

HCS HB 1515 -- CRIMES AND CRIMINAL PROCEDURES (Schad)

COMMITTEE OF ORIGIN: Committee on Crime Prevention and Public Safety

This substitute changes the laws regarding crimes and criminal procedure.

CHILD ABUSE AND NEGLECT REPORTING

The substitute requires that if a student reports alleged sexual misconduct on the part of a teacher or other school employee to a person employed in a school facility who is required to report the misconduct to the Children's Division within the Department of Social Services, the person and the superintendent of the school district must report the allegation to the division as specified in these provisions. Currently, they must forward the allegation to the division within 24 hours.

The substitute specifies that when two or more persons who are required to report jointly have knowledge of a known or suspected instance of child abuse or neglect, a single report may be made by a member of the team. Any member who has knowledge that the member designated to report has failed to do so must make the report. The reporting requirements are individual and no supervisor or administrator may impede or inhibit any reporting under these provisions and no person making a report can be subject to any sanction for making the report. Internal procedures that are not inconsistent with these provisions may be established to facilitate reporting and apprising supervisors and administrators of reports.

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.

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.

ORDERS OF PROTECTION

A court is allowed 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.

#### UNLICENSED CHILD CARE PROVIDERS

Sam Pratt's Law is established which allows any court in a case involving the abuse, neglect, or death of a child to impose as a condition of release of the defendant that he or she be prohibited from providing child care services for compensation pending final disposition of the case.

#### SENTENCING ADVISORY COMMISSION

The substitute removes the provisions requiring the Sentencing Advisory Commission to establish a system of recommended sentences for each felony committed in the state and to distribute its recommendations to all sentencing courts in the

state and to revise the recommended sentences every two years. These provisions cannot be construed to allow the commission to issue recommended sentences in specific cases pending in the courts of this state.

#### 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 that 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 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 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.

#### PUBLIC RECORDS

The substitute extends, from December 31, 2012 to December 31, 2016, the expiration date on certain provisions regarding specified exceptions to the Open Meetings and Records Law, commonly known as the Sunshine Law.

#### 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.

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 \$3,000,00 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.