

HCS#2 HB 406 & 726 -- CRIME

SPONSOR: Bruns (Cox)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 9 to 0.

This substitute changes the laws regarding crime prevention and boating while intoxicated.

CRIME PREVENTION

The substitute:

- (1) Adds any moving violation, as defined by Section 302.010, RSMo, to the list of infractions for which a court may order payment to the county law enforcement restitution fund;
- (2) Allows the Superintendent of the State Highway Patrol to direct members and other employees of the patrol to carry out any public safety duty or service authorized or appropriated by the General Assembly. The Governor nor the superintendent can order any member of the patrol to perform any duty or service not authorized under state statute;
- (3) Authorized the patrol to conduct criminal background checks on gubernatorial appointees who are subject to Senate confirmation. Information received by the patrol must be kept confidential and cannot be disclosed to anyone other than the Governor and/or members of the Governor's staff as necessary to determine the appointee's qualifications;
- (4) Specifies that the patrol will be divided into troops rather than districts;
- (5) Removes the requirement that the patrol superintendent must reside in Jefferson City and be a uniformed member of the patrol;
- (6) Authorizes the patrol superintendent to enter into an agreement with the Missouri Gaming Commission regarding the enforcement of any law or regulation and conducting background investigations related to the laws of this state and the regulation of licensed gaming activities;
- (7) Requires, subject to appropriation, any retired employee of the patrol who is a witness in any official court proceeding at least 30 miles from his or her place of residence to receive a per diem up to \$100, mileage reimbursement, and reimbursement of the necessary travel expenses incurred;

(8) Increases the amount an entity requesting criminal history record information not based on a fingerprint search must pay from up to \$5 per request to up to \$9. After January 1, 2010, the patrol superintendent may increase this fee up to an additional dollar per year, but cannot exceed \$15. Any entity requesting criminal history record information based on a fingerprint search will be required to pay a fee of up to \$20 per request. If the request is for a concealed carry endorsement, the fee will be \$14;

(9) Allows any state agency to require the fingerprinting of applicants or employees in specified occupations for the purpose of positive identification and for receiving criminal history record information when determining the applicant's or employee's ability or fitness for a position;

(10) Authorizes additional compensation or compensatory time off for overtime, court time, and standby court time in excess of 40 hours for sergeants of the police department of the City of St. Louis. Currently, additional compensation and time off are authorized only for patrol officers and probationary patrol officers;

(11) Authorizes college and university police officers to enforce traffic regulations on college or university property. The officers will be required to be certified under the Peace Officer Standards and Training (POST) Program and will have authority under the fresh pursuit doctrine provisions in Section 544.157;

(12) Expands the protection of the elderly against financial exploitation;

(13) Creates the crime of possessing or having control of a restricted natural substance, a class A misdemeanor for the first offense and a class D felony for each subsequent offense. No person will be guilty of the crime if the person owns, possesses, manages, or otherwise controls land on which a restricted natural substance naturally grows unless the person knowingly plants or cultivates the restricted natural substance, harvests the substance for any person to drink, inhale, or otherwise ingest or allows or authorizes another person to drink, inhale, or ingest the substance;

(14) Specifies that it will be unlawful for any person to distribute, deliver, manufacture, produce, or cultivate a restricted natural substance or to attempt to or possess with intent to distribute, deliver, manufacture, produce, or cultivate a restricted natural substance. A person who commits any of these crimes will be guilty of a felony with a minimum of four

years' imprisonment for the first offense and a minimum of 10 years for each subsequent offense;

(15) Adds Zopiclone, its salts, isomers, and salts of isomers to the list of Schedule IV controlled substances and Pregabalin to the list of Schedule V controlled substances;

(16) Requires the Department of Health and Senior Services to develop a program, subject to appropriation, to monitor the prescribing and dispensing of all Schedule II through Schedule V controlled substances by all licensed professionals who prescribe or dispense these substances in Missouri. The dispenser is required to electronically submit to the department information for each prescription and specifies the frequency of the submissions. The department is allowed to issue a waiver to a dispenser who is unable to submit the required information electronically. If a waiver is obtained, a dispenser can submit the required information in paper format or by other approved means. All submitted prescription information is to be confidential. Exceptions to this requirement include violations of the law or breaches of professional standards which result in an investigation and the submission or the release of prescription information to authorized persons. The release of non-personal, general information is authorized for statistical, educational, and research purposes;

(17) Authorizes the department to contract with other state agencies or private vendors to implement the provisions of the Prescription Monitoring Act;

(18) Requires the department to develop an educational course about the Prescription Monitoring Act and, when appropriate, to work with associations for impaired professionals to ensure the intervention, treatment, and ongoing monitoring of patients who have been identified as being addicted to substances monitored by the Prescription Monitoring Act;

(19) Specifies that the Amber Alert System is to aid in the location of abducted children rather than adults and defines "abducted child" as an individual whose whereabouts are unknown, is younger than 18 years of age, and is reasonably believed to be a victim of kidnaping or younger than 18 years of age and at least 14 years of age who would be reasonably believed to be a victim of child kidnaping if the person was younger than 14 years of age;

(20) Requires a photograph to be taken of an incarcerated individual upon release and made available to the victim upon his or her request;

(21) Allows offenders to appear before the Board of Probation and Parole by means of a video conference, rather than personal appearance, at the discretion of the board;

(22) Specifies that sheriffs and jailers are not required to take custody of a prisoner from an arresting officer until that prisoner has been examined by a physician or medical personnel if he or she appears to be unconscious, suffering from a serious illness or injury, or is seriously impaired by drugs or alcohol. The prisoner will be responsible for the cost of the examination;

(23) Allows paid police officers of a paid police department to be eligible for workers' compensation benefits for an injury due to psychological stress;

(24) Increases the length of a driver's license suspension for failing to stop for a school bus from 90 to 120 days for the first offense and from 120 to 180 days for a second or subsequent offense;

(25) Specifies that any person convicted of criminal securities fraud will be fined an amount not to exceed \$1 million, be sentenced to a term of imprisonment not to exceed 10 years, or both. If the violation was committed against a disabled or elderly person, the offender will be fined an amount not to exceed \$50,000, be sentenced to a term of imprisonment not to exceed five years, or both;

(26) Allows a judge to order a probationer, as a condition of probation, to be vaccinated for Hepatitis A and B at his or her local health department with the costs to be paid by the probationer;

(27) Removes the provision of law which allows a judgment to be entered against the prosecutor for the trial costs if the defendant is acquitted of the prosecution of the case is dismissed;

(28) Specifies that any person who unlawfully distributes or delivers any controlled substance to any person and that person's injection, inhalation, or ingestion of the controlled substance causes his or her death will be guilty of involuntary manslaughter;

(29) Revises the definitions of "domestic assault offense" and "intoxication-related offense" to include any offense committed in another state or any federal or military offense which, if committed in Missouri, would be considered a domestic assault offense or an intoxication-related offense;

(30) Expands the crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the first, second, or third degree to include corrections officers;

(31) Establishes "Ashley's Law" which creates the crime of transporting a child without parental consent when a person transports a child younger than 17 years of age out of the state, without the written consent of the child's parent or legal guardian, for the purpose of committing a crime with the child as the victim or a participant of that crime. The crime will be a class C felony;

(32) Prohibits certain sexual offenders from being physically present or loitering within 500 feet of or approaching, contacting, or communicating with any child younger than 18 years of age in any child care facility building or the real property comprising any child care facility when children younger than 18 years of age are present in the building unless the person is the parent, guardian, or custodian of a child in the building or on the grounds. Any person who violates the provisions of the substitute will be guilty of a class A misdemeanor;

(33) Changes the term "stealing-related offense" to include robbery and clarifies that a person who has pled guilty to or been found guilty of two separate stealing offenses, which were committed on two separate occasions, will be guilty of a class B felony;

(34) Increases the penalty for the crime of possessing child pornography from a class C felony to a class B felony;

(35) Creates the crime of false identification if a prisoner or offender knowingly and with the purpose to mislead gives a false name, date of birth, or Social Security number when identifying himself or herself to a person who is an employee of a jail or correctional center. False identification will be a class C felony;

(36) Increases the penalty for the crime of making a false report from a class B misdemeanor to a class A misdemeanor;

(37) Creates the crime of disarming a peace or correctional officer if a person intentionally removes from or deprives the peace or correctional officer of the use of his or her firearm or other deadly weapon while the officer is acting within the scope of his or her official duties. The crime, a class C felony, does not include situations in which the person does not know or could not reasonably have known that the person was a peace or correctional officer or if the officer was engaged in felonious conduct at the time of the disarmament;

(38) Expands the crime of tampering with a judicial proceeding to include a person whose purpose is to influence the official actions of a state prosecuting or circuit attorney;

(39) Increases the penalty for the crime of assault on a police animal from a class C to a class A misdemeanor;

(40) Transfers all powers, duties, and functions of administering the testing of blood-alcohol content from the Department of Health and Senior Services to the Department of Transportation;

(41) Allows a court to order a person's vehicle impounded for up to one year as part of a penalty for driving while intoxicated if the vehicle is not jointly owned or leased. The offender will be responsible for all costs associated with towing and storing the vehicle. Before ordering impoundment, the court must examine whether the impoundment would result in the loss of employment, an inability to attend school, or an inability to obtain medical care for the offender or a member of the offender's family. An owner who refuses to pay the impoundment fees or who fails to retrieve the vehicle within 30 days after the impoundment period will be considered to have abandoned the vehicle. When the vehicle is being leased and the lease expires in less than a year, the impoundment period terminates at the conclusion of the lease;

(42) Prohibits the use or possession of an alcohol beverage vaporizer. Any substance that has been approved by the federal Food and Drug Administration as an over-the-counter or therapeutic drug product administered by an authorized medical practitioner is exempt;

(43) Establishes the Address Confidentiality Program, administered by the Office of the Secretary of State, to protect victims of domestic violence by establishing a designated address for victims and their minor children. Knowingly submitting a misrepresented application will be a class D felony;

(44) Prohibits an individual who is required to register on the sexual offender registry from owning or operating a sexual offender treatment facility for more than one person. Previously established facilities and those contracted through government bodies are exempt. Violation of this provision will be a class A misdemeanor;

(45) Requires the Peace Officer Standards Training (POST) Commission to make instruction available to peace officers on the investigation of crimes involving the use of a computer, the Internet, or both;

(46) Requires peace officers who make traffic stops to receive three hours of training within the law enforcement continuing education three-year reporting period. All continuing education requirements will be waived for any peace officer who is activated for military duty;

(47) Expands the number of members on the Peace Officers Standards and Training Commission from nine to 11 by including two members who are peace officers at or below the rank of sergeant employed by a political subdivision. No more than two members of the commission can reside in the same congressional district or be employees of the same law enforcement agency;

(48) Allows the Director of the Department of Public Safety to establish rules to implement the POST Program;

(49) Requires crime victims to be paid up to \$250 from the Crime Victims' Compensation Fund to replace clothing, bedding, or other personal items seized by law enforcement as evidence of a crime;

(50) Allows victims to be represented by an appointed person instead of appearing in person during the offender's parole and probation revocation hearings. The victim's appointee who honors any subpoena to testify in or attend a criminal proceeding is protected from discharge by any employer or from using vacation, personal, or sick leave to attend any criminal proceeding;

(51) Allows records and documents pertaining to internal investigations by a law enforcement agency on the fitness and conduct of a law enforcement officer employed by the agency used solely in connection with matters relating to the employment of the officer to remain confidential unless the records and documents are used in a criminal investigation;

(52) Allows the department to establish rules recommending procedures for issuing missing/endangered person advisories;

(53) Revises the continued educational training requirements of 911 telecommunicators from 16 hours in a two-year period to 24 hours every three years;

(54) Specifies that the members of the Missouri Medal of Valor Board will be appointed by the Governor from a list submitted by the department director; and

(55) Creates the Reverend Nathaniel Cole Memorial Pursuit Reduction Grant in the state treasury to be administered by the department director. Any money appropriated or donated to the fund will be used to provide grants, in the amount of a 50% match, to urban police departments who purchase real-time tagging

and tracking pursuit management systems.

BOATING WHILE INTOXICATED

The substitute:

(1) Specifies that a person commits the crimes of negligent operation of a vessel, operating a vessel while intoxicated, involuntary manslaughter with a vessel, assault with a vessel in the second degree, and operating a vessel with excessive blood-alcohol content on any waters of this state. Currently, those crimes can only be committed on the Mississippi River, Missouri River, or any lake in this state;

(2) Specifies that a person convicted of a second violation of the crime of operating a vessel with excessive blood-alcohol content within 10 years of a first offense will be guilty of a class A misdemeanor and placed on probation for a period of two years;

(3) Specifies that a person convicted of a third violation of the crime of operating a vessel with excessive blood-alcohol content within 20 years of two prior offenses will be guilty of a class D felony and placed on probation for a period of three years. The individual will be prohibited from operating a vessel for a period of five years from the date of the third conviction;

(4) Lowers the weight of alcohol necessary in a person's blood in order for there to be a presumption that the person is intoxicated from .1 of 1% to .08 of 1%;

(5) Defines "prior offender" as any person who has pled guilty to or been found guilty of one intoxication-related boating offense within five years of the intoxication-related boating offense for which the person is charged. A person proved to be a prior offender will be guilty of a class A misdemeanor and will not be eligible for probation or parole until he or she has served a minimum of five days' imprisonment;

(6) Defines "persistent offender" as a person who has pled guilty to or been found guilty of two or more intoxication-related boating offenses, involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of controlled substances operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be a persistent offender will be guilty of a class D felony and will not be eligible for probation or parole until he or she has served a minimum of 10 days' imprisonment;

(7) Defines "aggravated offender" as a person who has pled guilty to or been found guilty of three intoxication-related boating offenses or has pled guilty to or been found guilty of one of more intoxication-related boating offense and any of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of controlled substances operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be an aggravated offender will be guilty of a class C felony and will not be eligible for probation or parole until he or she has served a minimum of 60 days' imprisonment;

(8) Defines "chronic offender" as a person who has pled guilty to or been found guilty of four or more intoxication-related offenses; has pled guilty to or been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of controlled substances; or has pled guilty to or been found guilty of two or more intoxication-related offenses and any of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of controlled substances operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be a chronic offender will be guilty of a class B felony and will not be eligible for probation or parole until he or she has served a minimum of two years' imprisonment; and

(9) Specifies that no prior, persistent, aggravated, or chronic offender will be given an imposition of sentence.

The provisions of the substitute regarding the Address Confidentiality Program will expire six years from the effective date.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown - exceeding \$1,131,319 in FY 2008, Unknown - exceeding \$678,453 in FY 2009, and Unknown - exceeding \$688,787 in FY 2010. Estimated Income of Other State Funds of \$2,871,938 to \$2,835,218 in FY 2008, \$3,445,713 to \$3,408,993 in FY 2009, and \$3,791,324 to \$3,754,604 in FY 2010.

PROPOSERS: Supporters for House Bill 406 say that our statutes regarding boating while intoxicated currently require a higher blood-alcohol content level than those regarding driving while intoxicated. The bill will make those laws consistent. Boaters

cannot distinguish what direction other boats with spotlights are traveling. The bill will prohibit boats from spotlighting.

Supporters for House Bill 726 say that the bill provides clean-up language for a similar bill passed last session.

Testifying for HB 406 were Representatives Schad and Jones (117); State Water Patrol; Tri-County Lodging Association; Jim Moody, Lake Area Convention Visitors Bureau; Water Patrol Association; and Missouri Canoe and Floaters Association. Testifying for HB 726 were Representative Lipke; Missouri Municipal League; Missouri Coalition Against Domestic Violence; and Missouri Chiefs of Police.

OPPONENTS: Those who oppose House Bill 726 say that Missouri investigative reports should be open and treated like other reports.

Testifying against HB 726 was Missouri Press Association.