

HCS HB 1695, 1742 & 1674 -- DRIVING WHILE INTOXICATED

SPONSOR: Lipke (Stevenson)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention by a vote of 7 to 1 with 2 present.

This substitute changes the laws regarding driving while intoxicated. In its main provisions, the substitute:

(1) Specifies that any nonviolent offender who has been convicted, pled guilty, or been found guilty under Sections 577.010 or 577.012, RSMo, and is incarcerated for the offense may be required to participate in the Missouri Postconviction Drug and Alcohol Treatment Program and upon release is required to complete a department-approved community supervised program or, if no program is available, to submit to continuous alcohol monitoring for at least 90 days (Section 217.785);

(2) Allows any circuit court to establish a DWI docket to provide an alternative for the disposition of driving while intoxicated or driving with excessive blood alcohol content cases when the person operating a motor vehicle has a blood alcohol content (BAC) of at least .15 or the person has pled guilty to or has been found guilty of one or more intoxication-related traffic offenses (Sections 478.001 and 478.007);

(3) Requires the course of instruction that all municipal judges must complete to include a review of state laws regarding intoxication-related offenses, jurisdictional issues related to those offenses, reporting requirements for courts, and the required assessment for offenders under the Substance Abuse Traffic Offender Program (SATOP). Circuit and municipal court clerks must retain all records pertaining to intoxication-related offense convictions for at least 50 years (Section 479.020);

(4) Requires each municipal judge to adopt a written policy requiring court personnel to timely report all dispositions of all charges for intoxication-related traffic offenses to the central repository and to provide a copy of the policy to the Office of State Courts Administrator and the State Highway Patrol (Sections 479.020, 479.170.4, and 479.170.5);

(5) Specifies that offenses involving operating a motor vehicle while intoxicated where the defendant has had two or more previous intoxication-related traffic offenses, had two or more alcohol-related contacts, or has had a previous intoxication-related traffic offense and the pending offense resulted in physical injury to another person will not be cognizable in municipal court (Section 479.170.2);

(6) Requires the municipal prosecutor to certify to the municipal judge that a review of an offender's driving record was conducted prior to exercising jurisdiction for an intoxication-related traffic offense. The review must include a search of the Missouri Uniform Law Enforcement System (MULES), the Driving While Intoxicated Tracking System (DWITS), and the driving record maintained by the Department of Revenue (Section 479.170.3);

(7) Requires each municipal division of every circuit court to prepare a report every six months that includes the total number and disposition of every intoxication-related offense adjudicated, dismissed, or pending in its division and submit the report to the circuit court en banc for review and recommendations (Section 479.170.6);

(8) Adds a warrant to collect a sample of a person's blood, breath, saliva, or urine to those warrants which may be executed (Section 542.286);

(9) Requires certain offenders to receive credit for time served for the successful completion of an institutional program within the Department of Corrections for substance or alcohol abuse treatment (Section 558.400);

(10) Requires law enforcement agencies and prosecutors to adopt a policy to report information for all intoxication-related offenses to the central repository and to certify the adoption when applying for any grants administered by the Department of Public Safety. Beginning January 1, 2011, the patrol must maintain regular accountability reports of alcohol-related arrests, charges, and dispositions based on the data submitted (Section 577.005);

(11) Specifies that there is a rebuttable presumption that a person is drugged if there is any amount of a nonprescribed controlled substance present in the person (Section 577.010.2);

(12) Increases the penalty for a person guilty of a driving while intoxicated offense from a class B misdemeanor to a class A misdemeanor if the person had a BAC of .15 or more and specifies that no person who operated a motor vehicle with a BAC of .15 or more will be granted a suspended imposition of sentence (Section 577.010.3);

(13) Specifies that for a first offense, unless a person participates and successfully completes the requirements of a DWI court or docket, a person who operated a motor vehicle with a BAC of between .15 and .20 will be imprisoned for at least 48 hours and a person who operated a motor vehicle with a BAC of .20 or more will be imprisoned for at least five days (Sections

577.010.3 and 577.012.3);

(14) Specifies that any person who pleads guilty to driving while intoxicated or excessive BAC cannot later withdraw that plea (Sections 577.010.4 and 577.012.4);

(15) Allows a blood sample to be extracted without consent and without a warrant from any person suspected of operating a motor vehicle in an intoxicated condition if the person has refused to submit to a chemical test. The blood sample will be admissible in evidence pursuant to the exigent circumstances exception to the warrant requirement. No law enforcement officer who requests that a blood sample be drawn will be civilly liable for damages unless for gross negligence or by a willful or wanton act of omission (Section 577.020.8);

(16) Changes the definition of "prior offender" by removing the requirement that the prior intoxication-related traffic offense must have occurred within five years of the present occurrence for which the person is being charged (Section 577.023.1);

(17) Changes the minimum imprisonment from five days to 10 days for a prior offender and from 10 days to 30 days for a persistent offender to be eligible for parole or probation unless as a condition the person performs a specified amount of community service or participates in a program established under Section 478.007 (Section 577.023.6);

(18) Requires a municipal court to transfer a case to the appropriate circuit court after finding a person to be a persistent, aggravated, or chronic offender (Section 577.023.7);

(19) Allows courts to search the central repository, DWITS, or the certified driving record maintained by the Department of Revenue for prior intoxication-related traffic offenses and requires any person who has been convicted of, pled guilty to, or has been found guilty of an intoxication-related traffic offense to have the record of the offense assessed against his or her driving record by the department director (Sections 577.023.16 and 577.023.17);

(20) Specifies that the jurisdiction will be in state court for any intoxication-related traffic offense where the person has previously been convicted of, pled guilty to, or has been found guilty of an intoxication-related traffic offense which caused bodily injury; the person has, on two or more occasions, been convicted of, pled guilty to, or has been found guilty of an intoxication-related traffic offense; and the offense resulted in death (Section 577.023.18);

(21) Adds a phlebotomist to the list of medical personnel who can draw blood for the purpose of determining a person's BAC and specifies that emergency medical technicians and paramedics can only draw blood at a hospital (Section 577.029);

(22) Adds the amount of a controlled substance as admissible evidence, demonstrated by a chemical analysis of a person's blood, breath, saliva, or urine, in a trial for any person alleged to have been driving while intoxicated or under the influence of controlled substances (Section 577.037);

(23) Increases the driver's license revocation period from one year to two years for a person who refuses upon the request of a law enforcement officer to submit to any test allowed under Section 577.020 (Section 577.041.3); and

(24) Specifies that after 10 years a court will enter an order of expungement if it determines that a person with a first alcohol-related driving offense has not been convicted of any subsequent alcohol-related driving offense, has no other subsequent alcohol-related enforcement contact, and has no other alcohol-related driving charge or enforcement action pending at the time of the hearing (Section 577.054).

FISCAL NOTE: Estimated Cost on General Revenue Fund of Up to \$536,899 or More in FY 2011, Up to \$581,564 or More in FY 2012, and Up to \$582,809 or More in FY 2013. Estimated Cost on Other State Funds of \$159,040 in FY 2011, \$0 in FY 2012, and \$0 in FY 2013.

PROPOSERS: Supporters say that the bill is designed to enhance the state's laws regarding alcohol-related offenses and the consequences for those offenders. The state needs accurate, complete, and timely reporting of alcohol-related offenses by law enforcement officers and the judicial system. There needs to be more severe penalties given to those offenders who refuse a chemical test or who are found to have a high blood-alcohol content. Currently, municipal prosecutors are handling alcohol-related felony offenses, and the state court system is a better place for these cases to be heard.

Testifying for the bill were Representative Stevenson; Department of Public Safety; Michael Boland and J.R. Gitlin, Mothers Against Drunk Driving; Missouri Family Network; Missouri Baptist Convention, Christian Life Commission; Judicial Conference of Missouri; Missouri State Medical Association; State Highway Patrol; Department of Transportation; Missouri Safety Council; R. Dale Findlay, Missouri Coalition for Roadway Safety; and Robert McCulloch, St. Louis County Prosecutor's Office.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say that there are unintended consequences by removing some alcohol-related administrative cases from the municipal courts to the circuit courts. A mandatory return to prison upon a violation of parole or probation is not recommended.

Testifying on the bill were Missouri Municipal League; and Department of Corrections.