

HCS HB 1451 -- CRIMINAL JUSTICE

SPONSOR: Lipke

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention by a vote of 10 to 0.

This substitute changes the laws regarding the criminal justice system. In its main provisions, the substitute:

(1) Specifies that any person who recklessly uses or possesses with an intent to use any drug paraphernalia to manufacture, compound, produce, test, or analyze amphetamine or methamphetamine or any of their analogues will be guilty of an infraction. Anyone who knowingly violates this provision will be guilty of a class D felony (Section 195.233, RSMo);

(2) Lowers the age limit for juvenile court jurisdiction for a person who violates a state or local traffic violation from 15 1/2 to 15 years of age (Section 211.031);

(3) Authorizes the Department of Corrections to receive and disburse grants and federal funds (Section 217.045);

(4) Specifies that a person who recklessly operates upon any highway in the state a vehicle without a valid license or any motorcycle or motortricycle without a valid license that shows the person has successfully passed an examination for its operation will be guilty of an infraction. A person who knowingly violates this provision will be guilty of a class A misdemeanor. Any person convicted a third or subsequent time of operating a vehicle, motorcycle, or motortricycle without a valid license, if the prior convictions were misdemeanors, will be guilty of a class D felony (Section 302.020);

(5) Specifies that any person who knowingly commits the crime of driving while revoked will be guilty of a class A misdemeanor and any person who recklessly violates this provision will be guilty of an infraction. No person who pleads guilty to or is found guilty of a felony or misdemeanor of driving while revoked will be granted suspended imposition of sentence or be eligible for parole or probation until the person has served a minimum of 48 consecutive hours of imprisonment unless he or she performs at least 10 days involving 48 hours of court-supervised community service (Section 302.321);

(6) Specifies that any owner of a motor vehicle registered or required to be registered in this state who knowingly operates, registers, or permits another person to operate the vehicle without maintaining the required financial responsibility will be

guilty of a class C misdemeanor. A person who recklessly violates this provision will be guilty of an infraction (Section 303.025);

(7) Changes the laws regarding the Missouri Securities Act including:

(a) Establishing the Whistleblower Program to receive and evaluate information received from individuals voluntarily disclosing potential securities violations while, as appropriate, maintaining the confidentiality or anonymity of those individuals;

(b) Allowing the Commissioner of Securities within the Office of the Secretary of State to pay a monetary award from the Investor Education and Protection Fund to certain whistleblowers providing information leading to the successful resolution of an administrative or civil enforcement action of up to 30% of the monetary sanctions imposed in the enforcement action. No award will be given to a whistleblower who is a member, officer, or employee of any regulatory agency, who is convicted of a criminal violation related to the action, or who fails to submit information in an acceptable or useable manner to the commissioner;

(c) Requiring the commissioner to inform the public of the program and make available a toll-free number and allowing the commissioner to establish incentives for individuals and companies to fully and truthfully cooperate and assist with investigations and enforcement actions;

(d) Requiring every broker-dealer, investment advisor, issuer, firm, or any other person who employs an individual engaged in the business of effecting transactions in securities or advising others as to the value of securities to post and keep posted on its premises, in conspicuous places where employees are employed, a notice regarding the whistleblower program. The information must also be provided to all new employees;

(e) Prohibiting any broker-dealer, investor advisor, issuer, firm, or other person who employs an individual engaged in the business of effecting transactions in securities or advising others as to the value of securities from discharging, demoting, suspending, threatening, harassing, or discriminating against a whistleblower regarding his or her employment for lawfully providing information to the commissioner under this program. Any whistleblower alleging discharge or discrimination may bring an action in the appropriate circuit court seeking necessary relief including reinstatement of seniority; back pay with interest; and compensation for litigation costs, expert witness

fees, and reasonable attorney fees; and

(f) Requiring all information delivered to the commissioner by a whistleblower to be confidential and privileged as an evidentiary matter and to be exempt from disclosure unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the commissioner or any other agency or regulatory entity or unless the commissioner deems it necessary to protect investors (Section 409.6-601);

(8) Allows the judge in a criminal or municipal case that is dismissed before the defendant pleads guilty or is found guilty to assess court costs against the defendant as specified in Section 488.012 if the defendant consents to pay and is not indigent and is able to pay the costs (Sections 479.260 and 488.5032);

(9) Requires an individual who is found guilty in any criminal case in a circuit court to be assessed a \$30 surcharge and removes the provision assessing the surcharge to an individual who pled nolo contendere in these cases. A \$15 surcharge is authorized in all other court proceedings in all other criminal cases except for traffic violation cases where the defendant is found guilty and removes the provision assessing the surcharge to an individual who pled nolo contendere in these cases. Currently, these funds are deposited into the General Revenue Fund if the state's general revenue did not increase by 2% or more in the previous fiscal year. The substitute repeals this provision and requires these moneys to be deposited into the DNA Profiling Analysis Fund to be used only by the State Highway Patrol Crime Lab (Section 488.5050);

(10) Increases the amount of the security required on a writ of attachment from \$100 to not less than \$500 (Section 491.170);

(11) Establishes the Missouri False Claims Act which specifies that a person will be liable to the state or relevant political subdivision for a civil penalty if he or she:

(a) Knowingly presents, or causes to be presented, false or fraudulent claims for payment or approval to any officer or employee of the state, any political subdivision, public school district, or public charter school;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;

(c) Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;

(d) Has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(e) Makes or delivers a certified receipt of property used without completely knowing that the information on the receipt is true if the person is authorized to make or deliver the document and intends to defraud the government;

(f) Knowingly buys or receives as a pledge of an obligation or debt public property from an officer, agent, or employee of the government who lawfully may not sell or pledge the property;

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government; or

(h) Violates Section 105.452, 105.454, 576.010, 576.020, 576.030, 576.040, 576.050, or 576.080 (Sections 537.800 and 537.802);

(12) Specifies that anyone who violates the Missouri False Claims Act will be liable for a civil penalty of between \$10,000 and \$100,000 plus three times the amount of damages sustained by the government or political subdivision or plus two times the amount of the damages sustained if the court finds that the person furnished the relevant entity charged with investigating the claim with all relevant information; fully cooperated with the investigation; and at the time of furnishing the information, had no knowledge of an existing investigation and no criminal prosecution, civil action, or administrative action had commenced (Section 537.802);

(13) Requires the Attorney General to diligently investigate any violation of the Missouri False Claims Act and allows him or her to bring a civil action. Any person is allowed to bring a civil action for himself or herself and for the government. Procedures are specified for bringing an action, the investigation, the hearing, the penalties, and the procedures in special circumstances. The provisions of the substitute will not apply to hospitals or medical providers governed under Section 208.164 or Sections 191.900 - 191.910 (Sections 537.804, 537.806, 537.808, and 537.810);

(14) Specifies that no indictment or information can be deemed invalid nor can any trial, judgment, or other proceeding be stayed, arrested, or in any manner affected in the case of any sexual or felony offense for the omission of the defendant's name

if the identity of the defendant is unknown at the time the indictment or information is brought and the indictment or information describes the defendant as a person whose name is unknown but who has a particular DNA profile (Section 545.030);

(15) Authorizes each prosecuting attorney to, upon agreement with an accused or a defendant, to divert a criminal case to a prosecution diversion program for a period of six months to two years, allowing for any statute of limitations to be tolled for that time. The prosecuting attorney may divert a case out of the criminal justice system that is nonviolent, nonsexual, and does not involve a child victim or the possession of an unlawful weapon and does not constitute a violation of a current condition of probation or parole. The prosecuting attorney is also allowed to divert a case if he or she determines that the advantages of utilizing prosecution diversion outweighs the advantages of immediate court activity. The accused or defendant must submit to all program requirements, and any newly discovered criminal behavior while in the program will immediately forfeit his or her right to continued participation. The prosecuting attorney is authorized to establish any other criteria for the program and to impose conditions, such as remaining free of criminal behavior, payment of restitution, and payment of an administrative handling fee of \$100 for each case diverted upon the behavior and conduct of the accused or defendant during participation in a program. The administrative handling fee collected is to be deposited into the Administrative Handling Cost Fund and expended for use by a prosecuting or circuit attorney for the expenses of the program. The prosecuting attorney or circuit attorney must collect an additional \$5 per case for deposit into the Missouri Office of Prosecution Services Fund. Any person participating in the prosecution diversion program has the right to insist on criminal prosecution for the offense for which he or she is accused at any time and the right to counsel during all phases of the diversion proceedings unless the right is knowingly and voluntarily waived by the accused or defendant. After successful completion of the program and any conditions imposed to the satisfaction of the prosecuting attorney, the person is entitled to a dismissal or alternative disposition of the charges against him or her (Section 557.014);

(16) Specifies that a defendant is not entitled to an automatic change of judge in a probation revocation proceeding (Section 559.036);

(17) Requires any restitution ordered by the court or agreed to by the parties to be paid through the office of the prosecuting or circuit attorney or another entity the office has contracted with for the collection. When ordered by the court, interest is allowed to be charged on any collection amount. Any prosecuting

or circuit attorney who collects restitution will also collect from the person paying restitution an administrative handling cost in addition to all other costs and fees allowed by law. The cost will be \$25 for restitution of less than \$100 and \$50 for restitution between \$100 and \$249. For restitution of \$250 or more, the cost will be 10% of the total restitution, not to exceed \$75. In addition to the administrative handling cost, an installment cost will be assessed in the amount of \$2 for each restitution payment except for the first payment. The county treasurer is to deposit the costs collected and the restitution payments received into the newly created administrative handling cost fund which is to be a separate interest-bearing administrative handling cost fund. The prosecuting or circuit attorney is required to collect from the person paying restitution an additional \$5 per crime victim to whom restitution is being paid to be deposited into the Missouri Office of Prosecution Services Fund. The substitute specifies how the moneys are to be used and that the fund may be audited by the State Auditor or the appropriate auditing agency (Section 559.100);

(18) Specifies that a court may set an amount of restitution to be paid by a defendant who is incarcerated with the amount being taken from the inmate's account at the Department of Corrections. The prosecuting attorney or circuit attorney may refer any failure to pay restitution as a condition of conditional release or parole to the Board of Probation and Parole within the department for enforcement (Section 559.105);

(19) Authorizes the department director to establish, as a three-year pilot program, a mental health assessment process. Upon a motion filed by the prosecutor in a criminal case, the judge who is hearing the case may request that an offender be placed in the department for 120 days for a mental health assessment and for treatment if it appears that the person has a mental disorder or illness. The offender must qualify for probation including community psychiatric rehabilitation programs, and the probation must be appropriate and consistent with public safety for the offender to be eligible for placement. Before the judge rules on the motion, the victim must be given the opportunity to be heard by the court. Upon recommendation of the court, the department must determine the offender's eligibility for the mental health process. Following the assessment and treatment period, an assessment report must be sent to the court. The sentencing court, if appropriate, may release the offender on probation that is supervised by a state probation and parole officer who must work with the Department of Mental Health to enroll eligible offenders in community psychiatric rehabilitation programs. A person convicted of certain serious offenses, any offense where probation or parole

is prohibited, or who has been found to be a predatory sexual offender is not eligible for probation. At the end of the three-year pilot, the directors of the departments of Corrections and Mental Health must jointly submit recommendations by December 31, 2013, to the Governor and General Assembly on whether to expand the process statewide (Section 559.117);

(20) Revises the crime of nonsupport by removing the requirement that the parent knowingly fails to provide adequate support without good cause and specifies that the parent commits the crime if he or she fails to provide adequate support (Section 568.040);

(21) Adds any elected prosecutor or assistant prosecutor with written authorization from the elected prosecuting attorney to the list of individuals who are exempt from certain restrictions on the use of weapons, including the prohibition on carrying concealed weapons (Section 571.030);

(22) Expands the crime of making a false declaration for the purpose of misleading 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 (Section 575.060); and

(23) Creates the Reverend Nathaniel Cole Memorial Pursuit Reduction Grant to be administered by the Director of the Department of Public Safety. Any moneys appropriated or received from federal grants, gifts, or donations to the fund will be used to provide grants, in the amount of a 50% match, to certain eligible urban police departments which purchase real-time tagging and tracking pursuit management systems (Section 650.470).

The substitute contains an emergency clause for the provisions regarding the surcharge charged to an individual found guilty in any criminal case for deposit into the DNA Profiling Analysis Fund and for the provisions regarding the automatic change of judge in a probation revocation proceeding.

FISCAL NOTE: Estimated Effect on General Revenue Fund of a cost of More than \$1,400,000 to an income of Unknown in FY 2011, FY 2012, and FY 2013. Estimated Income on Other State Funds of \$1,400,000 in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that the bill helps to fund a needed part of the criminal justice system and allows victims to receive the restitution they deserve without spending general revenue funds. Assessing interest on restitution is proper and

necessary. Collection fees charged are needed to compensate prosecution staff and pay postage costs.

Testifying for the bill were Representative Lipke; Missouri Office of Prosecution Services; Ron Cleek, Office of the Prosecuting Attorney of Christian County; and Michael Wright.

OPPONENTS: Those who oppose the bill say that it is not needed because a judge can currently require payment of restitution as a condition of parole. This issue should be addressed at the local level.

Testifying against the bill was Thomas Robbins, Missouri Association of Criminal Defense Lawyers.

OTHERS: Others testifying on the bill clarified questions regarding probation and parole issues.

Testifying on the bill was Department of Corrections.