

HCS HB 1515 -- CRIMES AND CRIMINAL PROCEDURES

SPONSOR: Schad

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 10 to 4.

This substitute changes the laws regarding crimes and criminal procedure.

PEACE OFFICER SAFETY ALERTS

The substitute requires the Amber Alert System Oversight Committee to 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.

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.

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 pleaded 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, RSMo, 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 an individual 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 it is a violation of these provisions for any person receiving or in the possession of funds of a MO HealthNet-eligible elderly or disabled person residing in a licensed facility to fail to remit to the facility all money 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 ACT

The House of Worship 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, other building or structure, or public or private place used for religious worship, religious instruction, or other religious purpose.

Any person aggrieved by the crime of disrupting a house of worship or the crime of institutional vandalism is allowed to commence a civil action for appropriate relief including, but not limited to, injunctive relief, compensatory and punitive damages, and costs and reasonable attorney fees.

#### 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.

#### 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 convicted defendant for the purpose of preparing to file or litigating in a habeas corpus action, a motion for a new trial, or a federal habeas corpus action under 28 U.S.C. Section 2254 or 2255. 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.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$3,000,000 or \$4,166,666 in FY 2013, \$3,000,000 or \$3,233,333 in FY 2014, and \$3,000,000 to \$3,100,000 in FY 2015. Estimated Net Income on Other State Funds of \$0 or \$1,166,666 in FY 2013, \$1,166,666 or \$1,400,000 in FY 2014, and \$1,400,000 in FY 2015.

PROPOSERS: Supporters say that exploitation of the elder occurs too frequently with Medicaid-eligible individuals in nursing and care homes, especially when families retain the elderly or disabled person's Social Security income and do not turn it over to the facility for the care of the person. The bill attempts to remedy this and provide prosecutors a better method in which to prosecute violators.

Testifying for the bill were Representative Schad; Missouri Health Care Association; LeadingAge Missouri; Patrice Donehue, Silver Haired Legislature; Missouri Association of Area Agencies on Aging; Shawn D'Abreu, Paraquad, Incorporated; Missouri Centers for Independent Living; Department of Social Services; Missouri Alzheimer's Coalition; and AARP.

OPPOSERS: There was no opposition voiced to the committee.