

HCS HB 1243, 1094 & 931 -- CRIME

SPONSOR: Mayer

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 16 to 0.

This substitute makes changes to the laws regarding crime.

DNA PROFILING

The substitute expands the collection and use of DNA evidence in criminal investigations. The substitute:

- (1) Clarifies that forensic DNA analysis is admissible in any criminal proceeding to prove any relevant fact;
- (2) Allows the state's DNA profiling system to be used to investigate any crime. Current law limits its use to investigating violent or sex-related crimes;
- (3) Clarifies that the Department of Corrections may have DNA samples collected by a contracted third party;
- (4) Requires a DNA sample to be collected from every person convicted of a felony or any offense in Chapter 566, RSMo, regarding sex crimes. Current law does not require collection for some offenses in Chapter 566 or for nonviolent offenses;
- (5) Clarifies that a DNA sample must be collected upon release from any correctional facility, including a mental health facility;
- (6) Makes the acceptance of an offender from another state under any interstate compact conditioned upon the collection of a DNA sample when the offender has been convicted of an offense which would require a sample if committed in Missouri;
- (7) Prohibits the early release of any offender until the offender has provided a DNA sample;
- (8) Requires an offender to provide another DNA sample if the offender's DNA sample is not adequate for any reason;
- (9) Prohibits courts from excluding evidence or setting aside any warrant or conviction that is based upon a DNA sample that was obtained or placed in the database by mistake;
- (10) Establishes the DNA Database Fund, to be administered by the Department of Public Safety and used to provide for the

ongoing operation of the state and local DNA index systems;

(11) Makes all DNA records and biological materials confidential and allows disclosure only to government employees for the performance of their public duties;

(12) Limits the use of records from the DNA profiling system to criminal investigations and proceedings and for law enforcement's identification purposes;

(13) Allows an individual whose criminal case was dismissed or conviction reversed to request the court to order his or her DNA record expunged;

(14) Requires the State Highway Patrol's crime lab to expunge all DNA records of an individual upon receipt of a certified copy of the final court order reversing a conviction, as long as the person is not otherwise required to submit a DNA sample;

(15) Allows the patrol to refuse to expunge any physical evidence obtained from a DNA sample if evidence relating to another person would be destroyed;

(16) Prohibits courts from excluding evidence or setting aside any warrant or conviction due to a failure to expunge, or a delay in expunging, DNA records; and

(17) Establishes a \$30 surcharge on all felony cases, a \$15 surcharge on all misdemeanor cases, and a \$1 surcharge on all traffic cases to be assessed as court costs and deposited into the DNA Database Fund.

TRAFFIC OFFENSES

The substitute makes changes to the laws regarding traffic offenses. The substitute:

(1) Replaces references to the offense of driving while intoxicated with the broader term "intoxication-related offense" in several provisions for the purpose of determining punishment or the number of prior convictions. Intoxication-related offenses include driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter with a vehicle while intoxicated, assault of a law enforcement officer with a vehicle while intoxicated, and driving under the influence of alcohol or drugs in violation of a county or municipal ordinance;

(2) Allows law enforcement officials, after obtaining a search warrant, to collect blood, saliva, or urine from a person under

the age of 21 who is arrested for an intoxication-related driving offense, even though the person has refused the test. The person will still face license revocation for refusing the test;

(3) Makes a technical change in how the offense of driving while revoked becomes a felony. Under current law, this offense is a class A misdemeanor; and a fourth offense within a 10-year period is a class D felony. If the person has been convicted of an alcohol-related offense, then the third offense of driving while revoked is a class D felony. One requirement for the offense being charged as a felony is that the person served at least 10 days in jail for one of those offenses. The substitute removes that requirement;

(4) Makes a technical change for determining the prior offenses in a driving while revoked or alcohol-related offense. Currently, convictions in municipal courts for these offenses are not counted as prior offenses unless the municipal judge is an attorney. The substitute removes the requirement that the municipal judge be an attorney;

(5) Allows the court to order a 90-day driver's license suspension of any person convicted of illegally passing a school bus;

(6) Prohibits any person other than emergency personnel from using any device to change a traffic control signal. The sale of these devices will be prohibited to any person other than emergency personnel. Any person who violates this provision will be guilty of a class A misdemeanor;

(7) Requires the Director of the Department of Revenue to return noncommercial drivers' licenses and remove suspensions from driving records when licensees provide proof of the disposition of charges and payment of all applicable fines and court costs. In cases involving commercial drivers' licenses, the director will reinstate licenses upon receiving proof of the disposition of charges and payment of all applicable fines and court costs; and

(8) Exempts from the commercial driver's license requirements any person who drives emergency equipment. Currently, people are exempt only when driving under emergency conditions.

SENTENCING PROVISIONS

In its provisions regarding sentencing, the substitute:

(1) Clarifies that felons convicted prior to June 27, 2003, are not eligible to petition the sentencing court for early release.

That date was the effective date of Senate Bill 5 passed in 2003, which allowed persons with no prior prison commitment who have been convicted of a nonviolent C or D felony to petition the court for early release after having served at least 120 days in prison. The substitute contains an emergency clause for this section;

(2) Repeals a law enacted in 2003 which divided all criminal cases submitted to a jury into two stages;

(3) Allows courts to order a defendant to enter an offender treatment program, work-release program, or a community-based residential or nonresidential program;

(4) Repeals a provision that requires defendants to be sentenced according to the laws in effect at the time of sentencing, if a criminal statute has been amended that reduces the penalty; and

(5) Repeals a provision which allows the Board of Probation and Parole to convert an offender's consecutive prison sentence into a concurrent sentence.

COUNTY LAW ENFORCEMENT RESTITUTION FUND

The substitute creates the County Law Enforcement Restitution Fund. The substitute:

(1) Allows counties to establish the fund by ordinance. The fund will receive money from court-ordered restitution not exceeding \$275 for any charged offense. If a defendant fails to make a payment, probation may be revoked. The fund may only be used for specified law enforcement expenditures and will be supervised by a board of five trustees appointed by certain county officials;

(2) Prohibits counties from reducing any law enforcement agency's budget as a result of establishing the fund;

(3) Subjects any county law enforcement restitution fund to audits; and

(4) Prohibits, after September 1, 2004, the creation of any county fund designed to collect money for the payment of additional expenses incurred by the county. Any moneys received by any county fund created after September 1, 2004, must be deposited into the county's general revenue fund.

OTHER COURT COSTS AND FEES

In provisions regarding court costs and other fees, the

substitute:

(1) Increases court costs in criminal cases for deposit into law enforcement training funds. The substitute increases from \$2 to \$3 a surcharge that counties and municipalities may assess and increases from \$1 to \$2 a surcharge that is required to be assessed in criminal cases involving criminal or traffic laws, county ordinances, or municipal ordinances. The maximum amount that may be retained by counties or municipalities for this purpose is increased from \$1,500 to \$3,500, with excess funds to be transferred to the general revenue fund of the county or municipality;

(2) Requires the Attorney General's office to investigate any alleged supplanting of law enforcement training funds by a county or municipality and requires these funds, if found to be supplanted, to be reinstated; and

(3) Increases from \$14 to \$20 the fees the State Highway Patrol charges for criminal record requests involving a fingerprint search and increases from \$5 to \$10 requests that do not involve a fingerprint search.

CRIMES

In other provisions regarding crimes, the substitute:

(1) Creates the crime of misuse of a power of attorney. The crime is committed when an agent's actions result in the unauthorized disposition of a principal's assets for the benefit of a third party. The crime is a class A misdemeanor when the value of the assets is \$500 or less and a class C felony when the value is more than \$500 or for a second or subsequent offense;

(2) Creates the crime of endangering a corrections employee, a class D felony. The crime is committed when a prisoner causes a corrections facility employee to come into contact with the prisoner's bodily fluids. The crime is a class B felony if the prisoner knows he or she is infected with HIV or hepatitis. Under current law, this act falls under the crime of aggravated harassment of an employee and applies to cases involving corrections employees as well as employees in any mental health facility or any secure facility operated by the Division of Youth Services;

(3) Makes it a class D felony for a person who has been civilly committed as a sexual predator to escape from commitment. This provision contains an emergency clause; and

(4) Clarifies that the crime of resisting arrest occurs when the

person is fleeing from a detention or stop by a law enforcement officer.

FISCAL NOTE: Estimated Effect on General Revenue Fund of a cost of Unknown to an income of Less than \$100,000 in FY 2005, FY 2006, and FY 2007. Estimated Effect on Other State Funds of a cost of More than \$21,093 to an income of \$2,516,316 in FY 2005, a cost of More than \$1,008 to an income of \$2,628,680 in FY 2006, and a cost of More than \$1,008 to an income of \$2,577,534 in FY 2007.

PROPOSERS: Supporters of HB 1094 and HB 931 say that DNA profiling of all felons is the law in 31 states. States have been solving several cold cases when they convict an offender of a drug crime, take a DNA sample, and match it with an unsolved violent crime. In states that have all felon profiling and DNA is recovered from a crime scene that matched with a person, 80% of the time that person was in prison for a drug or property crime, not a violent crime. Collecting DNA on all felons prevents crime. DNA has been described as the guilty person's worst nightmare and the innocent person's best friend because it is not biased and cannot be manipulated. It has revolutionized the way crime is investigated and prosecuted; however, it cannot be fully utilized unless DNA samples are in the system, allowing identification of suspects.

Supporters of HB 1243 say that the bifurcated trial process created last year has not been followed by many courts and repealing it will actually save money.

Testifying for HB 1094 and HB 931 were Representatives Mayer, Bivins, and Jolly; Kansas City Area Crime Lab; Office of the Jackson County Prosecutor; Metropolitan Organization to Counter Sexual Assault; Missouri Victim Assistance Network; and Missouri Police Chiefs' Association. Testifying for HB 1243 was Representative Lipke (157).

OPPOSERS: Those who oppose the bill say that testing all felons is too broad in scope. Profiling juvenile offenders, who could be in the system for very minor offenses, raises other concerns.

Testifying against HB 1094 and HB 931 was the Missouri Association of Criminal Defense Lawyers.

OTHERS: Others testifying on HB 1094 and HB 931 say that the state currently processes about 2,200 DNA samples per year. The bill would increase that amount to about 28,000 per year, requiring four additional full-time employees. However, having DNA samples on file will allow law enforcement to arrest suspects

before they commit more crimes. In addition to preventing crimes, this would trim the costs of law enforcement investigations. For example, the investigation of a serial killer in St. Louis cost approximately \$750,000. If DNA had been collected after he was convicted of robbery years earlier, the police would have identified him after the first murder he committed. He went on to rape and murder 16 additional women over a period of years.

Others testifying on HB 1094 and HB 931 was State Highway Patrol.

Richard Smreker, Senior Legislative Analyst