

HCS HB 210 -- RESTRUCTURE OF THE MISSOURI CRIMINAL CODE

SPONSOR: Cox

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by a vote of 10 to 0.

This substitute changes the laws regarding the Missouri Criminal Code. In its main provisions, the substitute:

- (1) Changes the felony classification of specified criminal offenses;
- (2) Changes from the Department of Social Services to the Department of Health and Senior Services where a person reports elderly abuse (Section 197.1002, RSMo);
- (3) Adds a habitual offender to the list of offenders who are prohibited from being placed on electronic monitoring (Section 221.025);
- (4) Creates the offense of manufacturing a false identification, a class A misdemeanor. A person commits the offense if he or she possesses any means of identification for the purpose of manufacturing and providing or selling a false identification card to a person less than 21 years of age for the purpose of purchasing or obtaining alcohol (Section 311.315);
- (5) Includes being in a drug-induced state or for any other reason being manifestly unable or known by the actor to be unable to make a reasonable judgment to those who are incapable of giving consent to sexual activity. Repeals the provision which specifies that a person is not considered incapacitated with respect to an act committed upon a person if he or she became unconscious, unable to appraise the nature of the person's conduct, or unable to communicate unwillingness to an act after consenting to the act (Section 556.061);
- (6) Establishes a class E felony and a class D misdemeanor. The bill specifies that any unclassified felony or felony for which the maximum term of imprisonment is four years will be a class E felony and it will be a class D misdemeanor if the offense includes a mental state as an element of the offense and there is no authorized imprisonment (Sections 557.016 and 557.021);
- (7) Repeals the provisions requiring the court to give notice of the time and place of sentencing to the prosecuting attorney and law enforcement agency within whose jurisdiction the prosecution was initiated in all felony cases (Section 557.046);

- (8) Increases the fines for misdemeanors and felonies (Section 558.002);
- (9) Changes the age at which a person is eligible for the death penalty from 16 to 18 years of age (Section 565.020);
- (10) Changes the laws regarding the offense of involuntary manslaughter in the first degree by only including a person who recklessly causes the death of another person (Section 565.024);
- (11) Changes the laws regarding the offense of assault (Sections 565.050 - 565.056, 565.072 - 565.074, 565.076, and 565.079);
- (12) Changes the laws regarding the crime of harassment and separates it into harassment in the first or second degree (Sections 565.090 and 565.091);
- (13) Changes the laws regarding the offense of child kidnapping and separates it into kidnapping in the first, second, or third degree (Sections 565.100 - 565.140);
- (14) Allows the court, upon a finding of guilt for an offense of interference with custody, parental kidnapping, or child abduction to assess as restitution against the defendant and in favor of the legal custodian or parent any reasonable expenses incurred by the legal custodian or parent in searching for or returning the child (Sections 565.150 - 565.156);
- (15) Changes the laws regarding the offense of abuse of an elderly, disabled, or vulnerable person (Sections 565.184, 565.188, 565.189, 565.218, and 565.222);
- (16) Changes the laws regarding the offense of stalking (Sections 565.225 and 565.227);
- (17) Changes the offense of invasion of privacy (Section 565.252);
- (18) Raises the age at which consent is not a defense to a sex offense from less than 13 years of age to less than 14 years of age (Section 566.020);
- (19) Changes the offense of rape (Sections 566.030 - 566.034);
- (20) Changes the laws regarding the offense of sodomy (Sections 566.060 - 566.064);
- (21) Changes the laws regarding the offense of child molestation (Sections 566.067 - 566.069 and 566.071);

- (22) Specifies that the offense of sexual contact with a student includes any public or private K-12 school or on any school bus used by the school district. The student's consent to the sexual contact is not a defense to prosecution to these provisions (Section 566.086);
- (23) Changes the laws regarding the offense of sexual misconduct and sexual abuse (Sections 566.090 - 566.100);
- (24) Changes the laws regarding the offense of sex with an animal (Section 566.111);
- (25) Changes the laws regarding the offense of sexual conduct with a nursing facility resident (Sections 566.115 and 566.116);
- (26) Changes the laws regarding a persistent and a predatory sexual offender (Section 566.125);
- (27) Changes the laws regarding the offense of prostitution (Sections 567.010 - 567.030, 567.050 - 567.085, and 567.110 - 567.120);
- (28) Specifies that a court cannot grant probation to a person who has previously been found guilty of incest (Section 568.020);
- (29) Repeals a provision stating that Section 568.045 is to be known as Hope's Law (Section 568.045);
- (30) Changes the laws regarding the offense of arson (Sections 569.040 - 569.053);
- (31) Changes the laws regarding the offense of negligent burning or exploding to include a person who with criminal negligence damages property, woodlands, cropland, grassland, prairie, or marsh by starting a fire or causing an explosion or allowing a fire burning on lands in his or her possession or control onto the property of another (Section 569.065);
- (32) Raises or lowers the financial thresholds for certain offenses regarding tampering with computer equipment, property damage, stealing, alteration or removal of an item, counterfeiting, passing bad checks, fraudulent use of a credit or debit device, identity theft, food stamps, and institutional vandalism (Sections 569.097 - 569.100, 570.020, 570.057, 570.085, 570.103, 570.120, 570.125, 570.130, 570.180, 570.223, 570.400 - 570.408, and 574.085);
- (33) Establishes the Crop Protection Act (Section 569.132);

- (34) Specifies that the provisions regarding the offense of unlawfully entering or defacing a cave or cavern or polluting cave or subsurface waters do not apply to vertical or horizontal underground mining operations (Sections 569.135 and 569.137);
- (35) Changes the laws regarding the offense of second degree robbery to include a person who in the course of the offense causes physical injury to another person (Section 570.025);
- (36) Changes the laws regarding the offense of stealing (Section 570.030);
- (37) Specifies that a person who appropriates cable television service cannot be deemed to have stolen that service under specified conditions (Section 570.039);
- (38) Changes the laws regarding the offense of deceptive business practice to include promoting the sale of property or services by false or misleading statements in an advertisement or advertising with the purpose not to sell or provide the property or services at the price he or she offered or in a quantity sufficient to meet public demand (Section 570.140);
- (39) Changes the laws regarding the offense of financial exploitation of an elderly or disabled person (Section 570.145);
- (40) Repeals the provisions regarding the offense of telephone service fraud (Section 570.190);
- (41) Repeals the provisions regarding the offense of library theft (Sections 570.200, 570.210, and 570.215);
- (42) Changes the laws regarding the offense of misapplication of funds of a financial institution (Section 570.217);
- (43) Changes the laws regarding the offense of misappropriation of intellectual property (Section 570.225);
- (44) Changes the laws regarding the offense of facilitating the theft of cable television service (Section 570.300);
- (45) Changes the laws regarding weapons offenses (Sections 571.031 - 571.044);
- (46) Specifies that the provisions of Chapter 572 do not prohibit authorized gambling activities under specified sections of the Missouri Constitution (Section 572.015);

(47) Changes the offense of public display of explicit sexual material to include a person who recklessly exposes, places, exhibits, or displays explicit sexual material in any location in a manner that it may be readily seen from a street, highway, public sidewalk, or the property of others, or the store of others or the exhibitor when items and material other than the explicit material are offered for sale or rent to the public (Section 573.060);

(48) Prohibits a person from establishing a sexually oriented business if that person has been found guilty of offenses specified in the bill and less than eight years has elapsed since the date of conviction or release from confinement for the conviction, whichever is later (Section 573.531);

(49) Changes the laws regarding the offense of making a terrorist threat (Sections 574.115 - 574.125);

(50) Changes the laws regarding the offense of cross burning to include a person who burns a cross with the purpose to frighten, intimidate, or cause emotional distress to any person or group of persons (Section 574.140);

(51) Changes the laws regarding the offense of unlawful funeral protest (Section 574.150);

(52) Changes the laws regarding persistent, chronic offenders (Sections 577.010, 577.012, 577.023, and 579.170);

(53) Creates the offenses of boating while intoxicated and boating with excessive blood alcohol content (Sections 577.013 and 577.014);

(54) Changes the laws regarding a person operating an aircraft while intoxicated or with excessive blood alcohol content (Sections 577.015, 577.016, 577.020, 577.021, and 577.037);

(55) Adds a phlebotomist to the list of individuals authorized to withdraw blood for the purpose of determining blood alcohol content (Section 577.029);

(56) Changes the laws regarding the offense of leaving the scene of an accident to include a vessel involved in an accident resulting in injury, death or damage to another person's property. The substitute requires an investigating officer of an accident involving an all-terrain vehicle and the loss of life or serious physical injury to forward a written report of the accident to the Department of Public Safety (Section 577.060);

(57) Changes the laws regarding the offense of failure to report a

shooting (Section 577.068);

(58) Changes the laws regarding the offense of littering (Section 577.070);

(59) Changes the laws regarding the offense of damaging state park property to include a person who removes, injures, disfigures, defaces, or destroys an object of archaeological or historical value within a state park. The bill repeals the provision requiring written permission or a concession contract with the Department of Natural Resources to offer or advertise merchandise or other goods for sale or hire in a state park (Section 577.073);

(60) Repeals the offense of refusing to immediately relinquish a party telephone line during an emergency (Section 577.105);

(61) Repeals the provision regarding the offense of operating a motor vehicle while younger than 16 years of age (Section 577.110);

(62) Repeals the provision regarding implied consent for a chemical test of an aircraft operator (Section 577.206);

(63) Repeals the provision regarding implied consent for a chemical test on a dead body (Section 577.211);

(64) Changes the laws regarding ignition interlock devices (Sections 577.599, 577.605, and 577.612);

(65) Changes the laws regarding the offense of hazing (Section 578.365);

(66) Creates the offense of sports bribery in the first and second degree (Sections 578.398 and 579.399);

(67) Changes the laws regarding the offense of prohibited acts against animal research and production facilities (Section 578.405);

(68) Adds an affirmative defense to the offenses of unlawful fishing, hunting, or trapping on private land and unlawful retrieval of large or small game when the premises were at the time open to members of the public and the person complied with conditions imposed on access or the privilege of remaining on the premises (Sections 578.520 and 578.525);

(69) Changes the laws regarding controlled substances and reduces the distance from 2,000 feet to 1,000 feet that distribution of a controlled substance will be deemed near a school (Sections 579.020, 579.030, 579.040, 579.045, 579.050, 579.055, and 579.060);

(70) Changes the amount of crack cocaine that is required before a person can be charged with first or second degree drug trafficking from two grams to eight grams and increases the amount of crack that leads to an enhanced penalty from six grams to 24 grams (Sections 579.065 and 579.068);

(71) Adds the condition of "knowingly" to certain drug-related offenses (Sections 579.074, 579.078, 579.080, 579.082, 579.084, 579.086, 579.105, 579.150, and 579.155);

(72) Changes the laws regarding the offense of unlawful manufacture of drug paraphernalia (Section 579.076);

(73) Changes the laws regarding the offense of possession of methamphetamine precursors to include a person who possesses more than 24 grams of ephedrine or pseudoephedrine. The provision does not apply to any practitioner or product possessed in the course of legitimate business (Section 579.110); and

(74) Changes the laws regarding a victim of domestic assault or stalking (Sections 595.223 and 595.226).

The provisions of the substitute in Section 302.060 regarding the issuance and reinstatement requirements for a driving license become effective October 1, 2013.

PROPONENTS: Supporters say the purpose of the bill is to enact a criminal code structure that makes sense to practitioners, judges, and the public. The bill tries to harmonize the language of the criminal code. Currently, there is a large gap between the possible sentences for a class C and a class B felony. The bill restructures the classification of offenses and creates a new class E felony that creates a classification structure that closes the gap between the current class B and class C felonies. The fine schedule has not been revised since the late 1970's; the fines have been adjusted in the bill to account for inflation. The names of various offenses have been changed to denominate them as lesser included offenses for charging purposes, which is a structural change, not a substantive change. Some offenses have been consolidated because there are duplicative statutes covering the same criminal behavior. Crimes are not being eliminated, just merged under the general statute criminalizing that specific behavior. For example, there are currently 24 separate statutes dealing with the offense of assault. The bill merges them all into one statute and used "special victims" as a penalty enhancement. The bill contains provisions that address Miller v. Alabama, a United States Supreme Court decision that held a sentence of mandatory life imprisonment without parole as unconstitutional for

juvenile offenders.

Testifying for the bill were Representative Cox; Stephen Sokoloff and Jason Lamb, Missouri Association of Prosecuting Attorneys; Patrick Starke, Kathi Alizadeh, Chris Seufert, Ellen Flottman, and Gwenda Renee Robinson, Missouri Bar; ACLU of Eastern Missouri; Marc Levin, Texas Public Policy Foundation; and Missouri Coalition Against Domestic and Sexual Violence.

OPPONENTS: Opponents say that the bill should make the first time possession of marijuana an infraction that carries only a fine, and that the bill does not go far enough to address some of the sentencing problems that currently exist, such as sentences that they believe are too lengthy.

Testifying against the bill were Christine Woody and Sister Mary Anne McGivern, Missouri Association for Social Welfare.