

HCS HB 1695, 1742 & 1674 -- DRIVING WHILE INTOXICATED (Stevenson)

COMMITTEE OF ORIGIN: Committee on Crime Prevention

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, or any similar provision of federal or state law and is incarcerated for the offense may be required to participate in the Missouri Postconviction Drug and Alcohol Treatment Program and upon release 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) Specifies that a person convicted of driving while revoked will be guilty of an infraction instead of a class A misdemeanor or class D felony (Section 302.321);

(3) 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);

(4) 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 of the judgment, charging document, any amendments to the charging document, and waiver of counsel, if applicable, pertaining to intoxication-related traffic offense convictions for at least 50 years (Section 479.020);

(5) Specifies that the provisions regarding certain intoxication-related cases that are not cognizable in a municipal court will be known as Cary's Law (Section 479.170.1);

(6) Specifies that any offense involving the operation of a motor vehicle while intoxicated where the defendant has been convicted, found guilty, or pled guilty to two or more previous intoxication-related traffic offenses; has had two or more alcohol-related enforcement contacts; or has been convicted,

found guilty, or pled guilty to a previous intoxication-related traffic offense and the pending offense resulted in physical injury requiring medical attention to another person will not be cognizable in a municipal court (Section 479.170.3);

(7) Requires a municipal prosecutor to certify to a 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 479.170.4);

(8) 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 479.170.5 and 479.170.6);

(9) 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 479.170.7);

(10) Adds a warrant to collect a sample of a person's blood, breath, saliva, or urine to those warrants which may be executed in any part of the state where the person is found (Section 542.286);

(11) Requires certain offenders to receive additional credit for time served for the successful completion of an institutional program within the Department of Corrections for the monitoring, control, and treatment of substance or alcohol abuse. The credit for time served applies only to the sentence for which the offender is currently serving. Participation in these programs will be at the discretion of the department (Section 558.400);

(12) Requires each law enforcement agency, county prosecuting attorney, and municipal prosecutor to adopt a policy to report the arrest information for all intoxication-related traffic offenses to the central repository and to certify the adoption of the policy when applying for any grants administered by the Department of Public Safety. Beginning January 1, 2011, the State Highway Patrol must maintain regular accountability reports of alcohol-related arrests, charges, and dispositions based on the data submitted (Section 577.005);

(13) Increases the penalty for any person convicted of driving while intoxicated or driving with excessive blood alcohol content if the offense occurred while a passenger younger than 16 years of age was in the vehicle (Sections 577.010, 577.012, and 577.023);

(14) 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. Any law enforcement officer taking a blood sample must file a probable cause affidavit with the associate circuit court within 72 hours of the arrest stating the basis for the blood draw. The associate circuit judge must review the affidavit and determine whether probable cause existed for the blood draw. The blood draw must be tested, and the results of the test are admissible in evidence pursuant to the exigent circumstances exception to the warrant requirement only after a judge of competent jurisdiction has determined that probable cause existed for the blood draw. 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 or omission (Section 577.020);

(15) Adds a phlebotomist to the list of medical personnel who can draw blood for the purpose of determining a person's BAC (Section 577.029);

(16) 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);

(17) 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);

(18) Increases the period of time that a person who fails to file proof of financial responsibility in accordance with Chapter 303 during a period of revocation under Section 577.041 will have his or her driver's license revoked and removes the requirement that he or she will also be guilty of a class A misdemeanor (Section 577.041.11); and

(19) 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 on the application (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.