so just making noise would not be sufficient. Currently, other states have similar laws in place.

Testifying for the bill were Senator Mayer; Missouri Family Policy Council; and Missouri Baptist Convention, Christian Life Commission.

OPPOSERS: Those who oppose the bill say that the bill may infringe on a person's right to freedom of speech and could be

unconstitutional.

Testifying against the bill was American Civil Liberties Union of Eastern Missouri.