MMACJA

MISSOURI MUNICIPAL AND ASSOCIATE CIRCUIT JUDGES ASSOCIATION

Annual Courts Conference

August 12-14,2020

Conference Notebook

MMACJA 2020 Annual Courts Conference

Abbreviated Agenda & Index

This abbreviated agenda shows only CLE sessions. See page 4 for a full agenda.

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WEDNESDAY, AUGUST 12, 2020

12:10 – 1:50 ..... **pg 9** ..... Medical Marijuana in Missouri and Practical & Ethical Impacts on the Courts
2:00 – 2:50 ..... **pg 61** ..... Pretrial Release Rules
2:50 – 3:40 ..... **pg 96** ..... Legislative Update
3:50 – 4:40 ..... **pg 269** ..... Raising the Age of Juvenile Court Jurisdiction – What will be the impact?

THURSDAY, AUGUST 13, 2020

8:30 – 9:50 ..... **pg 292** ..... Municipal Monitors & ShowMe Courts Implementation
10:00 – 10:50..... **pg 304** ..... Privilege Walk-Ethics, Cultural Competency, Diversity, Inclusion & Implicit Bias
10:50 – 11:40..... **pg 315** ..... Automation Update
12:40 – 2:40 ..... **pg 323** ..... TruNarc-Use in the Field, Reliability & Probable Cause
2:50 – 3:35 .... MMACJA General Membership Meeting, Pittman Award, President's Pin Presentation and Election of Officers (*Separate Zoom Meeting Link*)

FRIDAY, AUGUST 14, 2020

8:30 – 9:30 ..... **pg 498** ..... Caselaw Update Part 1
pg 500 ..... Table of Contents
pg 506 ..... Summary of Cases
9:30 – 10:30 ..... **pg 556** ..... Purposes & Responsibilities of Courts
10:45 – 12:00..... ..... Caselaw Update Part 2

NOTE: These materials are available only electronically at MMACJA.org > Annual Courts Conference.

Conference Survey: An electronic survey will be emailed to all registrants immediately following the program.

Welcome Letter from the 2020 Conference Chair

You are cordially invited to join the Board of Directors and I for the 2020 Annual Missouri Municipal & Associate Circuit Judges Association Courts Conference! Please join us VIRTUALLY, August 12-14, 2020 for a conference that provides not only practical information but the NEWLY required cultural competency/bias ethics training for Missouri judges, prosecuting attorneys, court administrators and private practitioners.

If you are like me, you might worry how this three day conference will be since it is virtual and you have to just sit at your computer (hopefully in your pajamas) and not have the traditional socializing opportunities. Well, worry no more! We are utilizing a virtual platform that will allow you to chat with your colleagues, privately and in a full group, while watching the presenter and the Power Point. We will have a live moderator for you to ask questions to provide for real, live answers at the appropriate time from the speaker(s)!

As I planned this conference (for the third time no thanks to this pandemic), I endeavored to create thought provoking education which provides practical application in our different roles. The first day of the conference kicks off with Director Fraker and Deputy Director Amy Moore presenting on Medical Marijuana in Missouri and Kansas City, Missouri Municipal Judge Ardie Bland presenting on the Implications of Medical Marijuana on the Courts. Next, Missouri Supreme Court Justice Brent Powell will cover pretrial release rules for associate circuit judges as well as those that apply to municipal judges set forth in Rule 37. Later that day, Marcia Hazelhorst, Executive Director for the Missouri Juvenile Justice Association will present on Raise the Age and the implications it will have for municipal and associate circuit judges. This will be your opportunity to understand the application of this new law, when it might go into effect, and if it impacts seventeen year olds with pending cases before you as we roll into 2021 and 2022. You will also learn if you can jail minors now or in the future for driving offenses.

On day two, you will have the opportunity to hear the changes to Municipal Court Monitors and how ShowMe Courts Implementation is proceeding. Pat Brooks, Director of Information Technology Services Division of OSCA, will also present with Judges Rick Zerr and Gary Lynch regarding an Automation Update for all Missouri courts. Next, you will obtain your required ethics hour on cultural competency/bias while listening to Family Court Commissioner Heather Cunningham present the "Privilege Walk". Afterwards, for the first time at this conference, you will hear about TruNarc, and the pros and cons of its use by law enforcement in Missouri. You will decide if there is any concern with TruNarc and probable cause relating to warrants and suppression hearings. To wrap up Thursday, we will have a wonderful presentation of the Pittman Award, a gift full of fun for the now retired Judge Roy Richter and more. Thereafter, please do not miss our virtual business meeting, including elections through the separate Zoom link as we need everyone's help in serving this one of a kind Association! With all the virtual changes hitting our courtrooms and even the offering of this conference, we need additional knowledge and assistance of our members! Be part of our Board and/or start writing and editing for the Benchmark, our newsletter. We also look for assistance with doing case law updates during our annual conference and regional seminars. Please let one of us know right away if you are interested!

The final day of the conference will include the acclaimed Mike & Joe case law update with the addition of Judge Jeff Eastman covering the alcohol related cases! Additionally, you will obtain an hour of judicial ethics from Tony Simones, Director of Citizenship Education at The Missouri Bar. If you have never seen Tony, you will initially be shell shocked with his enthusiasm but then you will find his passion infectious as you starting thinking about ways you can implement his suggestions and thoughts from the bench!

Thank you to all of the judges, attorneys, court administrators, and to anyone who volunteered to make the 2020 Annual Courts Conference a success. Thank you for allowing me to serve as your conference chair.

Stacey J. Lett, Vice-President & Conference Chair
MMACJA 2020 Annual Courts Conference

MISSOURI MUNICIPAL AND ASSOCIATE CIRCUIT JUDGES ASSOCIATION

MMACJA Annual Conference
Virtual Agenda
AUGUST 12, 13, 14, 2020

Zoom Webinar (link provided to all registrants)

CLE Credits 15.0 Ethics 3.2

August 12, 2020 (5.0 CLE Credits 1.0 Ethics)

12:00 – 12:10	Welcome to Annual Courts Conference	Judge Stacey Lett, Conference Chair and Judge Karen Krauser, President	
12:10 – 1:50	Medical Marijuana in Missouri and Practical & Ethical Impacts on the Courts	Director Franker, Deputy Director Amy Moore, Hon. Ardie Bland	2.0 CLE (1.0 Judicial Ethics
1:50 – 2:00	**BREAK**		
2:00 – 2:50	Pretrial Release Rules	Supreme Court Justice Brent Powell	1.0 CLE
2:50 – 3:40	Legislative Update *Panel discussion on the bills passed in the previous legislative session.*	Rich AuBuchon, Judge Cotton Walker, & Legislators	1.0 CLE
3:40 – 3:50	**BREAK**		
3:50 - 4:40	Raising the Age of Juvenile Court Jurisdiction – What will be the Impact?	Marcia Hazelhorst, Executive Director of MJJA	1.0 CLE

August 13, 2020 (6.0 CLE Credits 1.0 Ethics)

8:30 – 9:50	Municipal Monitors & ShowMe Courts Implementation	Rick Morrisey and Sherri Paschal	1.6 CLE
9:50 – 10:00	**BREAK**		
10:00 – 10:50	Privilege Walk-Ethics, Cultural Competency, Diversity, Inclusion & Implicit Bias	Judge Heather Cunningham	1.0 CLE (Implicit Bias/Ethics)
10:50 – 11:40	Automation Update	Judge Gary Lynch, Judge Rick Zerr, Pat Brooks	1.0 CLE
11:40 – 12:40	**LUNCH BREAK**		
12:40 – 2:40	TruNarc-Use in the Field, Reliability & Probable Cause Expungements in Missouri & What You Need to Know	W. Scott Rose, Esq. Tracy Spradlin, Esq.	2.4 CLE
2:40 – 2:50	**BREAK**		
2:50 – 3:20	*President's Pin, Pittman Award, Presentation to Judge Richter*		
3:20	*Election of Officers*	*(via Zoom Meeting - Separate Link)*	
3:25	*Election of Board of Directors*	*(via Zoom Meeting – Breakout Rooms)*	
3:35	*Nominations for Directors at Large Received – End of Day*		

August 14, 2020 (4.0 CLE Credits 1.2 Ethics)

8:30 – 9:30	Case Law Update Part 1 *Updated in Case Law in Missouri over the past year.*	Judge Michael Svetlic, Mr. Joseph Cambiano, & Judge Jeff Eastman	1.2 CLE
9:30 – 10:30	Purposes & Responsibilities of Courts *Judges will explore the purposes and responsibilities of courts as identified by the National Association of Court Management and the vital role they play in achieving these purposes and fulfilling these responsibilities*.	Dr. Anthony "Tony" Simones – Director of Citizenship Education, MO Bar	1.2 CLE (Judicial Ethics)
10:30 – 10:40	**BREAK**		
10:40 – 12:00	Case Law Update Part 2 *Updated in Case Law in Missouri over the past year.*	Judge Michael Svetlic, Mr. Joseph Cambiano, & Judge Jeff Eastman	1.6 CLE

The George Pittman Award

The George Pittman Award was first awarded in May, 1995, to George Pittman, Jr. The distinguished winners of this award are chosen based on their service to our Association through their writings, lecturing, and serving as an officer or director of our Association. It recognizes the honoree's contributions to our Association which substantially exceed those normally expected of our officers and board members.

The first award was granted at the May 1995 Annual Conference and was awarded posthumously to George Pittman, Jr.

Previous Award Winners

George Pittman, Jr.
Bob Guthland
Tom Sims
Polly Shelton
McCormick Wilson
Larry Butcher
Frank Vatterott
Mark Levitt
Jess Ullom
Todd Thornhill
Charles Curry (will be honored at the 2020 Annual Conference)

Presidents of MMACJA

Year	President
1965-66	McCormick Wilson
1966-67	Louis Davis
1967-68	Louis Huston
1968-69	Temple H. Morgett
1969-70	Reginald Smith
1970-71	Roger D. Hines
1971-72	George Pittman
1972-73	W. Harry Wilson
1973-74	Jack Koslow
1974-75	Clifford Spottsville
1975-76	James E. May
1976-77	McCormick Wilson
1977-78	Thomas E. Sims
1978-79	J. Lloyd Wion
1979-80	Fred Dannov & Patrick Horner
1980-81	Joanne Mayberry
1981-82	Gary Titus
1982-83	Joseph Cambiano
1983-84	Earl Drennen
1984-85	William Lewis
1985-86	Michael Frank
1986-87	Michael Svetlic
1987-88	Timothy Kelly
1988-89	D. Larry Dimond
1989-90	Joseph Lott
1990-91	William Buchholz III
1991-92	Fred Kidd, Jr.
1992-93	Frank Vatterott
1993-94	Polly Shelton
1994-95	Charles Curry
1995-96	James Tobin
1996-97	David Evans
1997-98	Jess Ullom
1998-99	Frank Vatterott
1999-2000	Charles Curry
2000-01	Todd Thornhill
2001-02	Kevin Kelly
2002-03	Mark Levitt
2003-04	Marcia Walsh
2004-05	Greg Beydler
2005-06	Larry Butcher
2006-07	Robert Adler
2007-08	Dennis Laster
2008-09	Shawn McCarver
2009-10	Bill Piedimonte
2010-11	Robert Hershey
2011-12	Thomas Fincham
2012-13	Mark Rundel
2013-14	Robert Aulgur
2014-15	Steve Sanders

2015-16	Tom Motley
2016-17	Andrea Niehoff
2017-18	Cotton Walker
2018-19	Renee Hardin-Tammons
2019-20	Karen Krauser

PRESS RELEASE

FOR IMMEDIATE RELEASE

HEADLINE
Judge _____ Attends 55th Annual Courts Conference

Lake Ozark, MO – August 12-14, 2020 -
Judge_____ recently attended the 2020 Annual Courts Conference of the Missouri Municipal and Associate Circuit Judges Association (MMACJA) held at Lake of the Ozarks. Judge _____ is the _____ Judge for the City of _____. Municipal judges are judges of the circuit courts, and are subject to requirements for continuing legal education in order to receive annual updates on new laws passed by the legislature, important decisions of the Supreme Court and the court of appeals as well as developments in the judicial branch of government. Attendance at the three-day Annual Courts Conference of the MMACJA fulfills a significant part of that requirement.

The Missouri Municipal and Associate Circuit Judges Association is composed of municipal judges, both lawyer and non-lawyer, and associate circuit judges. These judges preside over municipal and associate circuit courts in the state of Missouri. The municipal and associate circuit divisions hear the greatest majority of the cases heard by the Missouri judiciary.

The purpose of the association is to assist and train its members to better perform their duties as judges. Since its founding, the association has grown from a small group of twelve to over 350 members.

Among the topics included in the 2020 Annual Courts Conference were Medical Marijuana in Missouri, Pretrial Release Rules, Automation Update, Raising the Age of Juvenile Court Jurisdiction, ShowMe Courts Implementation, Privilege Walk- Cultural Competency, Diversity Inclusion & Implicit Bias and TruNarc-Use in the Filed. The conference also included a case law and legislative update.

Over 300 judges attended this 55th Annual Courts Conference.

Contact:
MMACJA.org
Jean Harmison
jean@clubmanagementservices.com
1717 E. Republic Rd, Ste A
Springfield, MO 65804
417-886-8606
###

Wednesday, August 12, 2020
12:10 – 1:50 – Virtual – Zoom Webinar

Medical Marijuana in Missouri and Practical & Ethical Impacts on the Courts

(2.0 CLE – 1.0 Judicial Ethics)

Director Franker, Deputy Director Amy Moore, Hon. Ardie Bland

Section for Medical Marijuana Regulation

Session Title:

Missouri Medical Marijuana Regulatory Program Update

Presenters:

Lyndall Fraker, Director

Amy Moore, Deputy Director & Counsel

Medical Marijuana Regulation

Department of Health and Senior Services

Article XIV, Missouri Constitution

November 6, 2018 - Constitutional Amendment Approved

December 6, 2018 – Article XIV Effective

December 19, 2018 – DHSS announces program Director, Lyndall Fraker, and Deputy Director/Counsel, Amy Moore

January 5, 2019 – Begin accepting pre-filed fees

Section for Medical Marijuana Regulation

Mission

To administer Missouri's Medical Marijuana Regulatory Program in alignment with the provisions of Article XIV of the Constitution, as determined by the will of the citizens of Missouri.

Vision

A program that provides safe and secure access to medical marijuana for qualifying Missouri patients through consistent regulation, enforcement, and education.

Key Dates

Section for Medical Marijuana Regulation

Early Influences

1. Missouri voter-approved constitutional amendment
2. Best practices from other state medical marijuana programs
3. Public Engagement

Section for Medical Marijuana Regulation

Rulemaking

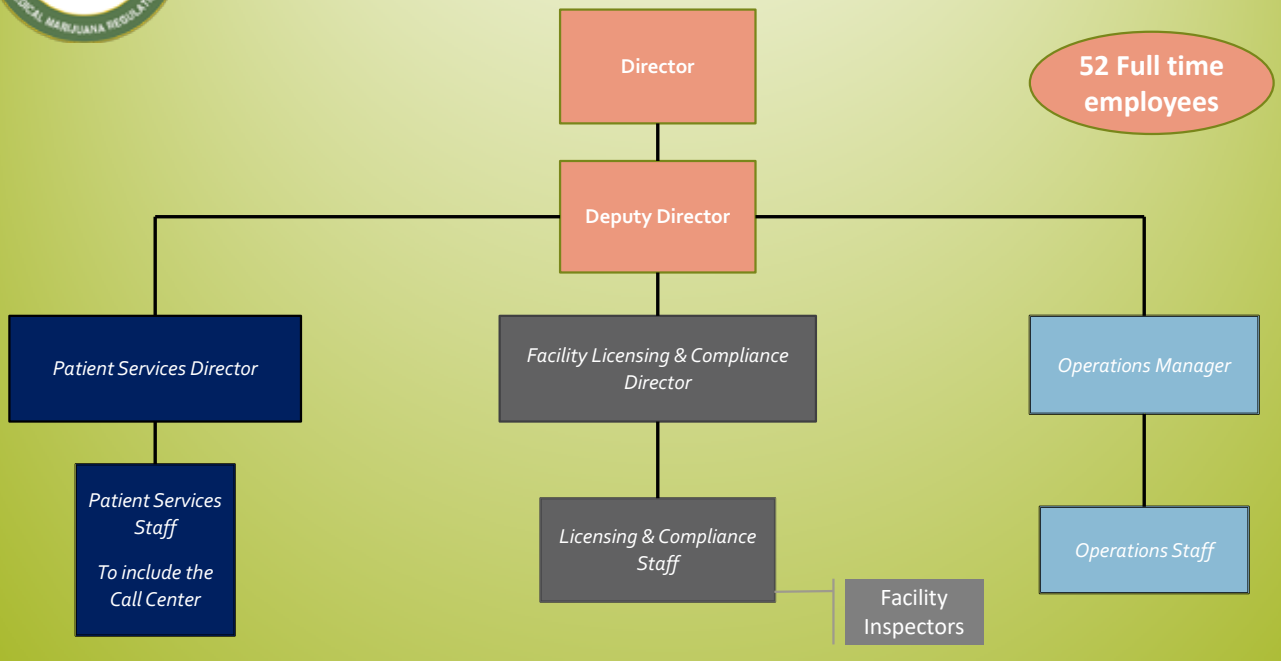
- The need: Regulatory framework
- Development timeframe: January - May
- Process: Public input (crowd sourcing!)

Emergency Rules

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 95—Medical Marijuana

EMERGENCY RULE

Section for Medical Marijuana Regulation



Patient Services

- Starting June 28, 2019 - patients and caregivers began submitting electronic applications:
  - $25 nonrefundable for a one year patient license
    - Plus a $100 fee for patient cultivation license (able to grow up to six flowering plants)
    - Minors are not able to apply for patient cultivation license
  - $25 for a one year caregiver license
    - Caregivers can have up to three patients
    - Additional $100 fee to grow up to six flowering plants

What conditions qualify?

- Cancer;
- Epilepsy;
- Glaucoma;
- Intractable migraines unresponsive to other treatment;
- A chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple sclerosis, seizures, Parkinson's disease, and Tourette's syndrome;
- Debilitating psychiatric disorders, including, but not limited to, post-traumatic stress disorder, if diagnosed by a state licensed psychiatrist;
- Human immunodeficiency virus or acquired immune deficiency syndrome;
- A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication;
- A terminal illness; or
- In the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome.

Patient Services – Statistics

Patient/Caregiver Application Stats – Monday, July 20, 2020	
Total Applications	64,496
Patient Applications	62,330
Caregiver Applications	2,166
Approved to Date	57,642
Rejection Status*	175

***Reject Status is not denials, just an opportunity for applicant to provide additional needed information.**

Obtaining Medical Marijuana

- **Where to get Medical Marijuana before Dispensaries Open**?
  - Dispensaries are expected to open in mid-2020.
  - Currently, patients with medical marijuana cards issued by the Missouri Department of Health and Senior Services may consume or possess marijuana.
  - Qualified patients may grow marijuana if they have a cultivation authorization from the department.
  - There is no legal way to buy or sell marijuana in Missouri before the licensed dispensaries open.

Law Enforcement Guidance

Legal Access to Marijuana & Protections

Article XIV, Section 1: Right to Access

- Provides protections for patients and caregivers licensed through the Department who are ***within their allowed legal possession amount or allowed plant amount for home cultivation under provisions in 19 CSR 30-95.030.***

Protection does **not** apply to:

- Licensed patients who are found driving while impaired
- The use of marijuana for non-medical purposes
- Licensed patients and caregivers who are found above their legal possession

Law Enforcement Guidance

DHSS Authority *as mandated in Article XIV, Section 3.*

The Department has authority to:

- Implement a program that creates safe patient access to medical marijuana
- Enforce any violations of Section 3 or any rules within 19 CSR 30-95
  - Includes denying, suspending, fining, restricting or revoking a license
- Provide guidance to local authorities and law enforcement

The Department does not have the authority to:

- Impose any criminal penalties on a non-compliant licensee

Law Enforcement Guidance

Constitutional Guidance

- Section 3. (14) provides specific authority for the Department to set medical marijuana purchase and possession limits.
- This section of Constitution provides a threshold for possession between the legal limit and up to twice the legal limit, and resulting sanctions for possession above that which can result in imprisonment and fines.
- The department does not have the authority for imprisonment, therefore this is a good example of a section of Article XIV that falls within the authority of law enforcement and the courts.
- This is the only area of the Constitution that provides clear guidance to law enforcement regarding penalties for over possession.

Law Enforcement Guidance

Law Enforcement Access to Patient Information

- Section 3. (5) allows for the release of information to law enforcement agencies for the purpose of verifying that a person who presents a medical marijuana card is a valid card holder
- Verification is available through MULES, and members of our patient services team

Caregiver Cultivation & Possession Limits

- Cultivation Limits per patient
- Cultivation Limits per space
- Possession Limit
  - Non-cultivation limit of 60-day supply
  - Cultivators may possess up to a 90-day supply
  - Patient-specific possession limits are available in MULES

Law Enforcement Guidance

Denial & Revocation

An active license can be revoked for the following:

- Violation of any provisions in .030
- Found to be in possession greater than their allowed legal limit
- Convicted or guilty plea, or SIS for violation of 579.020, 579.065 or 579.068 RSMo or any similar law of another state.

Only the department has the authority for revocation of a medical marijuana license.

Compliance & Investigations

The department continues their work towards developing compliance procedures and is developing a formal procedure for receiving patient and caregiver compliance reporting from law enforcement.

Section for Medical Marijuana Regulation

Constitutionally-Prescribed Minimum Facility Licenses

- **2 Testing Facilities – We will certify up to 10 Facilities**
- **60 Cultivation Facilities**
- **86 Manufacturing Facilities**
- **192 Total Dispensaries (24/Congressional District)**

340 - 348 Total Facilities

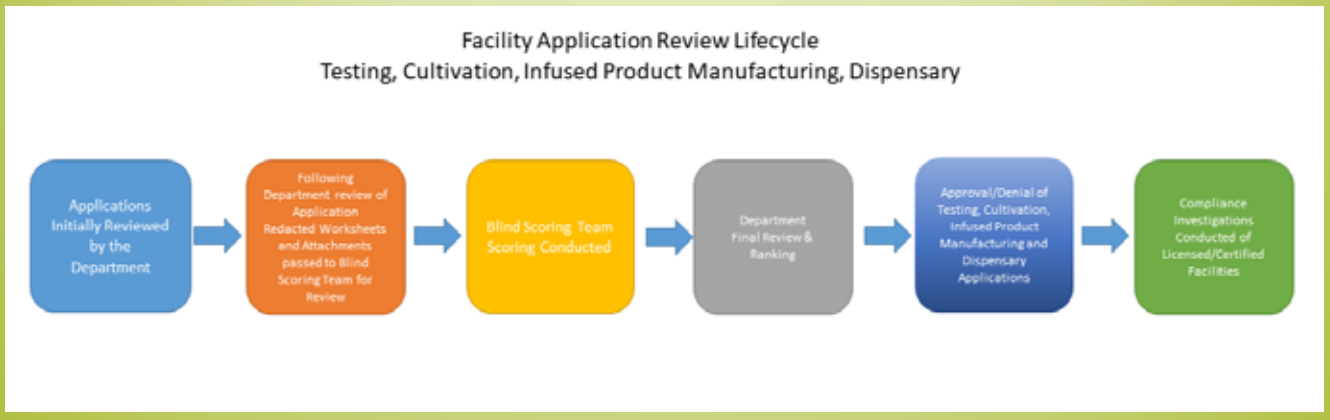
On-Going Certifications

- Transportation certification
  - The Department will issue certifications for all eligible Transportation entities.
- Seed to Sale Certification
  - The Department will issue certifications for all eligible Seed to Sale entities.

Facility Licensing and Compliance

License / Certification Type	New Application Fee (12/2018 – 12/2021)	Annual Fee	Renewal Fee	New Application Fees (1/2022)
Cultivation Facility	$10,000	$25,000	$5,000	$5,000
Dispensary Facility	$6,000	$10,000	$3,000	$3,000
Facility Agent	$75		$75	$75
Laboratory Testing Facility	$5,000	$5,000	$5,000	$5,000
Manufacturing Facility	$6,000	$10,000	$3,000	$3,000
Seed-to-Sale	$5,000	$5,000		$5,000
Transporter	$5,000	$5,000	$5,000	$5,000

Facility Licensing and Compliance



Facility Licensing and Compliance

- Received electronically submitted applications from Aug 3 to Aug 19, 2019.
  - 150 days for approval.
- Standard for approval
  - Minimum qualifications
  - Numerical score and rank

Facility Licensing and Compliance
Minimum Standards

1. Authorization to operate as a business in Missouri
2. That the entity is majority owned by natural persons who have been residents of Missouri for at least one year
3. That the entity is not under substantially common control as another entity or a combination of other entities in violation of 19 CSR 20-95.040(3)(C)-(D)

Facility Licensing and Compliance
Minimum Standards

4. That the entity is not within 1000 feet of an existing elementary or secondary school, daycare, or church, or, if a local government allows for closer proximity to schools, daycares, and churches, that the entity complies with the local government's requirements
5. Eligibility to operate in a local jurisdiction

6. That the entity will not be owned, in whole or in part, or have as an officer, director, board member, or manager, any individual with a disqualifying felony offense.

Facility Licensing and Compliance
Additional Evaluation Criteria

1. The character and relevant experience of principal officers or managers
2. The business plan proposed by applicant
3. Site security
4. Experience in a legal cannabis market
5. In the case of testing facilities, experience with the health care industry and with testing marijuana, food, or drugs for toxins and/or potency
6. The potential for the facility to have a positive economic impact in the site community

Facility Licensing and Compliance
Additional Evaluation Criteria – To be brief

7. In the case of cultivation facilities, capacity or experience with agriculture, horticulture, and health care
8. In the case of dispensary facilities, capacity or experience with health care, the suitability of the proposed location, and its accessibility for patients
9. In the case of infused products manufacturing facilities, capacity or experience with food and beverage manufacturing
10. Maintaining competitiveness in the medical marijuana marketplace

Facility Applications & Program Status

2,269

- Facility Applications received as of November 3rd
- Exceeding $13 million in collected fees
  - **Missouri Veterans' Health and Care Fund**
    As established in Article XIV of the Constitution, taxes on medical marijuana sold and money collected by DHSS through fees—after covering the program's operating expenses—will be transferred to the new Missouri Veterans' Health and Care Fund.

Section for Medical Marijuana Regulation
What's Next?

- Facility Compliance Inspections
- Facility Compliance Education
- Facility Agent ID Applications
- Seed to Sale Tracking
- Continue with Patient and Caregiver IDs
- Continue to provide Patient and Physician Education

On-Going Licenses and Certifications

- Agent Identification Cards: 19 CSR 30-95.040(3)(E)1-5
  - All owners, officers, managers, contractors, employees, and other support staff of a licensed or certified cultivation, dispensary, manufacturing, testing, or transportation facility.
  - All will have their backgrounds screened for disqualifying felony offenses.
  - ID card is valid for 3 years.

https://www.sos.mo.gov/CMSImages/AdRules/csr/current/19csr/19c30-95.pdf

Section for Medical Marijuana Regulation
Case Law and Litigation

19AC-CC00053 – St. Louis Post-Dispatch v MO Dept of HSS

- Interprets confidentiality provision of Article XIV
- Department instructed to release applicants' "Identifying Information" - applicant's name, addresses, telephone numbers, and type of license applied for.

More to come…

Publications

Missouri Marijuana Equivalency Units (MMEs)

Monthly Purchase Limits - Qualified patients are allowed to purchase up to 4 oz. (32 MMEs) of compliant product per month.

Marijuana 3.5 grams = Marijuana Concentrate 1 gram = THC Infused Product 100 mg

- A common purchase quantity of marijuana is 3.5 grams which is equal to 1 MME.
- This means that 1 MME is also equivalent to 1 gram of marijuana concentrate or 100 mg of THC infused product.

(See reverse side)

(Example Purchase) **7 grams of marijuana + 4 grams of marijuana concentrate + 200 mg of THC infused products.**

7 grams of marijuana = 7 ÷ 3.5 = 2 MMEs

4 grams of concentrate = 4 ÷ 1 = 4 MMEs

200 mg of THC infused product = 200 ÷ 100 = 2 MMEs

2 + 4 + 2 = 8 MMEs

32 MMEs – 8 = 24 MMEs remaining from monthly allotment

(From above example)

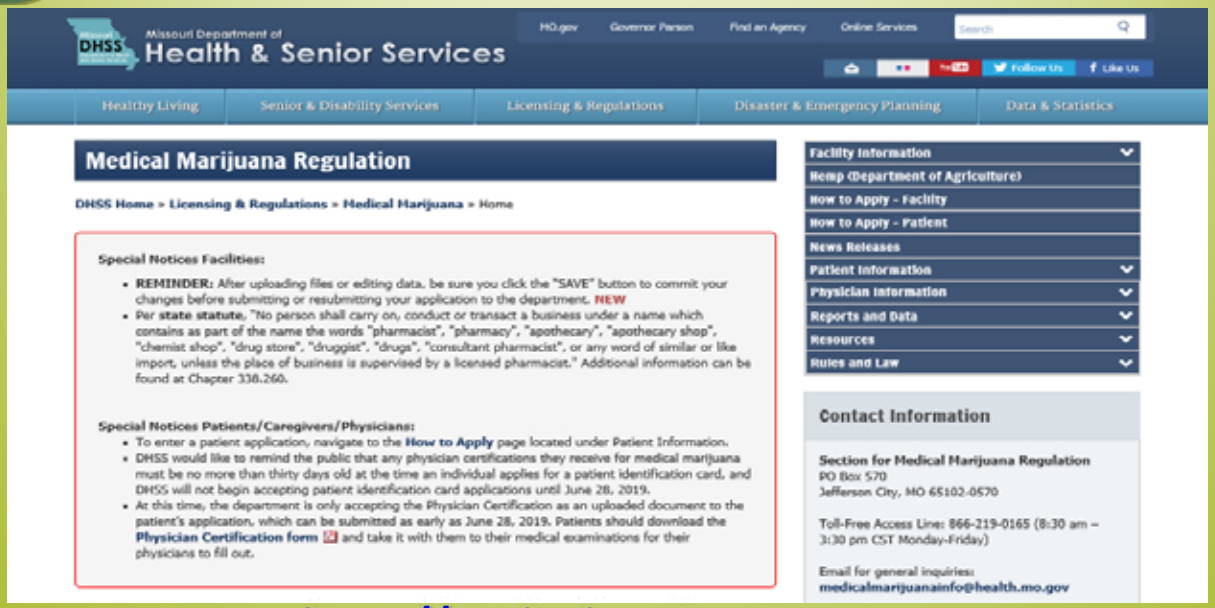
Missouri Department of Health and Senior Services
medicalmarijuana.mo.gov • Toll-free 866-219-0165
#203 09/2019

Publications

The public can order the Patient Information booklet and the Missouri Medical Marijuana Equivalency card free of charge from the Department's warehouse.

https://health.mo.gov/safety/medical-marijuana/publications.php

Section for Medical Marijuana Regulation
Stay Up-to-Date



https://medicalmarijuana.mo.gov

Section for Medical Marijuana Regulation

Access FAQs, review the rules or access other patient and facility information by visiting our website:

https://medicalmarijuana.mo.gov

866-219-0165 (M-F: 8:30-3:30)

COURTING MARIJUANA
August 2020

MMACJA Presentation

Judge Ardie A. Bland

City of Kansas City, MO

Legal or Illegal?

OBJECTIVES

Learn	Learn and/or discuss changing attitudes and ordinances across MO
Examine	Examine Article XIV
Examine	Examine Marijuana use as it relates to
Discuss	Discuss potential issues that the Medical Marijuana (MM) may present for courts
Examine	Examine Legal and Ethical issues judges may face with regard to MM

Data and Training Regarding Courts and Marijuana

- NADCP – National Association for Drug Court Professionals
- NDCI – National Drug Court Institute
- National Center for State Courts
- Missouri Department of Health and Human Services

Marijuana Change in Attitude and Culture

- Regardless of our opinions on Marijuana, a change in attitude and culture surrounding Marijuana and Medical Marijuana and the significance of it is here.
- Organizations like NORML have made it their mission to make marijuana legal especially medical marijuana. The organization has 4 chapters listed in Missouri Alone.
- Missouri is in the majority of states by being the 32nd state to allow the medical use of marijuana. (With even Utah being the 33rd state)
- The nation is now more concerned about treatment than punishment in its courts and there may be a need in our municipal and associate circuit courts for more treatment courts, ie., drug courts, dui/dwi, mental health courts and veteran's courts.

Confusion with the Public Regarding Medical Marijuana

- Public is unable to determine the difference between decriminalization of marijuana and marijuana being legal
- Distinctions to explain to Defendants in your courtrooms or treatment courts.
  - Marijuana is still illegal on a Federal Level
  - Convictions of drug offenses may lead to a loss of Federal Benefits or protections, ie., loans, grants, access to housing, etc.
  - The Fine in your city may be jail time in a different city or jail time in the state
  - Your City or jurisdiction has not removed marijuana from the books even if another city has removed it from the books.
  - Recreational marijuana use is still not legal (especially in public)

THE KANSAS CITY STAR. IMPACT2020

THE KANSAS CITY STAR.

KC voters approve lower penalty for pot possession: $25 fine and no jail

By Ian Cummings

Listen to this article now

THE KANSAS CITY STAR.

Kansas City won't punish marijuana possession after Council strips it from city code

BY ALLISON KITE

JULY 09, 2020 07:09 PM

When Kansas City voters approved lower penalties for marijuana possession last year, some warned of unintended consequences. Those consequences have not turned out as predicted, but people should realize pot is still not legal in the city. BY NEIL NAKAHODO AND IAN CUMMINGS

ORDINANCE NO. 200455

Amending Code of Ordinances Section 50-10 "Possession or control of marijuana" to eliminate the possession or control of marijuana as a violation of the Code of Ordinances.

WHEREAS, Code of Ordinances Section 50-10 makes possession or control of marijuana a violation of the Code; and

WHEREAS, the voters of Kansas City, by a 75% to 25% margin, decided in 2017 to decriminalize possession of 35 grams or less of marijuana, imposing instead a $25.00 fine; and

WHEREAS, Code of Ordinances Section 50-10(c) imposes certain penalties for possession of marijuana; and

WHEREAS, Code of Ordinances Section 50-10(c)(1) provides for a fine of no more than $25.00 for possession or control of 35 grams or less of marijuana and (2) provides for a fine of no more than $500.00 for possession or control of more than 35 grams of marijuana; and

WHEREAS, the population of Kansas City is 30% black, and Black Americans have been nearly four times more likely than white Americans to be arrested for marijuana possession;

WHEREAS, on February 18, 2020, the Mayor of Kansas City announced a pardon program for prior Kansas City marijuana possession and marijuana paraphernalia convictions; and

WHEREAS, the purpose of the Mayor's pardon program conflicts with Code of Ordinances Section 50-10 because such Section continues to make unlawful the possession or control of marijuana causing valuable city resources to be spent in a manner which no longer makes sense; and

WHEREAS, the City Council believes future resources should be focused on the prevention, investigation, and prosecution of violent crime in Kansas City; and

WHEREAS, the City Council desires to remove possession of marijuana from the Kansas City Code of Ordinances as a code violation; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 50 of the Code of Ordinances of the City of Kansas City, Missouri, "Possession or control of Marijuana," is hereby amended by repealing Section 50-10 and enacting in lieu thereof a new section of like number and subject matter, to read as follows:

ORDINANCE NO. 200455

Sec. 50-10 Possession or control of marijuana

(a) As used in this section "marijuana" shall mean all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to, Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(b) Possession or control of marijuana is not a violation of the Code of Ordinances.

Approved as to form and legality:

Alan Holtkamp
Assistant City Attorney

Only one marijuana bill makes it through St. Louis Board of Aldermen's session

Celeste Bott Mar 19, 2018 0

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ST. LOUIS • The fine for getting caught with a small amount of marijuana has been reduced from a range of $100 to $500 to a maximum of $25 under a **new city ordinance.**

"For a lot of families in the city of St. Louis, $100 or $500, you might as well ask them for a million dollars," Aldermanic President Lewis Reed, who sponsored the legislation, told the Post-Dispatch.

It passed the St. Louis Board of Aldermen last month 24-0.

Decriminalizing marijuana even further was a topic of debate once again during the board's session, but of two dueling marijuana bills, only Reed's more conservative proposal, slashing the amount users could be fined, made it across the finish line.

The Board of Aldermen has only one meeting left in the session, meaning bills that haven't been voted out of their assigned committees won't be able to be passed this time around, including **a second marijuana bill** sponsored by 15th Ward Alderman Megan Green.

Her proposal would have stopped enforcement of any laws that permit "the civil or criminal punishment for the use or possession of marijuana or marijuana paraphernalia against any individual or entity," except under certain circumstances.

Springfield News-Leader

NEWS

Least costly way out of a suit? Or a $225,000 mistake?

Jess Rollins, and Dave Iseman

Published 10:00 a.m. CT May 1, 2014 | Updated 10:05 a.m. CT May 2, 2014

The City of Springfield says a nearly quarter-million dollar payment to pot activists is the best way to end a costly lawsuit.

The activists, however, say the money is a recognition that city leaders usurped the will of the people by blocking a public vote to reduce criminal penalties for possession of marijuana.

The agreement reached after nearly a year in federal court requires the city to pay $225,000 and releases either party from admitting fault.

With a settlement in hand, but not yet finalized, plaintiff Maranda Reynolds on Thursday agreed to provide an exclusive statement to the News-Leader — as soon as all parties had signed off on the agreement.

"... the money certainly shows that the city has finally recognized that it trampled our free-speech and equal protection rights guaranteed to us under the Missouri and U.S. constitutions," Reynolds said. She along with other activist groups brought the lawsuit against the city in July 2013.

City Attorney Dan Wichmer confirmed council members met in closed session April 15 and agreed to the settlement.

BEFORE HANDLING ANY MARIJUANA CASES

- Review your local ordinance as a Municipal Court Judge or as an Associate Circuit Judge handling municipal cases to find out whether there are any conflicts in your ordinance as it relates to Article XIV.
- As Municipal Court Judge you may want to discuss with local leaders or probation officers about ordinances or practices that are now illegal.
- Each judge should now familiarize yourself with MMM law and potentially create a cheat sheet or Bench Book to reference issues that may come up.
- MJEC is currently working to add a section on this in the New Judge Orientation training.

Article XIV of the Missouri Constitution Effective 12/06/2018

- **XIV Section 1. Right to access medical marijuana. —** 1. Purposes.
- This section is intended to permit state-licensed physicians to **recommend** marijuana for medical purposes to patients with serious illnesses and medical conditions. The section allows patients with qualifying medical conditions the right to discuss freely with their physicians the possible benefits of medical marijuana use, the right of their physicians to provide professional advice concerning the same, and the **right to use medical marijuana for treatment under the supervision of a physician**.
- This section is intended to make only those changes to Missouri laws that are necessary to protect patients, their primary caregivers, and their physicians from civil and criminal penalties, and to allow for the limited legal production, distribution, sale and purchase of marijuana for medical use. **This section is not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. The section does not allow for the public use of marijuana and driving under the influence of marijuana**.

"Bold language is this author's emphasis"

Article XIV of Missouri Constitution Effective 12/06/2018

- 2. Definitions.
- (1) **"Administer"** means the direct application of marijuana to a qualifying patient by way of any of the following methods:
- (a) Ingestion of capsules, teas, oils, and other marijuana-infused products;
- (b) Vaporization or smoking of dried flowers, buds, plant material, extracts, or oils;
- (c) Application of ointments or balms;
- (d) Transdermal patches and suppositories;
- (e) Consuming marijuana-infused food products; or
- (f) Any other method recommended by a qualifying patient's physician.

Article XIV Missouri Constitution Effective 12/06/2018

- (11) **"Medical use"** means the production, possession, delivery, distribution, transportation, or administration of marijuana or a marijuana-infused product, or drug paraphernalia used to administer marijuana or a marijuana-infused product, for the benefit of a qualifying patient to mitigate the symptoms or effects of the patient's qualifying medical condition.
- (12) **"Physician"** means an individual who is licensed and in good standing to practice medicine or osteopathy under Missouri law.
- (13) **"Physician certification"** means a document, whether handwritten, electronic or in another commonly used format, signed by a physician and stating that, in the physician's professional opinion, the patient suffers from a qualifying medical condition.

Article XIV of Missouri Constitution Effective 12/06/2018

- (15) **"Qualifying medical condition"** means the condition of, symptoms related to, or side-effects from the treatment of:
- (a) Cancer;
- (b) Epilepsy;
- (c) Glaucoma;
- (d) Intractable migraines unresponsive to other treatment;
- (e) A chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple sclerosis, seizures, Parkinson's disease, and Tourette's syndrome;
- (f) Debilitating psychiatric disorders, including, but not limited to, posttraumatic stress disorder, if diagnosed by a state licensed psychiatrist;
- (g) Human immunodeficiency virus or acquired immune deficiency syndrome;
- (h) A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication;
- (i) Any terminal illness; or
- (j) In the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome.

Article XIV of Missouri Constitution Effective 12/06/2018

- Article XIV Section 1, 5. Additional Patient, Physician, Caregiver and Provider Protections (7) An *attorney* shall not be subject to criminal or civil liability or sanctions under Missouri Law for purchasing, transporting, or administering marijuana for medical use to a qualifying patient or participating in the patient cultivation of up to six flowering plants per patient in a manner consistent with this section and generally established legal standards or professional conduct.

Article XIV of Missouri Constitution Effective 12/06/2018

- (8) An *attorney* shall not be subject to disciplinary action by the state bar association or other professional licensing body for owning, operating, investing in, being employed by, contracting with, or providing legal assistance to prospective or licensed medical marijuana testing facilities, medical marijuana cultivation facilities, medical marijuana dispensary facilities, medical marijuana-infused products manufacturing facilities, qualifying patients, primary caregivers, physicians, health care providers or others related to activity that is no longer subject to criminal penalties under state law pursuant to this section.

Article XIV of MO Constitution Effective 12/06/18

- Article XIV Section 1, 6. Legislation.
- Nothing in this section shall limit the general assembly from enacting laws consistent with this section, or otherwise effectuating the patient rights of this section. The legislature shall not enact laws that hinder the right of qualifying patients to access marijuana for medical use as granted by this section.
- 7. Additional Provisions.
- (1) Nothing in this section permits a person to:
- (a) Consume marijuana for medical use in a jail or correctional facility;

HYPOTHETICAL

- Judge Righteously has been the judge for several thousand marijuana cases prior to MMM law and has found about 50/50 of those guilty. Judge Righteously has some defendants still on probation for marijuana and is over the Drug Court for his "FULL TIME" Municipal Court. Judge Righteously sees this law and believes that as an individual with a bar number that he is able to serve as a caregiver under the law. Is it legal for him to serve as a caregiver?
- Yes
- NO

HYPOTHETICAL

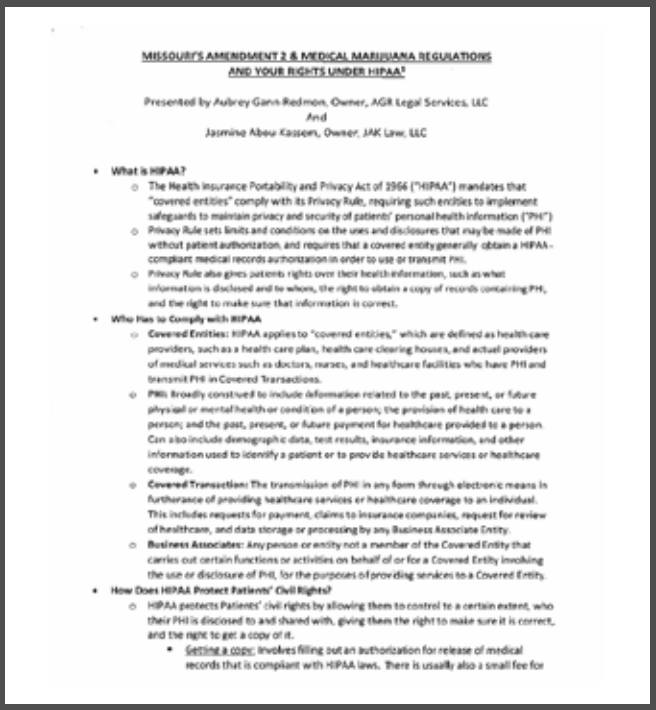
- Judge Righteously has been the judge for several thousand marijuana cases prior to MMM law and has found about 50/50 of those guilty. Judge Righteously has some defendants still on probation for marijuana and is over the Drug Court for his "FULL TIME" Municipal Court. Judge Righteously sees this law and believes that as an individual with a bar number that he is able to serve as a caregiver under the law. Assume that the language is amended to say attorney or judge, is it ethical for him to serve as a caregiver?
- Yes
- No

HYPOTHETICAL

- Judge Righteously has been the judge for several thousand marijuana cases prior to MMM law and has found about 50/50 of those guilty. Judge Righteously has some defendants still on probation for marijuana and is over the Drug Court for his "FULL TIME" Municipal Court. Judge Righteously sees this law and believes that as an individual with a bar number that he is able to serve as a caregiver under the law. Assume that Judge Righteously was serving as the caregiver for his wife that has cancer and mother who also had seizures. Would that be legal?

- Yes

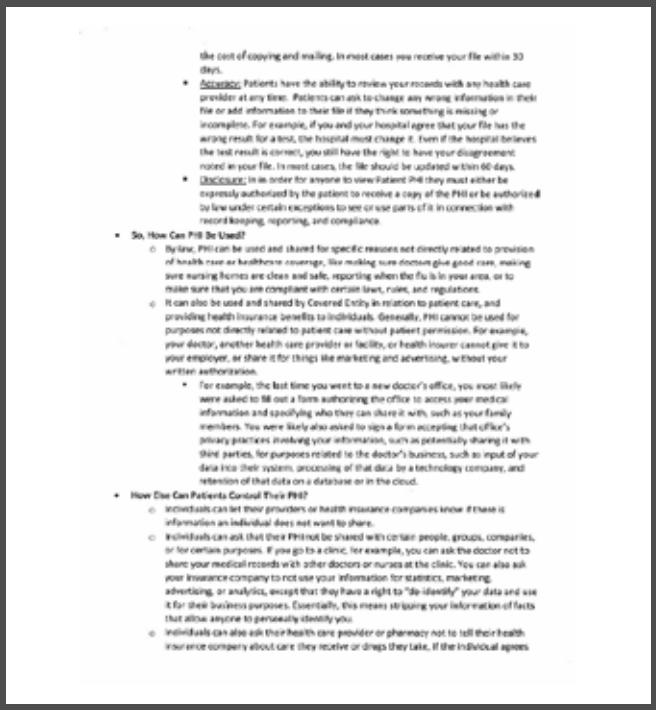
- No



MISSOURI'S AMENDMENT 2 & MEDICAL MARIJUANA REGULATIONS AND YOUR RIGHTS UNDER HIPAA?

Presented by Aubrey Gann-Redmon, Owner, AGR Legal Services, LLC
And
Jasmine Abou-Kassem, Owner, JAK Law, LLC

- **What is HIPAA?**
  - The Health Insurance Portability and Privacy Act of 1996 ("HIPAA") mandates that "covered entities" comply with its Privacy Rule, requiring such entities to implement safeguards to maintain privacy and security of patients' personal health information ("PHI")
  - Privacy Rule sets limits and conditions on the uses and disclosures that may be made of PHI without patient authorization, and requires that a covered entity generally obtain a HIPAA-compliant medical records authorization in order to use or transmit PHI.
  - Privacy Rule also gives patients rights over their health information, such as what information is disclosed and to whom, the right to obtain a copy of records containing PHI, and the right to make sure that information is correct.
- **Who Has to Comply with HIPAA**
  - **Covered Entities:** HIPAA applies to "covered entities," which are defined as health care providers, such as a health care plan, health care clearing houses, and actual providers of medical services such as doctors, nurses, and healthcare facilities who have PHI and transmit PHI in Covered Transactions.
  - **PHI:** Broadly construed to include information related to the past, present, or future physical or mental health or condition of a person; the provision of health care to a person; and the past, present, or future payment for healthcare provided to a person. Can also include demographic data, test results, insurance information, and other information used to identify a patient or to provide healthcare services or healthcare coverage.
  - **Covered Transaction:** The transmission of PHI in any form through electronic means in furtherance of providing healthcare services or healthcare coverage to an individual. This includes requests for payment, claims to insurance companies, request for review of healthcare, and data storage or processing by any Business Associate Entity.
  - **Business Associates:** Any person or entity not a member of the Covered Entity that carries out certain functions or activities on behalf of or for a Covered Entity involving the use or disclosure of PHI, for the purposes of providing services to a Covered Entity.
- **How Does HIPAA Protect Patients' Civil Rights?**
  - HIPAA protects Patients' civil rights by allowing them to control to a certain extent, who their PHI is disclosed to and shared with, giving them the right to make sure it is correct, and the right to get a copy of it.
    - Getting a copy: Involves filling out an authorization for release of medical records that is compliant with HIPAA laws. There is usually also a small fee for



the cost of copying and mailing. In most cases you receive your file within 30 days.
- Accuracy: Patients have the ability to review your records with any health care provider at any time. Patients can ask to change any wrong information in their file or add information to their file if they think something is missing or incomplete. For example, if you and your hospital agree that your file has the wrong result for a test, the hospital must change it. Even if the hospital believes the test result is correct, you still have the right to have your disagreement noted in your file. In most cases, the file should be updated within 60 days.
- Disclosure: In in order for anyone to view Patient PHI they must either be expressly authorized by the patient to receive a copy of the PHI or be authorized by law under certain exceptions to see or use parts of it in connection with record keeping, reporting, and compliance.

- **So, How Can PHI Be Used?**
  - By law, PHI can be used and shared for specific reasons not directly related to provision of health care or healthcare coverage, like making sure doctors give good care, making sure nursing homes are clean and safe, reporting when the flu is in your area, or to make sure that you are compliant with certain laws, rules, and regulations.
  - It can also be used and shared by Covered Entity in relation to patient care, and providing health insurance benefits to individuals. Generally, PHI cannot be used for purposes not directly related to patient care without patient permission. For example, your doctor, another health care provider or facility, or health insurer cannot give it to your employer, or share it for things like marketing and advertising, without your written authorization.
    - For example, the last time you went to a new doctor's office, you most likely were asked to fill out a form authorizing the office to access your medical information and specifying who they can share it with, such as your family members. You were likely also asked to sign a form accepting that office's privacy practices involving your information, such as potentially sharing it with third parties, for purposes related to the doctor's business, such as input of your data into their system, processing of that data by a technology company, and retention of that data on a database or in the cloud.
- **How Else Can Patients Control Their PHI?**
  - Individuals can let their providers or health insurance companies know if there is information an individual does not want to share.
  - Individuals can ask that their PHI not be shared with certain people, groups, companies, or for certain purposes. If you go to a clinic, for example, you can ask the doctor not to share your medical records with other doctors or nurses at the clinic. You can also ask your insurance company to not use your information for statistics, marketing, advertising, or analytics, except that they have a right to "de-identify" your data and use it for their business purposes. Essentially, this means stripping your information of facts that allow anyone to personally identify you.
  - Individuals can also ask their health care provider or pharmacy not to tell their health insurance company about care they receive or drugs they take, if the individual agrees

to pay for the care or drugs in full and the provider or pharmacy does not need to get paid by the individual's insurance company.
- Individuals can ask to be reached somewhere other than home and can make reasonable requests to be contacted at different places or through different methods. For example, you can ask to have a nurse call you at your office instead of your home or to send mail to you in an envelope instead of on a postcard.
- If an individual things their rights pertaining to protection of their PHI are being denied or their PHI is not being protected, he or she has the right to file a complaint with their provider, health insurer, or the U.S. Department of Health and Human Services.

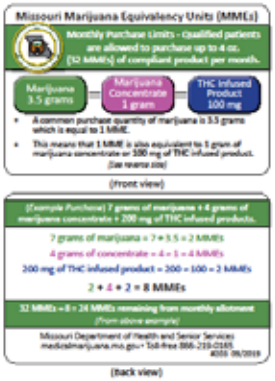
- **Does HIPAA's Privacy Rule Apply to The Missouri Department of Health and Senior Services ("DHSS")?**
  - The MO Department of Health and Senior Services ("DHSS") is charged with licensing and regulation for purposes of operating a medical marijuana business, or use of medical marijuana.
  - Is DHSS a Covered Entity? Construing HIPAA broadly, which is the practice of the US Dept of Health and Human Services "HHS", it seems to be because it
    - DHSS issues Patient Registration for use of medical marijuana pursuant to a doctor's recommendation, and Caregiver Registration to qualifying individuals for the purpose of assisting a registered patient with medical marijuana use.
    - Receives PHI in Patient and Caregiver Registration Applications:
      - Application includes disclosures of an individual personally identifiable information, such as name, social security number, birth date, home address, phone number, **PHI** such as medical history, and a physician certification form to be filled out by physician containing information regarding the patient's qualifying medical condition;
      - Application requires submission of patient's physician's certification, containings diagnosis of patient's qualifying condition, and the amount of medical marijuana recommended by the physician based on that condition.
    - Administers use of medical marijuana by patients under Amendment 2: DHSS reviews patient and caregiver applications and determines whether to issue a patient or caregiver registration.
    - Administers public assistance programs to registered patients
    - Transmits PHI to third parties in connection with registration of patients and caregivers, and permissible medical marijuana use quantities for purposes of keeping record of registered patients' names, , permissible quantities, products purchased by patients, and, after Dec. 1, 2020 will track seeds or clones purchased by patient for home grow, if permitted.

- Administers Missouri's Medicaid Program MO HealthNet, a public health program.[2]
  - Maintains data in connection with individuals receiving MO HealthNet benefits.
  - Determines whether patients registering for medical marijuana use are entitled to assistance based on patient's optional disclosure on registration application of receiving public welfare assistance, such as MO HealthNet.
- If you are issued a patient license, DHSS can keep information regarding your name (or the name of the patient you are a caretaker for) and the quantity you are permitted to possess and disclose that information to law enforcement and courts in connection with enforcement or violations of the law.
- DHSS does not have to disclose the patient's condition to any other entity or agency, and arguably, should not disclose this information.
- DHSS's receipt of your HIPAA protected information also requires your written authorization, although it appears that DHSS has not requested that applicants provide a written authorization in order to review their application.

[2] https://mn.gov/admin/data-practices/data/types/patient/hipaa/

To help with monthly purchase limits of dried marijuana, marijuana concentrate or THC infused products consider using Missouri Marijuana Equivalency Units (MMEs).

A common purchase quantity of marijuana is 3.5 grams of dried, unprocessed marijuana which is equal to one MME. Therefore, one MME is equivalent to one gram of marijuana concentrate or 100 mg of THC infused product. See the following for additional information on the use of MMEs.



Copies of the MME card may be ordered from the DHSS Warehouse by completing a Request Form found on the DHSS webpage.

11

Home Cultivation

The patient or his or her caregiver (but not both) may apply to obtain a cultivation license to grow up to six flowering marijuana plants for an additional $100 fee.

A qualifying patient under the age of 18 is not eligible to obtain a cultivation license, unless the qualifying patient under the age of 18 is emancipated. Only a parent or guardian who holds a primary caregiver ID card may obtain a cultivation license for a non-emancipated qualifying patient under the age of 18.

A caregiver can serve up to three patients. If a caregiver is obtaining a cultivation license on behalf of multiple patients, he or she must have a cultivation license for each patient.

The following security regulations must be followed:

- All qualifying patient cultivation shall take place in an enclosed, locked facility that is equipped with security devices that permit access only by the qualifying patient or by such patient's primary caregiver.
- One qualifying patient may cultivate up to six flowering marijuana plants, six nonflowering marijuana plants (over 14 inches tall), and six clones (plants under 14 inches tall) at any given time in a single, enclosed locked facility.
- Two qualifying patients, who both hold valid qualifying patient cultivation ID cards, may share one enclosed, locked facility. No more than 12 flowering marijuana plants, 12 nonflowering plants, and 12 clones may be cultivated in a single, enclosed locked facility, unless one of the qualifying patients, as a primary caregiver, also holds a patient cultivation ID card for another patient. In such case, the primary caregiver may cultivate six additional flowering marijuana plants, six additional nonflowering marijuana plants, and six additional clones for a total of 18 flowering marijuana plants, 18 nonflowering marijuana plants, and 18 clones in a single, enclosed locked facility.

8

Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired and Voice Dial: 711
Randall W. Williams, MD, FACOG
Director
Michael L. Parson
Governor

January 28, 2020

To Whom It May Concern:

At the request of several law enforcement entities and legislators, we are writing to express the Department of Health and Senior Services' understanding of the law and regulations applicable to the question of whether medical marijuana patients may be in possession of medical marijuana before licensed dispensaries are operating. We have always been aware that the interpretation of possession provisions of Article XIV and how those provisions should interact with existing possession laws will ultimately be determined through the decisions of law enforcement, prosecutors, and finally, Missouri courts. Because of this, we have been careful to express our opinions regarding these matters as only opinions. However, many stakeholders have suggested our opinion could be helpful on this topic, and so we offer the below thoughts for consideration to the extent you may find them useful.

Article XIV mandated that DHSS must begin accepting, no later than 210 days after the effective date of that law, applications by qualifying patients for the medical use of marijuana, by caregivers to possess medical marijuana on behalf of a patient, and by patients and caregivers to cultivate medical marijuana for patient use. Pursuant to this, DHSS began accepting these applications on June 28, 2019. DHSS is obligated to approve such applications if the individual meets the constitutional standard for approval. The first individuals approved for the medical use of marijuana received medical marijuana identification cards on June 28, 2019. As of January 27, 2020, 30,261 patients, 840 caregivers, and 9,709 patient/caregiver cultivators have received a medical marijuana identification card.

Article XIV also mandated that DHSS must begin accepting, no later than 240 days after the effective date of the law, applications from entities wishing to be licensed as medical marijuana facilities. Pursuant to this, DHSS began accepting facility license applications on August 3. By operation of the mandated timelines outlined in Article XIV, there is no question it was inevitable that individuals would be authorized for the medical use of marijuana before any business would be licensed to operate as a dispensary. Furthermore, the realities of preparing medical marijuana for sale, which necessarily includes several months of cultivation and testing, guaranteed that medical marijuana would not be ready for sale in dispensaries until well after the first facilities were licensed.

Naturally, these circumstances have given rise to the question of whether medical marijuana patients may possess medical marijuana in the months between when they were authorized and when dispensaries begin operating. Article XIV does not directly address this question. However, what does appear throughout Article XIV are rights and protections for authorized medical marijuana patients that are not activated by circumstances other than possession of a valid medical marijuana identification card. In other words, Article XIV establishes a right to possess and use medical marijuana once approved by DHSS, mandates that DHSS approve qualifying patients well before DHSS is required to license dispensaries, and never specifies that these patient rights are only applicable after dispensaries are operating.

Of course, a related question is, if medical marijuana patients are currently authorized to possess medical marijuana despite the lack of licensed dispensaries, then from where may a patient acquire medical marijuana? Article XIV does not address this question, either. As has been the case in every state that has legalized the possession of marijuana, it is a difficult reality that there is no legal method of initially acquiring marijuana, unless that marijuana is somehow discovered in the wild. This is true both for licensed facilities and for authorized patients. However, for both facilities and patients, once in possession of marijuana, all of the rights and protections outlined in Article XIV apply without caveat.

In summary, it is the opinion of DHSS that, pursuant to Article XIV, individuals who hold a valid medical marijuana identification card are currently authorized to possess and use medical marijuana, and the lack of a mechanism by which those individuals may legally come into possession of medical marijuana does not change their right to possess it. Of course, the right to possess and use is not unlimited. For instance, patients may not consume medical marijuana in public and may not operate a vehicle if impaired. While Article XIV does not cover all possession-related issues, there are many details on this topic worth studying in the law.

We realize this letter may not provide as much guidance as many have hoped to receive regarding how to proceed in this new legal environment. As always with this area of the law, we strongly encourage entities who must navigate the many complex circumstances that will arise regarding possession of medical marijuana to seek legal counsel who can provide guidance tailored to specific circumstances.

If you would like to discuss these issues further, please feel free to reach out to us. We have been working with various law enforcement entities from the earliest days of implementing this law and are very open to connecting with additional groups as needed.

Thank you,

Lyndall Fraker

Medical Conditions allowing for use of Medical Marijuana

- Cancer
- Epilepsy
- Glaucoma
- Intractable migraines
- Terminal Illness
- HIV or AIDS

- Chronic conditions causing severe pain or persistent muscle spasms
- A debilitating psychiatric disorder.
- Chronic condition normally treated with prescription drugs if a doctor thinks it MJ would be a safer alternative

Medical Conditions allowing for use of Medical Marijuana

- In the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome

Medical Conditions allowing for Medical Marijuana

- Catchall: In the professional judgment of a physician Or other medical condition that a doctor thinks in his/her professional judgment that marijuana would be useful.

Hypothetical

- Same previous facts but Judge Righteously owns property for which qualifies as perfect for caregiver location. Attorney I. M. Watchtower has agreed to be a caregiver and approved to be a caregiver. Judge R and Atty Watchtower form a LLC name "Get High W/US," LLC., and the caregiving starts. Is it legal for Judge R to be involved in this LLC?

- Yes

- no

HYPOTHETICAL

- Same previous facts but Judge Righteously owns property for which qualifies as perfect for caregiver location. Attorney I. M. Watchtower has agreed to be a caregiver and approved to be a caregiver. Judge R and Atty Watchtower form a LLC name "Get High W/US," LLC., and the caregiving starts. Is it ethical for Judge R to be involved in this LLC?

- Yes

- No

KEY CONCEPTS TO REMEMBER WHEN LOOKING AT THE MMM CASES

- PATIENT
- DISORDER
- DISABILITY
- MARIJUANA INFUSED

MME AMOUNTS

PHYSICIAN RECOMMENDATION

CULTIVATION

MEDICAL USE

Courts and Participants in Treatment or Specialty Courts

- Best Practices and Cases are a guide

Watson v. Kentucky, F. Supp. 2d , (E.D. Kentucky 7/7/15) (At the hearing, Watson requested the state court take her off the conditional release terms or remove the "blanket prohibition on her taking Suboxone, Methadone or any other drugs that she needs" to treat her addiction. The state attorney clarified that there was not a blanket prohibition on MAT drug use, but that "it's generally the Court's practice to allow [MAT drug use] if the doctor will show [] medical need." The court agreed and instructed Watson to produce "medical proof and recommendations from a treating physician" that she needs to use MAT drugs as part of her treatment.. Watson also asked the state court to declare Kentucky's policy with regards to MAT drugs in violation of the Americans with Disabilities Act ("ADA"), the Rehabilitation Act. The state court denied Watson's request. At the hearing, Watson did not raise any other claims, constitutional or otherwise. Watson filed a complaint in federal court challenging the medication condition. She claims that conditioning her use of narcotics on a court's review of a doctor's note violates the ADA, the Rehabilitation Act, the Equal Protection and Due Process Clauses of the United States Constitution, and § 2 of the Kentucky Constitution. Watson asks the Court to enjoin the Kentucky Administrative Office of the Courts from enforcing the medication condition. Held: Younger v. Harris, 401 U.S. 37 (1971) bars Watson's claims because they can be adequately dealt with in state court.)

Courts With Medical Marijuana Users on Probation

- Best Practices and Cases are a guide
- **Reed-Kaliher v. Hoggatt, Ariz. , P.3d (2015)**, (holding that § 36-2811(B)(1) prohibits a trial court from conditioning probation on refraining from possessing or using medical marijuana in compliance with Arizona Medical Marijuana Act).

Courts With Medical Marijuana Users on Probation

- MELISSA GASS, et al. v. 52nd JUDICIAL DISTRICT, LEBANON COUNTY, No. 118 MM 2019; Supreme Court of Pennsylvania, Middle District.
- Appeal from the Extraordinary Jurisdiction granted for this case which concerns a challenge to a policy (the Policy) prohibiting the use of medical marijuana by individuals under the supervision of the Lebanon County Probation Services
- ARGUED: May 19, 2020 OPINION CHIEF JUSTICE SAYLOR
- DECIDED: June 18, 2020 This matter concerns a challenge to a local judicial district's policy prohibiting the use of medical marijuana by individuals under court supervision, such as probationers. In 2016, the Pennsylvania General Assembly enacted the Medical Marijuana Act.

MELISSA GASS, et al. v. 52nd JUDICIAL DISTRICT, LEBANON COUNTY, No. 118 MM 2019;
Supreme Court of Pennsylvania, Middle District.

- In a declaration of policy, it recognized that "[s]cientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life." 35 P.S. §10231.102(1). The Legislature then [J-42-2020] - 2 announced its intention to provide a temporary program of access balancing patient needs with safety considerations. See id. §10231.102(3)(i), (4).
- Under the Act, "[n]othwithstanding any provision of law to the contrary, use or possession of medical marijuana as set forth in [the] act is lawful within this Commonwealth." Id. §10231.303(a). Relevantly, medical marijuana may only be dispensed, however, to patients who receive certifications from qualified physicians and possess a valid identification card issued by the Pennsylvania Department of Health. See id. §10231.303(b)(1)(i).2 A "patient" is a Pennsylvania resident who has an enumerated serious medical condition and has met specified requirements for certification. Id. §10231.103. Notably, there are many other regulatory requirements and restrictions imposed throughout the Act. See Class Action Petition for Review Addressed to the Court's Original Jurisdiction, 118 MM 2019 (Pa.), at ¶¶37-63 (summarizing the MMA's regulatory prescriptions).
- And of particular relevance here, the MMA contains an immunity provision protecting patients from government sanctions. See 35 P.S. §10231.2103(a). Per the statute, no such individual "shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, . . . solely for lawful use of medical marijuana . . . or for any other action taken in accordance with this act." Id

MELISSA GASS, et al. v. 52nd JUDICIAL DISTRICT, LEBANON COUNTY, No. 118 MM 2019

- Along these lines, the Supreme Court of Montana has aptly observed that, "whether or not medical marijuana is ultimately a good idea is not the issue" before the courts. Nelson, 195 P.3d at 833. Rather, in Pennsylvania, as elsewhere, the political branch has decided to permit patients -- including probationers -- to use medical marijuana for specified, serious medical conditions, upon a physician's certification. The Policy, both in its original and amended forms, fails to afford sufficient recognition to the status of a probationer holding a valid medical marijuana card as a patient, entitled to immunity from punishment, or the denial of any privilege, solely for lawful use. See 35 P.S. §10231.2103(a). As discussed in connection with our clarification of the question presented, this case does not merely concern an effort on the part of the District (or its judges or [J-42-2020] - 15 probation officials) to reasonably inquire into the lawfulness of a probationer's use of medical marijuana. Rather, both the original and amended Policies are constructed upon a presumption that any and all use is impermissible. In terms of the amended Policy, the Court deems the affordance of a hearing -- in which probationers bear the burden of overcoming this presumption by proving medical necessity and lawfulness of use -- to be an insufficient countermeasure to the Policy's foundationally inappropriate presumption. Certainly, judges and probation officials may make

MELISSA GASS, et al. v. 52nd JUDICIAL DISTRICT, LEBANON COUNTY, No. 118 MM 2019

- Certainly, judges and probation officials may make reasonable inquiries into the lawfulness of a probationer's use of medical marijuana. In this regard, the District's repeated assertions that it is rendered powerless to do so in absence of the Policy, see, e.g., Brief for Respondent at 6, are not well taken. For example, the Act itself establishes a system whereby the validity of a medical marijuana card can be verified through the Department of Health. See 35 P.S. §10231.301(a)(4)(ii) (requiring the Department of Health to maintain a statewide database enabling it to establish the authenticity of identification cards). Consistent with our interpretation of the MMA, however, judges and/or probation officers should have some substantial reason to believe that a particular use is unlawful under the Act before haling a probationer into court. Although ensuring strict adherence to the MMA by those possessing a valid medical marijuana card may be difficult, the alternative selected by the District of diluting the immunity afforded to probationer patients by the Act is simply not a viable option
- Petition for declaratory and injunctive relief is GRANTED. For the reasons stated above, the Policy as stated in its original and amended forms is deemed to be [J-42-2020] - 16 contrary to the immunity accorded by Pennsylvania's Medical Marijuana Act, and as such, the Policy shall not be enforced.

Court with Medical Marijuana Users while Incarcerated

- **Harris v. Lake County Jail, No. C 09-3168 SI (pr), (N.D. Cal. 5-2-2011)** (The Eighth Amendment claim of cruel and unusual punishment relating to medical treatment in an incarcerated setting requires that there be an objectively serious medical need. Harris does not, however, provide sufficient evidence to allow a reasonable jury to find that he suffered degenerative disk disease or any other medical condition making it impossible for him to walk without the use of marijuana. Summary judgment granted)

Medication Assisted Treatment – (MAT)

- Much of the fight in this area regarding Marijuana and other drugs has been fought in Drug Courts and Treatment Courts such as Mental Health Court and Veterans Treatment Courts.
- It is this Presenter's belief as a result of the training received, literature and case law primarily from other states with similar statutes that Medical Marijuana falls within the confines of the Medically Assisted Treatment model.

Challenging Blanket MAT Prohibitions * NADCP and NDCI training

- Americans with Disabilities Act (ADA)
  - Prohibits discrimination by state and local governments
- Rehabilitation Act of 1973 (RA)
  - Prohibits discrimination by federally operated or assisted programs
  - Discovery House, Inc. v. Consol. City of Indianapolis, 319 F.3d 277, 279 (7th Cir. 2003) ("the ADA and the [Rehabilitation Act]…run along the same path and can be treated in the same way.").
- Due Process Protections of 14th Amendment
- 8th Amendment – cruel and unusual punishment

ADA & RA
* NADCP and NDCI training

- To prevail on a claim for discrimination, an individual must prove that s/he:
  - 1) has a disability;
  - 2) is "otherwise qualified" to participate in or receive the public entities benefits including services, programs, or activities; and
  - 3) was either excluded from participation in, or denied the benefits, or was otherwise discriminated against because of disability.

Treatment Courts and Correctional Programs are "Programs Under the ADA & RA

- Pennsylvania Dept. of Corr. V. Yesky, 524 U.S. 206, 210 (1999) (ADA applies to correctional programs)
- People v. Brathwaite, 11 Misc. 3d 918, 816 N.Y.S.2d 331 (Crim. Ct., Kings County 2006) (Brooklyn's alternative sentencing program falls under Title II's definition of "state service or program.");
- Evans v. State, 667 S.E.2d 183, 186 (Ga. App. 2008) (A drug court is a "public entity" under the ADA).

INDIVIDUALS USING/NEEDING MAT ARE INDIVIDUALS WITH A DISABILITY

- MX Group, Inc. v City of Covington, 293 F.3d 326, 336 (6th Cir. 2002)
  - The court noted that it is well established that drug addiction constitutes an "impairment" under the ADA and that drug addiction necessarily limits major life activities of "employability, parenting and functioning in everyday life."
    - This specific case deals with MAT for substance abuse but a similar argument could be made for MM when it used to help a rightful individual or defendant deal with an impairment
  - US v. City of Baltimore, 845 F. Supp. 2d 640 (D. Maryland 2012) Residents of substance abuse facility were individuals with a disability

Blanket Denial of MAT Access is Discrimination because of a Disability

- Disparate Treatment
  - Thompson v. Davis, 295 F.3d 890 (9th Cir. 2002) (Denying parole b/c of drug addiction subject to disparate treatment analysis of ADA)
- Reasonable Accommodation
  - ADA requires governmental agencies to make reasonable accommodations to avoid discrimination unless such change would fundamentally alter the nature of services provided
- Disparate Impact
  - Title II ADA prohibits

Due Process and Blanket Prohibitions of MAT

- Constitutional due process requirements of reasonableness or rationality guide conditions of treatment and supervision for persons who are on probation or in treatment court.
  - 1. Probation terms and conditions should be reasonably related to the crime and the rehabilitation needs of the individual and protection of the community People v. Beaty, 181 Cal.App.4th 644, 105 Cal.Rptr.3d 76 (2010)
  - 2. Judge must impose individualized conditions to meet community and individual needs. Commonwealth v. Wilson, 11 A.3d 519 (Pa. Super. 2010).

Blanket Prohibitions of MAT is a Due Process Violation

- All judges should:
  - Consider relevant information before making a factual decision
  - Hear arguments from both sides of a controversy (typically from the defense and prosecution), and
  - Receive evidence from scientific experts, if the subject matter of controversy is beyond the common knowledge of laypersons.
  - **In an across the board prohibition, the court is doing none of these things.**
    - **Such as "I am not going to allow any of my probationers to use marijuana under any circumstances!"**

Thus.....

- Blanket prohibitions of medication assisted treatment are a due process violation because
  - They are not rationally (scientifically based)
  - They are not reasonable because they don't account for the mandate of individualized sentencing
  - Don't give the parties a fair opportunity to present their case since one alternative is foreclosed

HYPOTHETICAL

- On September 19, 2019, Lisa Smokital applies for her MMM card and is arrested on March 13, 2020 for Trespass, Disorderly Conduct and urinating in public based upon a local ordinance. On May 5, 2020, Ms. Smokital receives her MMM card. Attorney Getemoff requests probation and that she be allowed to smoke MM while on probation. Judge Righteously says "request denied. We automatically deny use of marijuana on all probations. Has Judge R acted improperly?
- Yes
- No

HYPOTHETICAL

- On September 19, 2019, Lisa Smokital applies for her MMM card and is arrested on March 13, 2020 for Trespass, Disorderly Conduct and urinating in public based upon a local ordinance. On May 5, 2020, Ms. Smokital receives her MMM card. Attorney Getemoff requests probation and that she be allowed to smoke MM while on probation. Judge Righteously says "request denied. We automatically deny use of marijuana on all probations. Has Judge R denied Ms. Smokital Due Process?

- Yes

- No

Eighth Amendment Cruel and Unusual Punishment

- Correctional officials and health care providers may not act with deliberate indifference to an inmate's serious medical needs. Estelle v. Gamble, 429 U.S. 94, 104 (1976);. Deliberate indifference has both an objective and a subjective element: the inmate must have an objectively serious medical condition, and the defendant must be subjectively aware of and consciously disregard the inmate's medical need. Farmer v. Brennan, 511 U.S. 825, 837 (1994).
  - Presenter's Note: Admittedly this principle will be interesting as MM moves forward in MO and other states as it relates to "serious medical needs"
  - Municipal Judges may want to find out what procedures will be followed by the facilities as there is little to no control over jail controls

Serious Medical Need Instances

- Boren v. Northwestern Regional Jail Authority, No. 5:13cv013, 2013 WL 5429421, at *9 (W.D. Va. Sept. 30, 2013) (alcohol withdrawal states serious medical need) Withdrawal symptoms can qualify as serious medical need.
- Mayo v. County of Albany, 357 F. App'x 339, 341-42 (2d Cir. 2009) (heroin and alcohol withdrawal)
- Sylvester v. City of Newark, 120 F.App'x 419, 423 (3d Cir.2005)(acute drug withdrawal)
- Foelker v. Outagamie County, 394 F.3d 510, 513 (7th Cir. 2005)(methadone withdrawal).

Deliberate Indifference

- The failure to provide methadone to an inmate exhibiting symptoms of withdrawal may constitute deliberate indifference to a serious medical need by intentionally ignoring the effects of withdrawal. Foelker v. Outagamie Cnty., 384 F.3d 510, 413 (7th Cir. 2005; Alvarado v. Westchester County, 22F. Supp. 3d 208 (SD New York 2014)

- Messina v. Mazzeo, 854 F.Supp. 116, 140 (E.D.N.Y. 1994) (pretrial detained, whose participation in a methadone program was interrupted by arrest, stated deliberate indifference claim against prison doctor who refused to continue methadone treatment). See also Mellender v. Dane County, ---F.Supp.--- (W.D.Wisc. 2006); Norris v. Frame, 585 F.2d 1183, 1188 (3d Cir. 1978)

Hypothetical 1

On July 2, 2020, "Mr. Highaskite" gets pulled over in his Purple Impala for speeding by a police officer after the smell of marijuana in his vehicle. Ultimately, he gets charged with possession of marijuana by your local ordinance. The defendant presents evidence at the arraignment that he has a certified MM card. Prosecutor Naivety refuses to dismiss his charge. Judge Righteously should dismiss?

- Yes ?
- No?

Hypothetical

- Mr. Highaskite who has been determined to have a valid MMM card has been found guilty by Judge Righteously for Driving while suspended and Disorderly conduct. Prosecutor Naivete requests that the judge place Mr. Highaskite on probation with a condition that the defendant cannot use marijuana while on probation. Can Judge Righteously grant such a probation condition?
- Yes
- No

Hypothetical

- Mr. Highaskite who has been determined to have a valid MMM card has been found guilty by Judge Righteously for Driving while suspended and Disorderly conduct. Prosecutor Naivete requests that the judge place Mr. Highaskite on probation with a condition that the defendant cannot have marijuana while on probation unless he is overseen by licensed caregiver. Can Judge Righteously grant such a probation condition?

- Yes

- No

Hypothetical

- Mr. Highaskite who has been determined to have a valid MMM card has been found not guilty for possession of marijuana but found guilty by Judge Righteously for Driving while suspended and Disorderly conduct as a result of actions during the stop. Prosecutor Naivete requests that the judge place Mr. Highaskite on probation and that the marijuana be forfeit. Judge Righteously rules that the Mr. Highaskite's MM is to be forfeit while on probation. Has Judge Righteously acted improperly?

- Yes

- No

Hypothetical

- Mr. Highaskite who has been determined to have a valid MMM card has been found guilty by Judge Righteously for Driving while suspended and Disorderly conduct as a result of actions during the stop but not guilty for possession of marijuana. Prosecutor Naivete requests that the judge place Mr. Highaskite in their local drug court. Judge Righteously immediately refers the defendant to drug court after conviction. Has Judge Righteously acted improperly?
- Yes
- No

Hypothetical

- Mr. Highaskite who has been determined to have a valid MMM card has been found not guilty for possession of marijuana but found guilty by Judge Righteously for assault on an officer and resisting arrest. Mr. Highaskite was referred to mental health court. Mr. Highaskite was assessed and presented to Mental Health court with diagnosis of PTSD. Judge Righteously ordered that he could not use Marijuana while in Mental Health Court. Has Judge Righteously acted improperly?
- Yes
- No

Hypothetical

- On April 3, 2020, Lisa Smokital was sitting in her front yard smoking a joint. Ms. Smokital is a school teacher that had been in the community for 20 years. A neighbor reported the smell was wafting into his yard while he was having his 8 year old son's birthday party where there were 10 other children. The neighbor called the police and gave Ms. Smokital a citation for possession of marijuana. At bond hearing, should the judge release her and give her a new court date?
- Yes
- No

Hypothetical

- On April 3, 2020, Lisa Smokital was sitting in her front yard smoking a joint. Ms. Smokital is a schoolteacher that had been in the community for 20 years. A neighbor reported the smell was wafting into his yard while he was having his 8 year old son's birthday party where there were 10 other children. The neighbor called the police and gave Ms. Smokital a citation for possession of marijuana. Ms. Smokital claims at the time of the arrest that she has a MMM card and produces the card. The officer still arrests her and confiscates her MM for evidence. At bond hearing, should the judge release her and give her a new court date?
- At the bond hearing, should the judge order the return of the MM?
- Yes
- No
- Yes
- No

Hypothetical

- Testimony at the trial shows that on July 7, 2020, Officer Observantez saw Mr. Ganja Blaze was driving down the street in your jurisdiction. Mr. Blaze weaved 5 times across the middle line into an oncoming lane at or about 11:00 PM where there was no other traffic. Officer O ultimately pulled over Mr. Blaze and during the investigation saw what appeared to be marijuana in the front seat. Mr. Blaze showed his MM card and Officer O got Mr. Blaze out of the car and gave him sobriety testing and Mr. Blaze failed all of the tests. Mr. Blaze was cited for DUI(D) and at trial Defense Attorney Getemoff moves for dismissal at trial because Mr. Blaze had duly certified MM card. Should Judge Righteously dismiss?

- Yes

- No

Final Thoughts and Discussion Questions for MMACJs

- With many municipalities decriminalizing marijuana and counties Municipal Judges may want to determine from the prosecutors in their areas or from their city councils as to who will prosecute violations of Article XIV.
- More common challenge appears to be the amount that a person will have in their possession which in most instances would appear to end up in state courts because those amounts would generally be more than would be commonly dealt with in Municipal Courts.
- What will this mean now for search and seizures especially for the officer that allegedly "smells marijuana" as the reason for the search for an individual that had a valid MM card only for the officer to find other criminal activity.

Special Credits and Thanks

- National Association of Drug Court Professionals
- National Drug Court Institute
- National Center for State Courts
- Judge Gayle Williams-Byers of Cleveland, OH
- Attorney Joani Harshman in Kansas City, MO for her assistance in putting this presentation together and providing her motions and research.
- Christina Frommer at Legal Aide of Western MO for providing me with research, information and cases. Also assisting with staff development training for KCMO Mental Health Court and Veteran's Treatment Court on Marijuana.
- KCMO judges for providing information regarding cases that they have had regarding marijuana and for giving me the opportunity to prepare this seminar.

Judge Ardie A. Bland

- Veteran's Treatment Court Judge 2009
- Municipal Judge Education Committee
- Mental Health Court Judge since 2015
- Supreme Court Committee for Practice and Procedures in Municipal Division Cases
- Secretary for MMACJA
- Kansas City, MO Municipal Court
  - Ardie.Bland@kcmo.org
  - (816)513-6732

Wednesday, August 12, 2020
2:00 – 2:50 – Virtual – Zoom Webinar

Pretrial Release Rules

(1.0 CLE)

Supreme Court Justice Brent Powell

Session Summary
General overview of the pretrial release rules.

Speaker Bio
Judge W. Brent Powell was appointed to the Supreme Court of Missouri in 2017. He was previously a circuit judge in Division 11 of the 16th Judicial Circuit in Jackson County. Judge Powell earned a B.A. from William Jewell College and a J.D. from the University of Missouri-Columbia.

Judge Powell is a member of the Missouri Sentencing Advisory Commission, The Missouri Bar, the Kansas City Metropolitan Bar Association, the Springfield Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis. He serves on the Lawyers Encouraging Academic Performance (LEAP) board of governors and is an active member of Visitation Catholic Church.

21.03 MISDEMEANORS – SUMMONS OR WARRANT OF ARREST – WHEN ISSUED

Rule 37.43

(a) When an information is filed pursuant to Rule 21.02, a summons shall be issued unless the court finds that sufficient facts have been stated to show probable cause that a misdemeanor has been committed and ~~that~~ there are reasonable grounds to believe ~~that~~:

(1) The defendant will not appear upon the summons; or

(2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the ~~arrest of the~~ defendant may be issued.

(b) When an indictment charging the commission of a misdemeanor is returned, either a summons or warrant ~~for~~of arrest may be issued.

(c) When an information or indictment charges a corporation with the commission of a misdemeanor, a summons shall be issued.

(d) If a warrant is issued under this rule, the court shall take into account, on the basis of available information, which may include a written recommendation from the State, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

21.04 MISDEMEANORS – STATEMENT OF PROBABLE CAUSE – CONTENTS
Rule 37.435 (Change to 21.04 adding subsection (d) from Rule 37.435)

A statement of probable cause must be in writing and shall:

(a) State the name of the ~~accused~~defendant or, if not known, designate the ~~accused~~defendant by any name or description by which the ~~accused~~defendant can be identified with reasonable certainty;

(b) State the date and place of the ~~crime~~offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe ~~a~~ ~~crime~~an offense was committed and that the ~~accused~~defendant committed it;

(~~d~~(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(~~e~~f) Be signed and on a form bearing notice that false statements made therein are punishable by law.

21.05 MISDEMEANOR – SUMMONS – CONTENTS
Rule 37.42

The summons shall:

(a) Be in writing and in the name of the State of Missouri;

(b) State the name of the ~~person~~defendant summoned;

(c) Describe the misdemeanor charged;

(d) Be signed by ~~a judge~~the court, or ~~by a~~ clerk ~~of the court when directed by~~ at the ~~judge~~court's direction for a specific summons; and

(e) Command the ~~person~~defendant to appear before the court at a stated time and place in response thereto.

21.06 MISDEMEANORS – WARRANT FOR ARREST – CONTENTS
Rule 37.45

(a) The warrant ~~of~~for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

(1) Contain the name of the ~~person~~defendant to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;

(2) Describe the offense charged in the information or indictment;

(3) State the date when issued and the county where issued;

(4) Command that the defendant named or described therein be arrested and brought forthwith, in person, or by interactive video technology, before the court designated in the warrant;

(5) Specify the condition or combination of conditions of release~~;~~, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c), or the determination made under 33.01(d); and

(6) Be signed by ~~a judge~~the court, or ~~by a~~ clerk ~~of~~at the ~~court when directed by the judge~~court's direction for a specific warrant.

21.09 MISDEMEANORS – INITIAL APPEARANCE UNDER WARRANT BEFORE THE COURT
Rule 37.47

A ~~person~~defendant arrested and confined under ~~a~~the initial warrant for any misdemeanor offense issued pursuant to Rule 21.03 or Rule 21.08 shall be brought forthwith for an appearance, as ~~soon as practicable~~set forth in Rule 21.10, in person or by interactive video technology, before a judge of the court from which the warrant was issued. This initial appearance shall be held no later than 48 hours, excluding weekends and holidays, after the defendant is confined under the warrant in the county that issued the warrant or in a county with which the county issuing the warrant has a contractual agreement to hold the defendant.

The warrant, with proper return thereon, shall be filed with the court~~.~~ forthwith.

21.10 MISDEMEANORS – INITIAL APPEARANCE BEFORE THE COURT
Rule 37.47

Upon the defendant's initial appearance~~, the judge~~:

(a) The court shall inform the defendant of the misdemeanor charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The ~~judge~~court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

22.03 FELONIES – STATEMENT OF PROBABLE CAUSE – CONTENTS
Rule 37.435 (Change to 21.04 adding subsection (d) from Rule 37.435)

A statement of probable cause must be in writing and shall:

(a) State the name of the ~~accused~~defendant or, if not known, designate the ~~accused~~defendant by any name or description by which the ~~accused~~defendant can be identified with reasonable certainty;

(b) State the date and place of the ~~crime~~offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe ~~a~~ ~~crime~~an offense was committed and that the ~~accused~~defendant committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(~~e~~f) Be signed and on a form bearing notice that false statements made therein are punishable by law.

22.04 FELONIES – SUMMONS OR WARRANT OF ARREST – WHEN ISSUED

Rule 37.43

(a) ~~(**a**) Unless the court orders the issuance of a summons, a warrant for the arrest of the defendant shall be issued:(1) Upon the filing of~~ When a complaint is filed pursuant to Rule 22.02 and ~~finding by the court that~~ sufficient facts have been stated ~~therein~~ to show probable cause that a felony has been committed ~~by the defendant, or~~, a ~~(2) Upon the return of~~summons shall be issued unless the court finds there are reasonable grounds to believe:

(1) The defendant will not appear upon the summons; or

(2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the defendant may be issued.

(b) When an indictment charging the commission of a felony is returned, either a summons or warrant of arrest may be issued.

(~~**b**~~c) When a complaint or an indictment charges a corporation with the commission of a felony, a summons shall be issued.

(d) If a warrant is issued under this rule, the court shall take into account, on the basis of available information, which may include a written recommendation from the State, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

22.05 FELONIES – WARRANT FOR ARREST – CONTENTS
Rule 37.45

(a) The warrant ~~of~~for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

(1) Contain the name of the ~~person~~defendant to be arrested or, if not known, any name or description by which the ~~accused~~defendant can be identified with reasonable certainty;

(2) Describe the felony charged in the complaint or indictment;

(3) State the date when issued and the county where issued;

(4) Command that the defendant named or described therein be ~~arrested and brought forthwith before the court designated in the warrant;~~ arrested and brought forthwith, in person or by interactive video technology, before the court designated in the warrant;

(5) Specify the condition or combination of conditions of release~~;~~, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c), or the determination made under Rule 33.01(d); and

(6) Be signed by ~~a judge~~the court, or ~~by a~~ clerk ~~of a court when directed by~~at the ~~judge~~court's direction for a specific warrant.

22.07 FELONIES – INITIAL APPEARANCE UNDER WARRANT BEFORE THE COURT
Rule 37.47

A ~~person~~defendant arrested and confined under ~~a~~the initial warrant for any felony offense issued pursuant to Rule 22.04 or Rule 22.06 shall be brought forthwith for an appearance, as ~~soon as practicable~~set forth in Rule 22.08, in person or by interactive technology, before a judge of the court from which the warrant was issued. This initial appearance shall be held no later than 48 hours, excluding weekends and holidays, after the defendant is confined under the warrant in the county that issued the warrant or in a county with which the county issuing the warrant has a contractual agreement to hold the defendant.

The warrant, with proper return thereon, shall be filed with the court~~.~~ forthwith.

22.08 FELONIES – INITIAL APPEARANCE BEFORE THE COURT
Rule 37.47

Upon the defendant's initial appearance~~, the judge~~:

(a) The court shall inform the defendant of the felony charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The ~~judge~~court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

22.09 FELONIES – PRELIMINARY HEARING

(a) Preliminary Hearing. After the filing of a felony complaint, a preliminary hearing shall be held within a reasonable time. At the preliminary hearing the defendant shall not be called upon to plead.

If the defendant waives preliminary hearing, the ~~judge~~court shall order the defendant to appear to answer to the charge.

(b) Conduct of Hearing and Finding by ~~**Judge**~~the Court. If the defendant does not waive preliminary hearing, the hearing shall be held. The defendant may cross-examine witnesses and may introduce evidence.

If the ~~judge~~court finds probable cause to believe ~~that~~ a felony has been committed and ~~that~~ the defendant has committed it, the ~~judge~~court shall order the defendant to appear and answer to the charge; otherwise, the ~~judge~~court shall discharge the defendant.

(c) Defendant to Appear in Court to Answer the Charge. If the defendant is held to answer to the charge, the ~~judge~~court shall order the defendant to appear in the appropriate division on a day certain as soon as practicable, but not more than 40 days after completion of the preliminary hearing.

Within five days after concluding the proceedings, the ~~judge~~court shall cause all papers in the proceeding and any bail posted by the defendant to be transmitted to that division.

29.18 PROBATION AND JUDICIAL PAROLE VIOLATIONS – PROCEDURE

(a) Nature of Proceeding - Rules of Civil Procedure Apply. Court hearings involving a person serving a term of probation or judicial parole are governed by this Rule 29.18. This Rule 29.18 provides the exclusive procedure for conducting such hearings. The procedure to be followed for such hearings is governed by the rules of civil procedure insofar as applicable except as provided in Rule 29.18(e).

(b) Clerk's Duties. The clerk shall file any motions to revoke probation or judicial parole in the underlying criminal file.

(c) Change of Judge. Any application for change of judge shall be governed by Rule 51.05. A party shall not be allowed a change of judge from a judge who presided over the underlying criminal case or a previous motion to revoke probation or judicial parole in the underlying case.

(d) Release Pending Final Hearing. A defendant arrested and confined under a warrant for a probation or judicial parole violation shall be brought for an appearance, in person or by interactive video technology, before a judge of the court from which the warrant was issued forthwith, but no later than seven days, excluding weekends and holidays, after the defendant is confined in the county that issued the warrant, or in a county with which the county issuing the warrant has a contractual agreement to hold the defendant. The court shall consider the conditional release of the defendant pursuant to Rule 33.01 pending a final determination of the probation or judicial parole violation.

(e) Revocation of Probation ~~or Parole~~. A court may revoke probation ~~or parole~~ upon compliance with section 559.036, RSMo, but not otherwise. ~~The defendant may be conditionally released pending final hearing.~~

([~~e~~]f) Discovery. The rules applicable to criminal cases shall govern discovery.

33.01 MISDEMEANORS OR FELONIES – RIGHT TO RELEASE – CONDITIONS

Rule 37.15

(a) A defendant charged with a bailable offense shall be entitled to be released from custody pending trial~~. Any person convicted of an offense entitled to be released upon appeal shall be released upon appeal until adoption by the court of an opinion affirming the judgment of conviction. The affirming court may, by special order, permit the defendant to remain on bond after affirmance pending determination of after-affirmance motions or applications.~~

~~(b) The court shall set such~~ or other stage of the criminal proceedings.

(b) The defendant's release shall be upon the conditions ~~for release as will reasonably assure the appearance of the accused.(c) The release shall be upon condition~~ that ~~the accused~~:

(1) The defendant will appear in the court~~, or in any other court, trial or appellate,~~ in which the case ~~may be~~is prosecuted or appealed, from time to time as required to answer the criminal charge; ~~that he~~

(2) The defendant will submit to the orders, judgment and sentence, and process of ~~any~~the court having jurisdiction ~~thereof;~~over the defendant;

(3) The defendant shall not commit any new offenses and ~~that he~~shall not tamper with any victim or witness in the case, nor have any person do so on the defendant's behalf; and

(4) The defendant will comply fully with any and all conditions imposed by the court in granting release.

~~(**d**) The court shall in all cases~~

(c) The court shall release the defendant on the defendant's own recognizance subject only to the conditions under subsection (b) with no additional conditions of release ~~the accused upon his written promise to appear,~~ unless the court determines ~~that~~ such release will not ~~reasonably assure the appearance of the accused.~~secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses. If the court so determines, it shall set and impose additional conditions of release pursuant to this subsection.

The court shall set and impose the least restrictive condition or combination of conditions of release, and the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

When considering the least restrictive condition or combination of conditions of release to set and impose, the court shall first consider non-monetary conditions. Should the court determine non-monetary conditions alone will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not

limited to the crime victims and witnesses, then the court may consider monetary conditions or a combination of non-monetary and monetary conditions to satisfy the foregoing. After considering the defendant's ability to pay, a monetary condition fixed at more than is necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, is impermissible.

If the court determines additional conditions of release are required pursuant to this subsection, it shall set and impose one or more of the following conditions ~~for his release which will reasonably assure such appearance:~~of release:

(1) Place the ~~person~~defendant in the custody of a designated person or organization agreeing to supervise ~~him~~the defendant;

(2) Place ~~restriction~~restrictions on the travel, association, or place of abode of the ~~person~~defendant during the period of release, including the holding by the court of the defendant's passport;

~~(3) Require the execution of a bond in a stated amount with sufficient solvent sureties, or the deposit in the registry of the court of the sum in cash or negotiable bonds of the United States or of the State of Missouri or any political subdivision thereof;~~

~~(4) Require the person~~(3) Require the defendant to report regularly to some officer of the court or peace officer, in such manner as the court directs;

(4) Require the use of electronic monitoring of defendant's location, the testing of defendant for drug or alcohol use, or the installation and use of

ignition interlock devices. The court may order the eligible defendant to pay all or a portion of the costs of such conditions, but the court shall consider how best to minimize the costs to the defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(5) Require the ~~execution of a~~ defendant to seek employment, to maintain employment, or to maintain or commence an educational program;

(6) Require the defendant to comply with a specified curfew;

(7) Require the defendant to refrain from possessing a firearm or other deadly weapon;

(8) Require the defendant to abstain from possession or use of alcohol or any controlled substance without a physician's prescription;

(9) Require the defendant to undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(10) Require the defendant to return to custody for specified hours following release for employment, school, treatment, or other limited purpose;

(11) Require the defendant to be placed on home supervision with or without the use of an electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court shall consider how best to minimize the costs of such condition to the

defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(12) Require the defendant to execute a monetary bond in a stated amount ~~and~~wherein the defendant promises to pay to the court the stated amount should the defendant fail to appear or abide by the conditions of release;

(13) Require the execution of a monetary bond in a stated amount with sufficient sureties, or the deposit in the registry of the court of ~~ten~~a sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(14) Require the execution of a monetary bond in a stated amount and the deposit in the registry of the court of 10 percent, or such lesser sum as the court directs, of such sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision ~~thereof~~;

(~~6~~15) Require the deposit of a property bond of sufficient value as approved and directed by the court;

(16) Impose ~~any~~ other conditions ~~deemed reasonably~~ necessary to ~~assure~~secure the appearance ~~as required~~of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including ~~a condition requiring~~ but not limited to the crime victims and witnesses.

(d) Should the court determine upon clear and convincing evidence that ~~the person return to custody~~no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other person, including but

not limited to the crime victims and witnesses, then the court shall order the defendant detained pending trial or any other stage of the criminal proceedings. A defendant so detained shall, upon written request filed after ~~specified hours~~arraignment, be entitled to a trial which begins within 120 days of the defendant's request or within 120 days of an order granting a change of venue, whichever occurs later. Any request by the defendant to continue the trial beyond the 120 days shall be considered a waiver by the defendant of the right to have the trial conducted within 120 days.

(e) In determining ~~which~~ whether to detain the defendant pursuant to subsection (d) or release the defendant with a condition or combination of conditions of release ~~will reasonably assure appearance,~~, if any, pursuant to subsection (c), the court shall~~,~~ base its determination on the ~~basis of~~ individual circumstances of the defendant and the case. Based on available information, the court shall take into account: the nature and circumstances of the offense charged~~,~~; the weight of the evidence against the ~~accused,~~defendant; the ~~accused's~~ defendant's family ties, employment, financial resources, including ability to pay, character, and mental condition~~,~~; the length of ~~his~~the defendant's residence in the community~~, his~~; the defendant's record of convictions~~, and his~~; the defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings~~.~~; whether the defendant was on probation, parole or release pending trial or appeal at the time the offense for which the court is considering detention or

release was committed; and any validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

(f) A court detaining or releasing ~~a person~~the defendant under this Rule shall enter an order stating the condition or combination of conditions of release, if any, set and imposed~~.~~ by the court. If the defendant is detained and unable to comply with any condition of release, the defendant shall have the right to a release hearing pursuant to Rule 33.05. At any hearing conducted under Rule 33, the court shall permit but not require either party to make a record on the defendant's financial status and ability to pay any monetary condition or other relevant issue. At such hearing, the court shall also make written or oral findings on the record supporting the reasons for detention or conditions set and imposed. The court shall inform ~~such person~~the defendant of the conditions set and imposed, if any, and ~~of the penalties applicable to violations of~~that the conditions of ~~his~~ release ~~and shall advise him~~may be revoked and the defendant detained until trial or other stage of the criminal proceedings for violation of any of the conditions of release and that a warrant for ~~his~~the defendant's arrest ~~will~~may be issued immediately upon notification to the court of any such violation.

33.02 MISDEMEANORS OR FELONIES – WARRANT FOR ARREST – CONDITIONS TO BE STATED ON WARRANT

Rule 37.16

~~The court or clerk thereof issuing a warrant for the arrest of any person shall set the condition for release of the accused which shall be one of the following:~~

~~(**a**) The written promise of the accused to appear; or~~

~~(**b**) The execution of a bond in a stated amount pursuant to Rule 33.01(d)(3); or~~

~~(**c**) The execution of a bond in a stated amount pursuant to Rule 33.01(d)(5).~~

~~The condition of release shall be stated on the warrant of arrest. If the condition of release is not stated on the warrant the sheriff may set the condition of release specified in Rule 33.01(d)(3).~~The court, or clerk at the court's direction for a specific warrant, issuing a warrant for the arrest of any defendant shall state the condition or combination of conditions of release, if any, on the warrant for arrest.

33.04 MISDEMEANORS OR FELONIES – OFFICER AUTHORIZED TO ACCEPT CONDITIONS OF RELEASE

Rule 37.18

~~The court or clerk who set the conditions of release, or the sheriff, may~~

The court that set conditions of release, the clerk thereof, or the sheriff may accept the conditions of release and release the ~~accused.~~defendant.

33.05 MISDEMEANORS OR FELONIES – ~~**Right to Review of Conditions**~~ RELEASE HEARING

Rule 37.20

A ~~person for whom conditions of release are imposed and~~ defendant who ~~after twenty-four hours from the time of the release hearing~~ continues to be detained ~~as a result of his inability to meet the conditions of release~~ after the initial appearance under Rule 21.10 or Rule 22.08 shall~~, upon application, be entitled to~~ have the defendant's detention or conditions of release reviewed at a hearing by the court ~~which imposed them.~~subject to the right of a victim to be informed of and heard at the hearing. The ~~application~~hearing shall occur as soon as practicable but no later than seven days, excluding weekends and holidays, after the initial appearance, absent good cause shown by the parties or the court. At the hearing, the court shall determine if the defendant shall be ~~determined promptly.~~ detained or released as provided in Rule 33.01. Nothing herein shall prohibit a defendant from making subsequent application for review of the defendant's detention or conditions of release under Rule 33.01.

33.06 MISDEMEANORS OR FELONIES – MODIFICATION OF CONDITIONS OF RELEASE

Rule 37.19

(a) Upon motion by the state or by the ~~accused~~defendant, or upon the court's own motion, the court ~~in which~~, subject to the ~~proceeding is pending may~~,right of a victim to be informed of and be heard, and after notice to the parties and hearing, may modify the ~~requirements for~~conditions of release when the court finds that:

(1) New, different, or additional requirements for release are necessary; or

(2) The conditions ~~for~~of release which have been set are excessive; or

(3) The ~~accused~~defendant has failed to comply with or has violated the conditions ~~for his~~of release; or

(4) The ~~accused~~defendant has been convicted of the offense charged.

(b) When the ~~requirements for~~conditions of release are increased by the court, or new ~~requirements~~conditions of release are set and imposed, the ~~accused shall be remanded~~court may remand the defendant to the custody of the sheriff or other officer until compliance with the modified conditions. If the ~~accused~~defendant is not in custody, the court may order that a warrant for ~~his~~the defendant's arrest be issued.

33.07 MISDEMEANORS OR FELONIES – RULES OF EVIDENCE INAPPLICABLE

Proceedings under Rule 33 shall be informal and ~~technical~~ rules of evidence need not apply.

33.08 MISDEMEANORS OR FELONIES – REARREST OF DEFENDANT
Rule 37.12

The court may order a warrant for the arrest of ~~an accused~~a defendant who has been released pursuant to Rule 33.01 if it shall appear to the court that:

(a) There has been a breach of any condition ~~for the~~of release, including but not limited to failure to appear for a court ordered court appearance; or

(b) The ~~bail~~ conditions of release should be ~~increased~~modified or new or additional ~~security be required or new~~ conditions ~~for release be~~ imposed.

~~The accused, upon application,~~A defendant arrested and confined on a warrant under this Rule shall be entitled to a hearing forthwith, as set forth below, concerning the reasons for the issuance of the ~~order~~warrant.

A defendant who has not previously had an initial appearance under Rule 21.08 or Rule 22.08 shall be brought for an appearance, in person or by interactive video technology, before a judge of the court from which the warrant was issued, as provided by Rule 21.09 or Rule 22.07. This initial appearance shall be held no later than 48 hours, excluding weekends and holidays, after the defendant is confined under the warrant in the county that issued the warrant or in a county with which the county issuing the warrant has a contractual agreement to hold the defendant.

A defendant who has previously had an initial appearance under Rule 21.08 or Rule 22.08 shall be brought for an appearance, in person or by interactive video technology, before a judge of the court from which the warrant was issued. This appearance shall be held no later than seven days, excluding weekends and holidays, after the defendant is confined under the warrant in the county that issued

the warrant or in a county with which the county issuing the warrant has a contractual agreement to hold the defendant.

33.09 MISDEMEANORS OR FELONIES – FAILURE OF COURT TO SET CONDITIONS OF RELEASE, OR SETTING OF INADEQUATE OR EXCESSIVE CONDITIONS OF RELEASE – APPLICATION TO HIGHER COURT

Rule 37.22 (No change from old rule – bring to appropriate higher court)

Pursuant to these rules, applicable statutes and constitutional provisions, if the defendant or the state allege the court unlawfully detained the defendant, failed to detain the defendant, or set inadequate or excessive ~~condition or combination of~~ conditions of release, the defendant or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.

33.10 MISDEMEANORS OR FELONIES – TRANSMITTAL OF RECORD BY CLERK OF THE RELEASING COURT

Rule 37.23

When any ~~person~~defendant is released by a court other than the court in which the ~~person~~ defendant is to appear, the clerk of the releasing court shall transmit a record of the release, together with any conditions of release imposed, to the clerk of the court in which the ~~person~~defendant released is required to appear.

33.11 MISDEMEANORS OR FELONIES – BONDS – WHERE FILED – CERTIFICATION BY SHERIFF OR PEACE OFFICER – CASH BONDS

Rule 37.24

All bonds shall be filed by the clerk of the court in which the ~~person~~defendant is required to appear. All bonds taken by the sheriff or by any other peace officer shall be certified by such officer and transmitted ~~forthwith~~ to the clerk of the court in which the ~~person~~defendant is required to appear. When cash or securities specified in Rule 33.01 are taken they shall be delivered ~~forthwith~~ to the clerk of the court in which the ~~person~~defendant is required to appear and deposited in the registry of the court.

37.17 ARREST WITHOUT WARRANT

When an arrest is made without a warrant, the peace officer may accept bond within 24 hours of arrest in accordance with a bond schedule furnished by the court having jurisdiction. If the judge has not issued an arrest warrant within 24 hours of arrest, the peace officer shall release the defendant~~accused~~ from custody.

Wednesday, August 12, 2020
2:50 – 3:40 – Virtual – Zoom Webinar

Legislative Update

(1.0 CLE)

Rich AuBuchon, Judge Cotton Walker & Legislators

Session Summary
Panel discussion on the bills passed in the previous legislative session.

- -

SCS HB 1330 -- CONVEYANCE OF STATE PROPERTY

This bill authorizes the Governor to sell, transfer, grant, convey, remise, release, and forever quitclaim all interest in specific properties, described in the bill, along with an easement, located in Cole County, Missouri; the City of Fulton, Callaway County; St. Francois County, Ste. Genevieve County, and the City of Moberly, Randolph County.

There is an emergency clause for the conveyances in St. Francois County.

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HB 1386 -- LOBBYISTS

This bill modifies the definition of "legislative lobbyist" for purposes of lobbying laws to exclude legislative liaisons. In these provisions "legislative liaison" is defined as any state employee hired to communicate with members of the General Assembly on behalf of any elected official of the state; the judicial branch of state government; or any department, agency, board, or commission of the state, provided such entity is a part of the executive branch of state government. Any state employee employed as a legislative liaison who performs lobbying services for any other entity shall register as a lobbyist with respect to such lobbying services.

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HCS HBs 1387 & 1482 -- ELECTRONIC MONITORING

This bill establishes the "Authorized Electronic Monitoring in Long-Term Care Facilities Act", which specifies the parameters of electronic monitoring by residents of long-term care facilities (Section 198.610, RSMo).

The bill describes unauthorized monitoring and prohibits the facility and the Department of Health and Senior Services from being civilly or criminally liable for such monitoring (Section 198.614).

The bill requires the department to promulgate rules that prescribe a form to be completed and signed by every resident that explains

the liabilities and rights for residents who place covert or authorized electronic monitoring devices, and the procedures to request authorized monitoring (Section 198.616).

The bill also describes who may consent to electronic monitoring (Section 198.618) and how that monitoring shall be requested, including the form, with the consent of any other residents in the room and the conditions of their consent (Section 198.620).

The bill requires the facility and any resident conducting electronic monitoring to post a conspicuous sign indicating that rooms, or the room of the resident is being monitored. It also states that facilities must accommodate requests for monitoring and shall not refuse to admit an individual that requests electronic monitoring. For purposes of abuse and neglect, the bill outlines time lines and reporting requirements for people who might view footage on behalf of a resident and specifies when a video recording may be used as evidence. Finally, the bill specifies when the department may sanction facilities or their administrators who violate these provisions (Sections 198.622 to 198.628).

The bill also makes it a class B misdemeanor to intentionally hamper, obstruct, tamper with, or destroy devices installed or data collected under these provisions, or to conduct unauthorized monitoring after a written warning to cease and desist from that conduct (Section 198.632).

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SS SCS HCS HB 1414 -- PROTECTION OF CHILDREN

COMMITTEE OF ORIGIN: Standing Committee on Children and Families

PROTECTION OF FOSTER CHILDREN

This bill requires Children's Division within the Department of Social Services to complete a standard risk assessment within 72 hours of a report of abuse or neglect as part of its structured decision-making protocols for responding to abuse and neglect. The division and the Office of the State Court Administrator shall develop a joint safety assessment tool before December 31, 2020 to replace the current risk assessment. The safety assessment tool must be implemented before January 1, 2022.

The bill also prohibits the division from requiring foster parents to conduct or be present for supervised visits with a child in their care and states that the court shall only require a child to appear in court if necessary for making a decision and after considering all of the information provided by the division and

family support team and the appropriateness of the courtroom environment and the hardship to the child and current guardians. However, the bill also clarifies that according to the foster care bill of rights, a child maintains a right to attend any hearing (Sections 210.145, 210.566, and 211.135, RSMo).

HOMELESS YOUTH

A homeless child or youth or an unaccompanied youth, or their parent or guardian, shall not be charged a fee for copies of birth records for the child or youth. An unaccompanied youth shall not be required to have the consent or signature of his or her parent or guardian for a copy of his or her own birth record. Only one birth certificate under this provision shall be provided at no cost and additional certificates shall be provided upon payment of the statutory fee. Additionally, any homeless child or homeless youth shall be eligible for MO HealthNet benefits, subject to federal approval of a state plan amendment.

Finally, a minor's ability to contract shall include obtaining mental health services if he or she meets certain qualifications specified in current law. Status as an unaccompanied youth may be demonstrated by a letter verifying the minor is an unaccompanied youth signed by:

(1) A director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless persons;

(2) A local education agency liaison for homeless children or youth designated under federal law or a school social worker or counselor; or

(3) A licensed attorney representing the minor in any legal matter(Sections 193.265, 208.151, and 431.056).

Any entity or licensed provider who contracts with a minor under this bill shall be immune from any civil or criminal liability based on the entity's or provider's determination to contract with the minor, unless the entity's or provider's determination is the result of the entity's or provider's negligence or willful or wanton acts or omissions.

CHILD CARE FACILITY DEFINITIONS AND BACKGROUND CHECKS

This bill provides new definitions of "child care", "child care facility", and "child care provider". Specifically, this bill defines "child care" for the purpose of child care facility licensure as the care of a child away from his or her own home for

any part of the 24-hour day for compensation or otherwise. "Child care" is a voluntary supplement to parental responsibility for the child's protection, development, and supervision. A "child-care facility" shall be a house or other place conducted or maintained by any person who advertises or holds himself or herself out as providing child care for more than six children or for more than three children under two years of age, for any part of the 24-hour day, for compensation or otherwise.

It also provides definitions for "Montessori school", "neighborhood youth development program", "nursery school", "person", "school system", and "summer camp" and clarifies other conditions and requirements related to defining what entities need to be licensed to provide child care. This bill removes the requirement to renew licenses every two years and updates the requirements for background checks to agree with the change in raising the age for certification as an adult in the commission of a crime to age 18, updates the list of crimes that makes a person ineligible to be a child care provider, and clarifies the procedures and designated department to oversee the background check process for licensed, licensed-exempt and unlicensed facilities.

Finally, the bill also updates the appeal process for a person denied a license based on the results of a background check (Sections 210.025, 210.201, 210.211, 210.221, 210.252, 210.254, and 210.1080).

CHILD PROTECTION FOR MILITARY FAMILIES

This bill requires the Children's Division within the Department of Social Services upon receipt of a report of child abuse to attempt to ascertain whether or not the suspected perpetrator is a member of the military, and the Children's Division must report its findings to the most relevant program authorized by the Department of Defense or the most relevant person authorized by the Department of Defense (Sections 210.109 and 210.150).

FOSTER CARE REFORM

These sections elaborate on the principles guiding the child protection system to prioritize home and community-based services and supports and successful outcomes. To that end, it requires creation of a response and evaluation team that will review and evaluate the practice of the division and any contractors. This system will be used to support contract development, placement and referrals, and enhanced payments.

The bill also creates "temporary alternative placement agreements" that allow voluntary placement of a child with a relative in cases

where a parent is temporarily unable to care for a child, but removal from the home, through court action is not appropriate.

The bill establishes protections from civil liability for employees of state-funded child assessment centers. Any adult whose parents have had their parental rights terminated through a nonconsensual termination of parental rights proceeding shall have access to their complete records, including all identifying information (Sections 210.112, 210.123, 210.135, and 453.121).

FOSTER PARENT RIGHTS

This bill modifies the "Foster Parents' Bill of Rights" to require the Children's Division and its contractors to provide written notification of these rights at the time the child is placed with a prospective foster parent, even if the parent has yet to be licensed as a foster parent. Additionally, the Division and its contractors shall provide full access to the child's medical, psychological, and psychiatric records, including records prior to the child coming into care, at the time the child is placed with a foster parent. Access shall include providing information and authorization for foster parents to review or to obtain the records directly from the service provider. If a foster parent alleges a court failed to allow the foster parent to be heard orally or in writing in a court hearing involving a child in his or her care, the foster parent may seek remedial writ relief pursuant to Missouri Supreme Court Rules 84, 94, and 97. No docket fee shall be required to be paid by the foster parent. The Division shall not remove a child from placement with the foster parent based solely upon the foster parent's filing of a petition for a remedial writ or while the writ is pending, unless removal is necessary for the health and safety of the child (Sections 210.566 and 211.171).

SUBSTANCE ABUSE TREATMENT WAIVER

This provision allows the Department of Social Services to seek a waiver of the Institutions for Mental Disease (IMD) exclusion for the comprehensive substance abuse treatment and rehabilitation program as administered by the Department of Mental Health. Operating through a global pandemic disclosed a need for additional flexibility in administering this program in accordance with federal requirements (Section 1).

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HB 1467 -- LAGERS RETIREMENT

This bill modifies the Missouri Local Government Employees Retirement system (LAGERS) member employer contribution elections for retirement benefit funding.

Currently, an employer can elect to cover the full cost of funding the retirement benefit of its eligible employees or require all eligible employees to contribute 4% of their gross wages to help pay for the retirement benefit. This bill expands the available contribution options by allowing employers to additionally elect a 2% or 6% contribution rate that all eligible employees would make to help pay for the retirement benefit.

The bill allows a political subdivision to elect one benefit program for members whose employment is concurrently covered by federal Social Security and a different benefit program for members whose employment is not concurrently covered by federal Social Security, as provided in Section 70.655, RSMo. The political subdivision is also allowed, by majority vote of the governing body, to make one election concerning member contributions for members concurrently covered by federal Social Security and one election concerning member contributions for members whose employment is not concurrently covered by federal Social Security. (Section 70.705).

STATE EMPLOYEE RETIREMENT SYSTEMS

Currently, if a member elected a joint & survivor benefit payment option at retirement, survivor benefits are paid out to the spouse designated, regardless of marital status of the member and spouse.

Under this bill, any member of the Missouri Department of Transportation and Highway Patrol Employees' Retirement System and the Missouri State Employees' Retirement System receiving a reduced annuity with his or her spouse as the designated beneficiary may cancel his or her election and receive a monthly benefit, with no survivor benefits, equal to the actuarial equivalent of the joint and survivor benefit payment if the marriage is dissolved on or after January 1, 2021, and the dissolution decree provides for the sole retention of the annuity and that the spouse shall not be entitled to survivor benefits. In no event shall the monthly benefit be more than the single life annuity amount entitled to the member as if his or her spouse had died on the date of the dissolution.

Additionally, a member who divorced their designated spouse before January 1, 2021, may have their annuity adjusted if the dissolution decree provided for sole retention of the retirement benefits by the member and the member obtained an amended dissolution decree after January 1, 2021. If the dissolution decree did not provide for the sole retention by the member, the member may also adjust their retirement allowance if an amended dissolution decree providing for the member's sole retention is obtained.

Any increase shall be prospective and shall be effective the first of the month following the date of receipt by the system of a certified copy of the dissolution decree (Sections 104.010, 104.090, 104.395, 104.1027).

MISSOURI STATE EMPLOYEES RETIREMENT SYSTEM

This bill allows vested members of the Missouri State Employees' Retirement System covered under the closed plan or Year 2000 plan who are no longer employees to elect to receive a lump sum payment equal to 60%, or a higher percentage chosen by the board, of the present value instead of a deferred annuity if the member is employed in a position covered by the judicial retirement plan. Any member making an election shall forfeit all creditable service, future rights in the annuity, and long-term disability benefits. If the member subsequently becomes an employee entitled to a benefit from the system, such a member shall be considered a new employee under the Missouri State Employees' Plan 2011 (Section 104.1089).

PUBLIC SCHOOL RETIREMENT SYSTEM

This bill exempts information pertaining to the salaries and benefits of the executive director and employees of the Board of the Public School Retirement System of Missouri from being confidential (Section 169.020).

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HB 1511 -- PROFESSIONAL LICENSING RECIPROCITY

This bill allows any resident or nonresident military spouse to apply for an occupational license in Missouri, as long as he or she holds a valid current license issued by another state or territory of the United States. The bill includes resident and nonresident spouses of active duty members who have been transferred or are scheduled to be transferred to Missouri, who have been transferred or are scheduled to be transferred to an adjacent state and are domiciled in Missouri, who have moved to Missouri on a permanent change-of-state basis, who are permanent residents of Missouri, or who have Missouri as their home of record.

This bill requires an oversight body to issue a license within 30 days for any resident or nonresident military spouse who meets the requirements of licensure reciprocity.

Currently, the law shall be interpreted so as to imply no conflict between it and any compact, or reciprocity agreement with other states in effect on August 28, 2018. This bill specifies that

should any conflict arise between the reciprocity section and the provisions of any compact or reciprocity agreement, the provisions of such compact or agreement shall prevail.

This bill specifies that a resident or nonresident military spouse is eligible, under this bill, to apply for a license with any board, department, agency, or office of a jurisdiction that issues licenses.

This bill repeals the provisions relating to the issuance of a temporary courtesy license to a nonresident spouse of an active duty member of the military.

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SCS HCS HB 1655 -- SECRETARY OF STATE RECORDS

SECRETARY OF STATE RECORDS

This bill requires the Secretary of State to allow public inspection of the original rolls of laws passed by the General Assembly. The Constitution of Missouri shall be made available in print and online (Sections 2.020, 2.110).

NOTARY PUBLIC REGULATIONS

The bill modifies provisions relating to the certification of documents, including processes for the Recorder of Deeds and procedures for notaries public. In its main provisions the bill:

(1) Changes laws relating to land conveyances and recorder of deeds. If a document is required by law to be an original, on paper, or in writing for the purpose of recording, the document may be in electronic form. Furthermore, a requirement of notarization for a document or signature is satisfied if the electronic signature of the authorized person is attached to or logically associated with the document or signature. The bill also allows satisfaction of the document requirements if a paper copy of an electronic document bearing an electronic signature along with all other required information is certified by a notary. The form and requirements of such certification are provided for in this bill. The notary shall confirm that the electronic document contains an electronic signature that is capable of independent verification, shall personally print or supervise the printing of the document, and shall not make any changes to the document. A document conveying real property, recorded by a clerk, and not certified by a notary according to the bill shall put third persons on notice of the conveyance and is effective as if the document had been certified. The bill does not apply to the recording of certain

plats, maps, or surveys of real property. For the purposes of proving or acknowledging a written instrument affecting real property by an officer, a person may appear before the officer by physical presence or by means of communication technology. (Sections 59.568, 59.569, and 442.145);

(2) In order to be commissioned as a notary, a person must be at least 18 years old, reside or have a regular place of work or business in Missouri, be a legal resident of the United States, read and write English, pass an examination, and submit an application with the Secretary of State. The Secretary is given discretion to deny any application for reasons specified in the bill. Once the Secretary has granted an application for a notary commission, the commission shall be presented to the appropriate county clerk and the applicant shall take an oath of office and present a $10,000 bond within 60 days of the commission being issued. Notary commissions last for a period of four years, or until the commission is revoked by the Secretary or resigned by the person holding the commission. A notary commission issued to a person prior to the effective date of this bill shall not be invalidated. However, once such commission expires, the bill applies to an application for any new commissions (Sections 486.605 to 486.635);

(3) Authorizes a notary, judge, clerk, or deputy clerk of any Missouri court, or other person authorized by Missouri law to perform a specific notarial act to perform specified notary services (Sections 486.640 to 486.695, Sections 486.740 to 486.770, and Section 486.1160)

(4) Restricts the manner in which a notarial act may be performed. Additionally, for every notarial act involving a document, a notary shall properly complete a notarial certificate which shall include specified information. The maximum fees that can be charged for performing a notarial act range from $1 to $5, depending on the type of notarial act requested. The bill permits a notary to charge a travel fee. However, a notary may not discriminate in the charging of fees based on the characteristics of the principal if such attributes would be a basis for employment discrimination under Missouri law. In addition to the other fees allowed, a remote online notary may charge a remote online notary transaction fee. The bill also has specific requirements for any notarized document sent to another state or nation;

(5) Enacts notary journal requirements. Notaries are required to keep a chronological journal of notarial acts for a period of no less than 10 years following the last notarial act. The bill stipulates the information that is required to be recorded in the journal. The journal may be examined and copied without restriction

by a law enforcement officer in the course of an official investigation, subpoenaed by court order, pursuant to subpoena power as authorized by law, or surrendered at the direction of the Secretary. Nothing in this provision shall prevent a notary public from seeking appropriate judicial protective orders. Requirements for electronic journals are specified (Sections 486.700 to 486.715, Sections 486.945 to 486.950, and Sections 486.1180 to 486.1190);

(6) Requires notaries to use an official seal when notarizing a paper document and the bill regulates what information must be present on and adjacent to the seal. At the expiration of the notary commission or upon resignation of the commission, the seal must be destroyed. If the notary commission has been revoked, the seal shall be delivered to the Secretary for disposal. Failure to do so could result in a fine of $500, at the discretion of the secretary (Sections 486.725 to 486.735);

(7) Requires vendors and manufacturers to register with the secretary prior to selling or manufacturing notary seals. Furthermore, prior to providing a notary seal to a purchaser claiming to be a notary, the vendor or manufacturer shall require such person to present a notary commission. A vendor or manufacturer failing to comply with these requirements shall be subject to a fine of $1,000 for each violation. For multiple violations, a vendor's permission to sell or manufacture notary seals may be withdrawn by the Secretary (Section 486.735);

(8) Stipulates that notaries may be liable for damages proximately caused by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization. A surety for a notary's bond shall be liable to any person for damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability shall not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants. An employer of a notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer. Civil liability applies to electronic notaries and remote online notaries (Section 486.805);

(9) Authorizes the Secretary to revoke or suspend notary commissons under certain circumstances. The Secretary is required

to revoke a notary commission if the notary fails to maintain a residence or a regular place of work or business in this state or if the notary fails to maintain status as a legal resident of the United States (Sections 486.810 to 486.820);

(10) Creates the misdemeanor crime on the part of a notary if he or she fails to require the presence of a principal at the time of a notarial act or to identify a principal through personal knowledge or satisfactory evidence, or executes a false certificate. A notary who performs any other act prohibited by the bill or fails to perform a required act shall be guilty of a misdemeanor, punishable by a fine of no more than $500 or imprisonment of not more than 6 months, or both. Any person who is not a notary and who knowingly acts as or otherwise impersonates a notary shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding $500 or imprisonment for not more than six months, or both. Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary or who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding $500 (Section 578.700);

(11) Creates requirements for electronic notaries. In addition to courses required for commissioning as a notary, an electronic notary shall complete a course consisting of notarial laws, procedures, and ethics relating to electronic notarization. Allows acknowledgements, jurats, signature witnessings, and copy certification to be performed electronically (Sections 486.900 to 486.1010); and

(12) Regulates remote online notaries. The Secretary shall develop and maintain standards for remote online notarization. In developing standards, the Secretary shall consider the standards established by the National Association of Secretaries of State and national standard setting bodies. The Secretary shall also approve remote online notarization software as long as the software meets certain requirements defined in the bill. In addition to courses required for commissioning as a notary, an remote online notary shall complete a course consisting of notarial laws, procedures, and ethics relating to remote online notarization. The bill provides that acknowledgments and jurats may be performed remotely online by using communication technology (Sections 486.1100 to 486.1205).

DESIGNATIONS FOR HEALTH AWARENESS

This bill designates the month of May as "Mental Health Awareness Month" , the month of July as "Minority Mental Health Awareness Month", The month of September as "Deaf Awareness Month" and "Infant and Maternal Mortality Awareness Month", the month of August as "Minority Organ Donor Month" which will encourage citizens to participate in appropriate awareness and educational activities that emphasize the importance of good mental health and the effects of mental illness on Missourians. The bill also establishes the 22nd day of each month as "Buddy Check Day" to raise awareness to the cause of veteran suicides (RSMo. Sections 9.152, 9.166, 9.182, 9.300, and Section 1).

LONG TERM DIGNITY ACT

This bill establishes the "Long-Term Care Dignity Act". Beginning January 1, 2021, an individual may open a long-term care savings account and designate the account to be used to pay a designated qualified beneficiary's eligible long-term care expenses.

Also creates an income tax deduction for contributions to a long-term savings account in the amount of 100% of the contribution, not to exceed the taxpayer's Missouri adjusted gross income for the tax year the deduction is claimed and not to exceed $8,000 for an individual or $16,000 for married individuals filing jointly. Moneys withdrawn from the account shall be subject to recapture and the account holder subject to a penalty if it has been less than one year since the first deposit in the account or the moneys have been used for any purpose not specified (Section 143.1160).

ACCESS TO AUTOMATED EXTERNAL DEFIBRILLATOR

Requires any training or course in cardiopulmonary resuscitation to include instruction in the proper use of an automated external defibrillator (Sections 190.092 & 190.1005).

PHYSICIAN ASSISTANTS SERVING AS STAFF ON AMBULANCES

A physician assistant is included in the list of those that are qualified to meet the requirement to be in patient compartment in ambulance with volunteer staff, additionally, a physician assistant is exempt from mileage limits in ambulance in a collaborative practice arrangement (Sections 190.094, 190.105, 190.143, and 190.196).

PROVISIONS RELATING TO DO NOT RESUSCITATE ORDERS

This bill modifies provisions related to outside the hospital do-

not-resuscitate orders from inside and outside of the state of Missouri. Emergency medical services personnel are authorized to comply with such order from another state if such order is on a standardized written form as outlined in the bill. Emergency medical services personnel do not have to comply with this order if the patient or patient's representative expresses to such personnel the desire to be resuscitated (Sections 190.606 & 190.612).

PROHIBITION OF VAPOR PRODUCTS

This bill prohibits the use of vapor products, as defined in Section 407.925, RSMo, in any indoor area of a public school or school bus. The bill allows a school board to adopt additional policies relating to vapor product, and removes the penalty language from the current statute (Section 191.775).

POSTPARTUM DEPRESSION CARE ACT

This bill creates the "Postpartum Depression Care Act" and specifies that all hospitals and ambulatory surgical centers that provide labor and delivery services shall, prior to discharge following pregnancy, provide pregnant women and, if possible, new fathers and other family members information about postpartum depression, including its symptoms, treatment, and available resources. The Department of Health and Senior Services, in cooperation with the Department of Mental Health, shall provide written information that the hospitals and ambulatory surgical centers may use and shall include such information on its website (Section 191.940)

MEDICINAL MARIJUANA TELEHEALTH

The bill adds physician certifications for medicinal marijuana to telemedicine language requiring physicians to interview a patient face to face before providing a certification (Section 191.1146).

OMBUDSMAN LONG-TERM CARE

This bill extends the current powers and duties, as defined in the bill, of the Office of State Ombudsman for Long-Term Care Facility Residents to include Missouri veterans' homes (Section 192.2305).

ADMINISTRATION OF CONTROLLED SUBSTANCES

This bill permits a non-dispensing practitioner to accept the unused controlled substance when the controlled substance is prescribed to the patient and delivered to the practitioner to administer to the patient. Practitioners are required to maintain records and secure the medication. (Section 195.070)

MODIFIES PROVISIONS RELATING TO DRUG PRESCRIPTIONS

This bill prohibits the requirement of a prescription for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in law.

This provision shall expire when state's methamphetamine laboratory seizure incidents, as reported by the Missouri State Highway Patrol, exceed 300 incidents in a year.

All current local ordinances and regulations regarding prescriptions for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in law that are in effect prior to August 28, 2020, shall be void and of no effect on August 28, 2020.

This bill also changes the amounts that can be sold, dispensed, or otherwise provided to a person in a 30-day period without a prescription from a maximum of 9 grams to a maximum of 7.2 grams and adds an annual limit of 43.2 grams. (Sections 195.417 & 579.060)

MEDICAL MARIJUANA EDIBLES

This bill prohibits the sale of edible marijuana-infused products, packaging, or logos in the shape of a human, animal, or fruit, but geometric shapes shall be permitted. Each package, or packages within a package, containing 10 or more milligrams of tetrahydrocannabinols (THC) shall be stamped with a universal symbol and the amount of THC, as described in the bill.

Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services (DHSS) found to have violated this provision shall be subject to sanctions, including an administrative penalty (Section 195.805).

MEDICAL MARIJUANA BACKGROUND CHECKS

The bill specifies that DHSS shall require all officers, managers, contractors, employees, and other support staff of licensed or certified medical marijuana facilities, and all owners of such facilities who will have access to the facilities or the facilities' supply of medical marijuana, to submit fingerprints to

the Highway Patrol for a state and federal criminal background check. The Highway Patrol shall notify the Department of any criminal history record information or lack thereof discovered on the individual. All such records shall be accessible and available to the Department.

This provision has an emergency clause (Section 195.815).

EPINEPHRINE AUTO-INJECTOR DEVICES

This bill adds "qualified first responders" to the definition of "authorized entities" authorized to dispense prescription epinephrine auto-injectors (epi-pens).

Additionally, current law requires certain emergency health care entities and other organizations to maintain epi-pens according to the rules and regulations of DHSS. Under this bill, the director of DHSS, if a licensed physician, or a licensed physician operating on behalf of the director, may issue a statewide standing order for epi-pens for adult patients to fire protection districts in nonmetropolitan areas of Missouri.

Possession and use of epi-pens under this bill is limited to only such qualified first responders who have completed a training course and maintain the epi-pens pursuant to Department rules.

Additionally, every use of an epi-pen shall be reported to a emergency health care provider.

Under this bill, the use of an epi-pen is considered first aid or emergency treatment for purposes of liability under the law and shall not constitute the unlawful practice of medicine.

This bill further establishes the "Epinephrine Auto-injector Devices for Fire Personnel Fund". The Fund shall be used solely by the department for the purpose of providing epi-pens to qualified first responder agencies pursuant to this bill (Sections 196.990 and 321.621).

STATE-SETTLED OPIOID CAUSES OF ACTION

Under this bill, the proceeds of any monetary settlement or portion of a global settlement between the Attorney General and any drug manufacturers, distributors, or combination thereof to resolve an opioid-related cause of action in a state or federal court shall only be utilized to pay for opioid addiction treatment and prevention services and health care and law enforcement costs related to opioid addiction treatment and prevention. Under no circumstances shall such moneys be utilized to fund other services,

programs, or expenses not reasonably related to opioid addiction treatment and prevention.

This bill creates the "Opioid Addiction Treatment and Recovery Fund", which shall consist of the settlement funds, as well as any other appropriations, gifts, grants, donations, or bequests. To be administered by various departments as outlined and specified in the bill (Section 196.1050).

DISSOLUTION OF A HOSPITAL DISTRICT

This bill provides that, upon the dissolution of a county hospital district in Ripley County levying a sales tax for the purpose of funding the district, the sales tax shall be automatically repealed and 25% of the funds remaining in the special trust fund shall be distributed to the county public health center and 75% shall be distributed to a federally qualified health center located in the county (Section 205.202).

PERSONAL CARE ASSISTANCE SERVICES

This bill requires the consumer to permit the vendor to comply with its quality assurance and supervision process, including annual face-to-face home visits and monthly case management activities. During the home visits, the vendor shall document if the attendant providing services as set forth in the plan of care and report to the department if the attendant is not providing services, which may result in a suspension of services to the consumer.

The bill repeals language permitting DHSS to establish certain pilot projects for telephone tracking systems.

This bill also requires vendors to notify consumers during orientation that falsification of personal care attendant time sheets shall be considered and reported as fraud.

The bill specifies that a vendor shall submit an annual financial statement audit or annual financial statement review performed by a certified public accountant to the department upon request.

Beginning July 1, 2022, the department shall require the vendor to maintain a business location in compliance with any and all city, county, state, and federal requirements. Additionally, this bill requires the department to create a consumer-directed services division provider certification manager course. No state or federal funds shall be authorized or expended for personal care assistance services if a direct employee of the vendor is conducting the home visit and is also the personal care attendant, unless such person provides services solely on a temporary basis on

no more than three days in a 30 period.

Currently, a consumer's services may be discontinued if the consumer has falsified records. This bill adds language to include providing false information of his or her condition, functional capacity, or level of care needs.

This bill requires the consumer, the personal care attendant, and the vendor to report to the department if the consumer's health or his or her ability to self-direct care has significantly changed.

Finally, the Department shall, subject to appropriations, develop an interactive assessment tool for utilization by the Division of Senior and Disability Services when implementing the assessment and authorization process for home and community-based services authorized by the division(Sections 208.909, 208.918, 208.924, and 208.935).

REMOTE DISPENSING SITE PHARMACIES

Under this bill, an intern pharmacist working at a remote dispensing site pharmacy may be remotely supervised by a pharmacist working at a supervising pharmacy. The bill defines a "remote dispensing site pharmacy" as any location in Missouri where the practice of pharmacy occurs, that is licensed as a pharmacy to dispense prescription drugs, and is staffed by one or more qualified pharmacy technicians or intern pharmacists who are supervised by a pharmacist at a supervising pharmacy through a continuous, real-time audio and video link.

A supervising pharmacy that operates a remote dispensing site pharmacy, and the remote dispensing site pharmacy, shall be licensed as a pharmacy by the Board of Pharmacy as described in the bill.

The remote dispensing site pharmacy shall be under the supervision and control of a supervising pharmacist employed by the supervising pharmacy. Such pharmacist shall not be required to be immediately physically present to supervise any activities at the remote dispensing site pharmacy, but shall make monthly visits to the remote dispensing site pharmacy to ensure compliance with this bill. A pharmacist shall not be designated or act as the supervising pharmacist for more than two remote dispensing site pharmacies at one time.

A pharmacist at the supervising pharmacy shall verify each prescription before such prescription leaves the remote dispensing site pharmacy. Verification of prescriptions shall occur as set forth in the bill.

Unless a pharmacist is onsite at the remote dispensing site pharmacy, counseling shall be done by a supervising pharmacist via a HIPAA-compliant continuous real-time video and audio link prior to any drug or medical device being dispensed. Such system shall retain the initials or unique identifier of the pharmacist performing the consultation. The pharmacist shall have access to all relevant patient information maintained by the remote dispensing site pharmacy.

A remote dispensing site pharmacy shall be located at least 10 miles from an existing retail pharmacy unless such pharmacy is part of a community mental health center, federally qualified health center, rural health clinic, or outpatient clinical setting, or if the applicant with the proposed remote dispensing site pharmacy demonstrates that the pharmacy will promote public health. A remote dispensing site pharmacy shall be staffed by a pharmacist for at least 8 hours per month who shall have certain responsibilities set forth in the bill.

If the average number of prescriptions dispensed per day by the remote dispensing site pharmacy exceeds 150, over a 90-day period, such remote pharmacy shall apply to the Board for licensure as a Class A, B, or C pharmacy within 10 days.

Unless otherwise approved by the Board, the supervising pharmacy shall be located in Missouri and within 50 miles of a remote dispensing site pharmacy to ensure sufficient support and to ensure that necessary personnel or supplies may be delivered within a reasonable period of time.

This bill adds "remote dispensing site pharmacy" as a Class R pharmacy (Sections 338.035, 338.210, 338.215, 338.220, and 338.260).

CHARITABLE PHARMACIES

Current law sets forth classes of pharmacy permits or licenses. This bill adds "charitable pharmacy" as a Class Q pharmacy (Section 338.220).

LICENSING REQUIREMENTS FOR NURSING HOME ADMINISTRATION

This bill expands the criteria for qualification for a nursing home administrator to include an associates degree and provides that emergency license for administrators be limited to 120 days with criteria outlined in bill (Section 344.030).

SPEECH PATHOLOGISTS OR AUDIOLOGISTS

This bill modifies current language to allow applicants for speech pathologist or audiologist to hold a master's or doctoral degree from a program that was awarded "accreditation candidate" status, or is accredited as set forth under current law (Section 345.050).

REIMBURSEMENT OF HEALTH CARE CLAIMS

Currently, a health carrier that has not paid a claimant on or before the 45th processing day from the date of receipt of the claim shall pay the claimant interest and a penalty based on the unpaid balance of the claim as of the 45th processing day. On claims exceeding $35,000 on the unpaid balance of the claim, the health carrier under this bill shall pay the claimant 1% interest per month and a penalty in an amount equal to 1% of the claim per day for a maximum of 100 days and thereafter shall pay the claimant 2% interest per month.

Currently, any claim or portion of a claim that has been properly denied before the 45th processing day shall not be subject to interest or penalties. Under this bill, denied claims before the 45th processing day shall begin to accrue interest and penalties during the claimant's appeal with the health carrier until such claim is paid, if the claim is approved. If the appeal does not result in an approved claim and a petition is filed with a court of competent jurisdiction to recover payment of the claim, interest and penalties shall continue to accrue for no more than 100 days from the day the first appeal was filed with the health carrier and continue to accrue until 10 days after the court finds that the claim shall be paid to the claimant (Section 376.383).

HEALTH CARRIER CLAIM OVERPAYMENT

This bill provides that an amount that a health carrier claims was overpaid for a health care service can only be collected, withheld, or recouped from the provider or third party to which the overpaid amount was originally paid. The notice of withholding or recoupment shall inform the provider or third party of the health care service, date of service, and patient for which the recoupment is being made (Section 376.345).

PHARMACY BENEFITS MANAGERS

Under this bill, pharmacy benefits managers (PBM) shall notify health carriers in writing of any conflict of interest, including, but not limited to, common ownership or any other relationship between the PBM and any other health carrier with which the PBM contracts.

Additionally, this bill specifies that no entity subject to the jurisdiction of Missouri shall act as a PBM without a license issued by the Department of Commerce and Insurance. The Department may cause a complaint to be filed with the Administrative Hearing Commission against the holder of a PBM license for the reasons specified in the bill. Proceedings shall be conducted before the Administrative Hearing Commission as provided by law. The department may take action against a PBM's license, as specified in the bill, upon a finding that a rule has been violated (Sections 376.387 and 376.393).

BREAST CANCER SCREENING INSURANCE

In addition to existing coverage requirements, the bill adds "detectors" to the X-ray equipment specifically listed as being covered under the current insurance mandate.

The bill also specifies that coverage for certain breast cancer screening and evaluation services shall be provided to any woman deemed by her physician to have an above-average risk for breast cancer in accordance with American College of Radiology (ACR) guidelines, rather than specifically to women with a personal or family history of breast cancer.

The bill also requires coverage of any additional or supplemental imaging, such as breast MRI or ultrasound, deemed medically necessary by a treating physician for proper screening or evaluation in accordance with applicable ACR guidelines.

Furthermore, the bill requires coverage of ultrasound or MRI services when determined by a treating physician to be medically necessary for the screening or evaluation of breast cancer for any woman deemed by the treating physician to have an above-average risk of breast cancer in accordance with ACR guidelines for breast cancer screening.

Lastly, provisions relating to out-of-pocket expenditures are modified to apply to the additional modalities required to be covered under the bill (Section 376.782).

LIFE CARE CONTRACTS

This bill specifies that the "entire amount" of entrance fee funds held in reserve for a life care contract shall be earned by "and available for release to" the care provider as provided by law, provided that the reserve and interest thereon shall not exceed 100%, rather than one and one-half times the percentage, of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care

contracts. The requirement to hold reserve funds may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations, provided that the total amount equals or exceeds the amount otherwise required(Section 376.945).

HEALTH CARE PRACTITIONER CREDENTIALING

This bill provides that if a health carrier receives a credentialing application, the carrier shall have 10 days from sending notice of the application's receipt to request additional information from the practitioner. The application shall be deemed complete upon receipt of the additional information. Within two working days of receipt of the additional information, the carrier shall send notice to the practitioner that the practitioner has submitted a completed application. If the carrier does not request additional information, the application shall be deemed completed as of the date the notice of receipt was sent by the carrier to the practitioner.

The bill specifies that the carrier's credentialing decision and notification to the practitioner of such decision shall be made within 60 days of receipt of the "completed credentialing application", rather than 60 "business" days of receiving the practitioner's "credentialing information".

If a practitioner's application is approved, the carrier shall provide payments for covered health services performed by the practitioner during the credentialing period if the services were on behalf of an entity that had a contract with the carrier during the credentialing period. A health carrier shall not require a practitioner to be credentialed to receive payments for covered health services if the practitioner is providing coverage for an absent credentialed practitioner during a temporary period as outlined in the bill.

All claims eligible for payment under these provisions shall be subject to the prompt payment statute(Section 376.1578).

CONFIDENTIALITY OF CERTAIN HEALTH RECORDS

Under this bill, any reports or records in the possession of the DHSS's Missouri State Public Health Laboratory, which were the result of testing performed at the request of any municipal, county, state, or federal law enforcement agency, shall be considered closed records until such investigation becomes inactive (Section 610.100).

PROGRAM WAIVER

The bill allows DSS to seek a waiver of the Institutions for Mental Disease exclusion for substance treatment and rehabilitation programs (Section 1).

COVID 19 TESTING

If a health care provider recommends a Covid 19 test it shall be provided at no cost to the patient. DHS may utilize federal funds or grants to cover the cost of such testing (Section 1).

This provision contains an emergency clause.

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HB 1711 -- DONATED FOOD

This bill adds shelf stable packaged venison to the foods that a charitable or not-for-profit organization can distribute in good faith with limited liability arising from an injury or death due to the condition of the food.

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CCS #2 SS SCS HB 1768

This bill modifies provisions related to communication services.

NEIGHBORHOOD IMPROVEMENT DISTRICTS AND COMMUNITY IMPROVEMENT DISTRICTS

This bill modifies the powers of neighborhood improvement districts and community improvement districts to include the ability to partner with telecommunications companies or broadband service providers in order to construct or improve telecommunications facilities (Sections 67.453 and 67.1461, RSMo).

LINEAR FOOT FEES

A grandfathered political subdivision shall not charge a linear foot fee for use of its right-of-way to a small local exchange telecommunications company as of December 31, 2019, provided that the small local exchange telecommunications company is providing Internet access to customers within rural areas of the state (Section 67.1846).

UNIFORM SMALL WIRELESS FACILITY DEPLOYMENT ACT

This bill extends the sunset date for the Uniform Small Wireless Facility Deployment Act from January 1st, 2021, to January 1st, 2025 (Section 67.5122).

OPERATING DESIGNATIONS OF CERTAIN TELECOMMUNICATIONS COMPANIES

Under the bill, any corporation formed for the purpose of being a telephone or telegraph company or operating under the General and Business Corporation Law of Missouri, may amend the articles of association to include a statement referencing the corporation's operating designation as an exempt organization as described in the Internal Revenue Code (Section 392.020).

RURAL BROADBAND ACCESS FUNDING

This bill requires the Department of Economic Development to maintain a record of all federal grants awarded to entities for the purposes of providing, maintaining, and expanding rural broadband in the state. In cases in which federal funds have been awarded but later retained, withheld, or otherwise not distributed to the original grant recipient due to failure to meet performance standards or other criteria, the Department of Economic Development will seek to have the funds awarded to another eligible, qualified Missouri broadband provider (Sections 620.2451).

Under this bill, a grant recipient of funds from the Missouri Broadband Grant Program must return such funds if the grant recipient fails to establish retail broadband Internet speeds of at least 25 megabits per-second download and three megabits per-second upload (Section 620.2456).

Currently, the broadband Internet grant program for unserved and underserved areas of the state will expire on August 28, 2021. This bill extends the program until June 30, 2027 (Section 620.2459).

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SS#2 SCS HCS HB 1854 -- POLITICAL SUBDIVISIONS

AUDITS OF COUNTY OFFICES (Section 29.230, RSMo)

Under current law, the State Auditor is permitted to conduct performance audits when performing an audit of a county office. This act prohibits the State Auditor from conducting a performance audit when conducting an audit in a third class county not initiated pursuant to a petition if:

(1) The county commission has adopted a resolution electing not to be subject to such an audit; and

(2) The county has undergone an audit by a certified public accountant within the preceding two years.

The county commission is required to send the resolution and audit report to the State Auditor.

POLITICAL RESTRICTIONS FOR CERTAIN STATE EMPLOYEES (Section 36.155)

Under current law, any individual holding a position of state employment that is subject to the State Personnel Law is also subject to various restrictions on participating in political activities, including running for partisan political office. This act provides that any state employee that is not subject to the Merit System (Section 36.030) or the Uniform Classification and Pay System (Section 36.031) may run for the nomination, or as a candidate for election, to a partisan political office.

This provision contains an emergency clause.

MISSOURI LOCAL GOVERNMENT EXPENDITURE DATABASE (Section 37.1090 through Section 37.1098)

This bill establishes the "Missouri Local Government Expenditure Database". The database shall be available free of charge on the Office of Administration's website and shall include information about expenditures made during each fiscal year that begins after December 31, 2022.

The database shall include the following information: the amount of the expenditure; the date the expenditure was paid; the vendor to whom the expenditure was paid, unless such information is confidential; the purpose of the expenditure; and the municipality or county that made or requested the expenditure.

A municipality or county may choose to voluntarily participate in the database. Each municipality or county participating in the database shall provide electronically transmitted information to the Office of Administration biannually as provided in the act.

Additionally, if 5% of the registered voters in a municipality or county request to participate, the municipality or county shall participate in the database. Residents may request participation by submitting a written letter by certified mail to the governing body of the municipality or county and the Office of Administration. After receiving the requisite number of requests, a municipality or county shall begin participating in the database, but is not required to report expenditures incurred before one complete 6 month reporting period.

The Office of Administration shall provide financial reimbursement to any participating municipality or county for actual expenditures

incurred from participation in the database.

COUNTY REGULATION OF COUNTY PROPERTY (Section 49.266)

Currently, the county commissions in all non-charter counties are authorized to promulgate regulations concerning the use of county property. This bill authorizes the county commission in all first, second, third, and fourth classification counties to promulgate such regulations.

Additionally, please note that Section 49.266 appears twice in this bill because it is doubly-enacted due to the Cole County Circuit Court decision in Calzone v. Koster, et al. (2016). This bill repeals the version enacted by SB 672 (2014) and amends the version in effect prior to SB 672 (2014).

WARRANTS FILED BY COUNTY CLERKS (Section 50.166)

Under current law, a county clerk may transmit in the form of a warrant the amount due for a grant, salary, pay, and expenses to the county treasurer.

This bill provides that, upon request, the county treasurer shall have access to any financially relevant document in the possession of any county official for the purposes of processing a warrant. If the warrant is received in the absence of a check, then the county treasurer shall have access to the information necessary to process the warrant.

Additionally, no official of any county shall refuse a request from the county treasurer for access to or a copy of any document in the possession of a county office that is financially relevant to the salaries of county officers and assistants. No county treasurer shall refuse to release funds for the payment of any properly approved expenditure.

2ND CLASS COUNTY CORONER SALARIES (Section 50.327)

Under current law, the compensation for non-charter county coroners is based on salary schedules established by law.

This bill provides that, upon majority approval of the salary commission, the annual compensation of a non-charter county coroner of any county of the second classification may be increased up to $14,000 greater than the compensation provided by the salary schedule established by law.

COUNTY REVENUE VIOLATIONS (Section 54.140)

Under current law, any county treasurer or other county officer who fails or refuses to perform duties required of him or her under the law is guilty of a misdemeanor, shall be punished by a fine and, in addition to such punishment, his or her office shall become vacant.

This bill repeals the provision that a county treasurer's or other county officer's office shall become vacant upon violation.

CANDIDATES FOR COUNTY RECORDER (Sections 59.021 & 59.100)

This bill provides that each candidate for county recorder shall provide an affidavit to the election authority that indicates the candidate is able to satisfy the bond requirements under the law.

A recorder elected before January 1, 2021, shall have bond of no less than $1,000. A recorder elected after December 31, 2020, shall have a bond no less than $5,000.

BOONE COUNTY PROPERTY MAINTENANCE AND NUISANCE CODES (Section 64.207)

This bill authorizes Boone County to adopt property maintenance regulations and ordinances as provided in the bill. The unavailability of a utility service due to nonpayment is not a violation of the property maintenance code.

Under this bill, the property maintenance code must require the county commission to create a process for selecting a designated officer to respond to written complaints of the condition of a rented residence that threaten the health or safety of the tenants. When a written complaint is filed, the owner of any rental residence must be served with a notice specifying the condition alleged in the complaint and state a reasonable date by which abatement of the condition must commence. If work to abate the condition does not commence as determined by the designated officer, the complaint shall be given a hearing before the county commission. If the county commission finds that the rented residence has a dangerous condition that is harmful to the health, safety, or welfare of the tenant, the county commission shall issue an order that the condition be abated. If the owner violates an order issued by the county commission the owner may be punished by a penalty, which shall not exceed a Class C misdemeanor.

COUNTY PLANNING COMMISSION MEETING EXPENSES(Section 64.805)

Currently, members of the county planning commission may be reimbursed for meeting expenses up to $25 per meeting. This bill increases the reimbursement amount to $35.

CAPITAL IMPROVEMENT SALES TAX (Sections 67.730 & 94.838))

This bill makes technical corrections to provisions of law authorizing Clay and Platte counties to propose a capital improvement sales tax.

Current law authorizes the City of Lamar Heights to levy a sales tax of up to 2% on retail sales of food at cafes, cafeterias, lunchrooms, or restaurants for the purpose of funding the construction, maintenance, and operation of capital improvements. This bill allows such sales tax to be levied at a rate not to exceed 6% and allows the revenues to be used for general revenue purposes.

CERTAIN TAXING DISTRICTS (Section 67.1545, 238.207, 238.235, & 238.237)

Current law authorizes community improvement districts (CIDs) and transportation development districts (TDDs) to impose a sales tax on purchases made within such districts if approved by a majority of voters living withing the district. This bill requires such sales taxes to be approved by a majority of the voters of the municipality in which the district is located. Additionally, current law authorizes TDDs to charge and collect tolls or fees for the use of a project if approved by a majority of voters within the district. This bill requires such tolls or fees to be approved by a majority of voters within the municipality in which the TDD is located.

EARLY CHILDHOOD SALES TAX (Section 67.1790)

This bill allows Greene County and any city within the county to impose a sales tax, upon approval of a majority of the voters, not to exceed one-fourth of one percent for the purpose of funding early childhood education in the county or city.

APPOINTMENT OF MEMBERS OF BOARDS AND COMMISSIONS IN FOURTH CLASS CITIES (Section 79.235)

If a statute or ordinance authorizes the mayor of a city of the fourth classification with no more than 2,000 inhabitants to appoint a member of a board or commission, any requirement that the appointed person be a resident of the city shall be deemed satisfied if the person owns real property or a business in the city.

If the board to which a person is appointed is for the purpose of managing a city's municipal utilities, then any requirement that the appointed person be a resident of the city shall be satisfied

if the following conditions are met:

(1) The board has no authority to set utility rates or to issue bonds;

(2) The person resides within a 5-mile radius of the city limits;

(3) The person owns real property or a business in the city;

(4) The person or the person's business is a customer of the public utility that is owned and operated by the city; and

(5) The person has no pecuniary interest in, or is not a member of, any other utility of the type managed by the board.

TRANSIENT GUEST TAXES (Sections 67.1011, 67.1360, 94.842, & 94.1014)

This bill authorizes the City of Butler to submit to the voters a transient guest tax not to exceed 6% of the charges per occupied room per night. The vote shall occur on a general election day not earlier than the 2022 general election.

This bill adds the City of Cameron to the list of cities authorized to propose a transient guest tax for the promotion of tourism.

This bill authorizes the City of Springfield to submit to the voters a transient guest tax not to exceed 7.5% of the charges per occupied room per night. Such tax shall be used solely for capital investments that can be demonstrated to increase the number of overnight visitors.

Upon approval by the voters, the city may adopt rules and regulations for the internal collection of the tax, or may enter into an agreement with the Department of Revenue for the collection of the tax.

This bill authorizes the City of Ashland to submit to the voters a transient guest tax not to exceed 5% of the charges per occupied room per night. Such tax shall be used for the promotion of tourism, growth of the region, economic development, and public safety, as described in the bill.

PUBLIC SAFETY SALES TAXES (Sections 94.900 and 94.902)

This bill adds the cities of Clinton, Lincoln, Branson West, Cole Camp, Hallsville, Kearney, Smithville, and Claycomo to the list of cities and villages authorized to levy a sales tax upon voter approval for the purposes of improving public safety.

FINANCIAL REPORTS OF POLITICAL SUBDIVISIONS (Section 105.145)

Under current law, any transportation development district having gross revenues of less than $5,000 in a fiscal year for which an annual financial statement was not timely filed to the State Auditor is not subject to a fine.

This bill provides that any political subdivision that has gross revenues of less than $5,000 or that has not levied or collected sales or use taxes in the fiscal year for which the annual financial statement was not timely filed shall not be subject to a fine.

Additionally, if failure to timely submit the annual financial statement is the result of fraud or other illegal conduct by an employee or officer of the political subdivision, the failure shall not be subject to a fine if the statement is filed within 30 days of discovery of the fraud or illegal conduct.

If the political subdivision has an outstanding balance or fines at the time it files its first annual financial statement after January 1, 2021, the Director of Revenue shall make a one-time downward adjustment to such outstanding balance in an amount that reduces the outstanding balance by 90%. If the Director of Revenue determines a fine is uncollectible, the Director shall have the authority to make a one-time downward adjustment to any outstanding penalty.

The Director of Revenue shall initiate the process to disincorporate a political subdivision if such political subdivision has an outstanding balance for fines or penalties and fails to file an annual financial statement as provided in the bill. A resident of a political subdivision may file an affidavit with the Director of Revenue with information regarding the political subdivision's failure to report.

The question of whether a political subdivision may be subject to disincorporation shall be submitted to the voters of the political subdivision as provided in the bill. Upon the affirmative vote of a majority of voters in the political subdivision, the Director of Revenue shall file an action to disincorporate the political subdivision in the circuit court with jurisdiction over the political subdivision. The circuit court shall enforce such orders and carry out remedies as provided in the bill. Additionally, the Attorney General shall have the authority to file an action in a court of competent jurisdiction against any political subdivision that fails to comply with this bill.

FILING PERIOD FOR CANDIDATES IN POLITICAL SUBDIVISIONS (Section 115.127)

Under current law, the period for filing a declaration of candidacy in certain political subdivisions and special districts is from 8:00 a.m. on the 16th Tuesday prior to the election until 5:00 p.m. on the 11th Tuesday prior to the election.

This bill changes that period to 8:00 a.m. on the 17th Tuesday prior to the election until 5:00 p.m. on the 14th Tuesday prior to the election.

SENATORIAL DISTRICT POLITICAL PARTY COMMITTEES (Section 115.621)

Under current law, the members of each senatorial district political party committee are required to meet on the Saturday after each general election for the purpose of electing members to the state political party committee. In lieu of that requirement, this bill permits the chair of the congressional district committee where the senatorial district is principally located to call for a meeting to be held concurrently with the election of senatorial officers.

USE OF PUBLIC FUNDS IN ELECTIONS (Section 115.646)

This bill prohibits the contribution or expenditure of public funds by any school district or by any officer, employee, or agent of any school district to:

(1) Support or oppose the nomination or election of any candidate for public office;

(2) Support or oppose the passage or defeat of any ballot measure;

(3) Any committee supporting or opposing candidates or ballot measures; or

(4) For paying debts or obligations of any candidate or committee previously incurred for the above purposes.

Any purposeful violation of this bill is punishable as a class four election offense.

PROPERTY TAX ASSESSMENT NOTIFICATIONS (Section 137.180)

For property tax assessments, current law provides that assessors shall notify property owners of an increase in the property owner's assessed valuation by June 15. This bill requires such notifications in St. Louis County to include information regarding

the assessment method and computation of value for such property and, for properties valued using sales of comparable properties, a list of such comparable properties and the address or location and purchase prices from sales thereof that the assessor used in determining the assessed valuation of the owner's property.

PROPERTY TAX APPEALS ATTORNEY FEES (Section 138.434)

Current law allows certain counties and St. Louis City to reimburse taxpayers who successfully appeal a property tax assessment to the State Tax Commission for appraisal costs, attorney fees, and court costs, with such reimbursements limited to $1,000 for residential appeals and the lesser of $4,000 or 25% of the tax savings resulting from the appeal for other non-residential appeals. Beginning January 1, 2021, this bill increases such limits for St. Louis County to $6,000 for residential appeals and the lesser of $10,000 or 25% of the tax savings resulting from the appeal for other non-residential appeals.

TAXATION OF PARTNERSHIPS (Section 143.425)

This bill requires taxpayers in a partnership to report and pay any tax due as a result of federal adjustments from an audit or other action taken by the IRS or reported by the taxpayer on an amended federal income tax return. Such report shall be made to the Department of Revenue on forms prescribed by the Department, and payments of additional tax due shall be made no later than 180 days after the final determination date of the IRS action, as defined in the bill.

Partners and partnerships shall also report final federal adjustments as a result of partnership level audits or administrative adjustment requests, as defined in the bill. Such payments shall be calculated and made as described in the bill. Partnerships shall be represented in such actions by the partnership's state partnership representative, which shall be the partnership's federal partnership representative unless otherwise designated in writing.

Partners shall be prohibited from applying any deduction or credit on any amount determined to be owed under this bill.

The Department shall assess additional tax, interest, and penalties due as a result of federal adjustments under this bill no later than three years after the return was filed, as provided in current law, or one year following the filing of the federal adjustments report under this bill. For taxpayers who fail to timely file the federal adjustments report as provided under this bill, the Department shall assess additional tax, interest, and penalties

either by three years after the return was filed, one year following the filing of the federal adjustments report, or six years after the final determination date, whichever is later.

Taxpayers may make estimated payments of the tax expected to result from a pending IRS audit. Such payments shall be credited against any tax liability ultimately found to be due. If the estimated payments made exceed the final tax liability, the taxpayer shall be entitled to a refund or credit for the excess amount, as described in the bill.

The provisions of this bill shall apply to any adjustments to a taxpayer's federal taxable income or federal adjusted gross income with a final determination date occurring on or after January 1, 2021.

BALLOT LANGUAGE RELATING TO LOCAL USE TAX (Section 144.757)

This bill modifies ballot language required for the submission of a local use tax to voters by including language stating that the approval of the local use tax will eliminate the disparity in tax rates collected by local and out-of-state sellers by imposing the same rate on all sellers.

DISSOLUTION OF CERTAIN COUNTY HOSPITAL DISTRICTS (Section 205.202)

This bill provides that, upon the dissolution of a county hospital district in Ripley County levying a sales tax for the purpose of funding the district, the sales tax shall be automatically repealed and 25% of the funds remaining in the special trust fund shall be distributed to the county public health center and 75% shall be distributed to a federally qualified health center located in the county.

FIRE PROTECTION DISTRICT DIRECTOR (Section 321.015)

Currently, a person cannot hold any lucrative office or employment under this state or a political subdivision and hold the office of fire protection district director. This bill creates an exception to this prohibition for employees of law enforcement agencies.

ATTENDANCE FEES FOR BOARD MEMBERS (Section 321.190 & 321.603)

This bill further modifies the attendance fee for a board member attending a board meeting from $100 to $150 for board members of districts in both non-charter and charter counties.

This bill also repeals provisions that prohibit a member from being paid more than one attendance fee if such member attended multiple

meetings in certain time periods and, in its place, authorizes board members to be paid for attending not more than one meeting per calendar week.

BOUNDARIES OF FIRE PROTECTION DISTRICTS (Section 321.300)

Under this bill, if one or more fire protection districts serve any portion of a city with a charter form of government located in a county with a charter form of government with a population of 900,000 or more inhabitants which has a municipal fire department, the boundaries of either district may be expanded so as to include areas within the city into the boundaries of the fire protection district, but shall not expand beyond the city limits of such city as it existed on July 1, 2020.

Such a change in the district boundaries shall be accomplished if the governing body of the city files with the board of any such fire protection district a written consent for the board to seek approval of the circuit court for an extension of the district's boundaries to the registered voters of the area.

If a majority of the voters voting on the proposition vote in favor of the extension of the boundaries of the district, then the court shall enter an order declaring the extension of the boundaries of the fire district to be final and conclusive.

FIRE PROTECTION SALES TAXES (Section 321.552)

Current law authorizes ambulance and fire protection districts in certain counties to propose a sales tax at a rate of up to 0.5%. This bill allows such districts to propose a sales tax of up to 1.0%.

CIVIL ACTIONS BROUGHT BY INMATES IN COUNTY JAILS (Section 506.384)

Currently, offenders under supervision or in the custody of the Department of Corrections may not bring a civil action against the Department unless all administrative remedies are exhausted. This bill also prevents inmates or detainees in county jails from bringing a civil action until all administrative remedies are exhausted.

RECORDS OF MUNICIPALLY OWNED UTILITIES (Section 610.021)

This bill adds individually identifiable customer usage and billing records for customers of a municipally owned utility, unless the records are requested by the customer or authorized for release by the customer, to the list of records that may be closed under the Sunshine Law. A municipally owned utility shall make available to

the public the customer's name, billing address, location of service, and dates of service provided for any commercial service account.

MISSOURI WORKS PROGRAM (Section 620.2005 & 620.2010)

This bill modifies the Missouri Works program to provided that, for qualified military projects, the benefit shall be based on part-time and full-time jobs created by the project.

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SS SCS HCS#2 HB 1896 -- MEDICAL MARIJUANA INDUSTRY

This bill prohibits a state agency from disclosing to the federal government any information of a person who applied for a medical marijuana card. Any violation of this is a class E felony.

Under the provisions of this bill, the Department of Health and Senior Services (DHSS) shall require all employees, officers, managers, staff, and owners of marijuana facilities to submit fingerprints for criminal background checks to the State Highway Patrol. The fingerprint submissions must be a part of the medical marijuana facility application. All fingerprint cards and fees must be sent to the State Highway Patrol. The fingerprints will also be forwarded to the FBI for a federal criminal background check.

This bill shall be effective upon its passage and approval or July 1, 2020, whichever occurs later (Sections 191.1146, 195.815, and Section B, RSMo).

This bill specifies that if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, DHSS shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the DHSS objects to the change. If the DHSS promulgates emergency rules under this bill, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this bill updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002 and further updates by the Drug Enforcement Agency in the Federal Register (Sections 195.015 and 195.017).

This bill prohibits the requirement of a prescription for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or

psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in current law. A prescription shall be required for such drug in excess of the statutory limits. This bill also changes the amounts that can be sold, dispensed, or otherwise provided to a person in a 30 day period from a maximum of 9 grams to a maximum of 7.5 grams.

Additionally, this establishes a prescription abuse registry. The DHSS shall, by January 1, 2022, establish and maintain a prescription abuse registry. Individuals 18 years or older may request to be listed in the registry. Individuals may request to be removed as specified in the bill after five years from the date such individual was listed in the registry.

Information contained in the registry shall be confidential. The DHSS shall enable health care providers to access the registry for the sole purpose of determining whether an individual is listed in the registry and shall only provide a response that confirms or denies the individual's presence in the registry. The bill specifies that a department, agency, instrumentality, political subdivision, state or federal law enforcement agency, or any individual other than a health care provider shall not have access to the registry.

Any person who knowingly and unlawfully accesses or discloses information in the registry and any person authorized to have access who knowingly uses or discloses such information in violation of the provisions of this bill shall be guilty of a Class E felony. Additionally, this bill provides a private cause of action for persons whose data has been disclosed to an unauthorized person. Recovery under this cause of action shall include liquidated damages of $2,500 and compensatory economic and non-economic damages, attorney's fees, and court costs. Punitive damages are available for intentional and malicious unauthorized disclosure (Sections 195.417 and 579.060).

This bill prohibits the sale of edible marijuana-infused products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including candies, gummies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Any medical marijuana licensed or certified entity regulated by the DHSS found to have violated this bill shall be subject to sanctions, including an administrative penalty. The DHSS shall develop a process by which a licensed or certified entity may seek approval of a product design, package, or label prior to manufacture or sale to determine compliance with these provisions (Section 195.805).

This bill adds to the offense of trafficking drugs in the first

degree knowingly distributing, delivering, manufacturing, or producing or attempting to distribute, deliver, manufacture, or produce more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class A felony. If it involves more than 10 milligrams, it is a class B felony. Additionally, one gram or more of flunitrazepam (Rohypnol) or any amount of gamma-hydroxybutyric acid (GHB) is a class B felony for the first offense and a class A felony for the second or subsequent offense. (Section 579.065).

The bill adds to the offense of trafficking drugs in the second degree knowingly possessing or having under one's control, purchasing or attempting to purchase, or bringing into the state more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class B felony. If it involves more than 10 milligrams, it is a class C felony. Additionally, the offense is a class C felony for the first offense and class B felony for the second or subsequent offense for the trafficking of less than one gram of flunitrazepam (Rohypnol) (Section 579.068).

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HB 1963 -- TRANSPORTATION PARTNERSHIPS

SS#3/SCS/HB 1963 - This bill modifies provisions relating to transportation.

REMOTE DRIVER'S LICENSE RENEWALS (Section 32.300, RSMo)

This bill authorizes the Department of Revenue to design and implement a remote driver's license renewal system accessible through the department's Internet website connection or through one or more self-service terminals located within the state. The system shall comply with federal law as specified in the bill. Drivers may apply for no more than one consecutive renewal remotely, and shall apply within six months before or after the license expires as required for conventional renewal. Applicants for remote renewal shall not be required to complete the highway sign recognition test unless the Department has technology allowing the test to be conducted remotely. In lieu of the current vision test requirement, applicants for remote renewal shall certify under penalty of law that their vision satisfies the legal requirements

and that he or she has undergone an eye exam in the last 12 months. The applicant shall authorize the exchange of relevant medical information as provided in the bill, and shall be at least 21 years of age but not more than 50 years of age. The applicant's ophthalmologist or optometrist shall have 4 business days to confirm or deny the vision and medical information of the applicant, and if no response is received within the time allotted, the department shall accept the information provided by the applicant.

QUALIFIED AIR FREIGHT FORWARDERS (Section 143.441)
This bill adds "qualified air freight forwarders", as defined in the bill, to the definition of "corporation" as a transportation corporation for the purposes of corporate income allocation.

LEASE OR RENTAL COMPANIES (Section 144.070.6)
This bill provides that registered fleet owners of rental or lease motor vehicles, rather than vehicle lease or rental companies, shall post a bond with the Department of Revenue upon applying for a license to operate.

TAXATION OF AVIATION JET FUEL (Section 144.805)
Current law provides a sales tax exemption for aviation jet fuel used by common carriers engaged in the interstate air transportation of passengers and cargo, with the exemption set to expire on December 31, 2023. This bill extends the expiration date until December 31, 2033.

BILL GRIGSBY MEMORIAL HIGHWAY (Section 227.476)
This bill designates the portion of State Highway 9 from Nodaway Street to Park College Entrance Drive in Platte County "Bill Grigsby Memorial Highway.

TUBE TRANSPORT SYSTEMS (Section 227.600)
This bill modifies the Missouri Public-Private Partnerships Transportation Act to authorize the Missouri Highways and Transportation Commission to form a public-private partnership to construct a "tube transport system", as defined in the bill. The power of eminent domain shall not apply to a tube transport system. No funds from the Constitutional state road fund shall be used for the financing, development, or operation of a tube transport system. Under no circumstances will a public right-of-way necessary for the expansion of Interstate 70 be materially impeded by or transferred to a public-private partnership for the purpose of constructing a tube transport system. The provisions of a tube transport system authorized under the bill will sunset on August 28, 2025, unless reauthorized by the General Assembly in subsequent 5-year periods.

POLICE OFFICER CHRISTOPHER RYAN MORTON MEMORIAL HIGHWAY (Section 227.803)
This bill designates the portion of State Highway 7 from County Road 221 West continuing to Calvird Drive in the city of Clinton in Henry County as "Police Officer Christopher Ryan Morton Memorial Highway".
POLICE OFFICER GARY LEE MICHAEL, JR. MEMORIAL HIGHWAY (Section 227.804)
This bill designates the portion of State Highway 13 from State Highway 52 West continuing to Calvird Drive in the city of Clinton in Henry County shall be designated as "Police Officer Gary Lee Michael, Jr. Memorial Highway".
COMPOSITION OF OFF-HIGHWAY VEHICLES (Sections 300.010, 301.010, 407.815, 407.1025, and 577.001)
This bill modifies the definitions of certain off-highway vehicles. This bill provides that in addition to the other requirements specified in the definition, a vehicle need only meet the seating and handlebar requirements "or" the maximum width requirement to meet the definition of "all-terrain vehicle", and specifies that the width shall be measured from the outsides of the tire rims (Sections 300.010(2), 301.010(1), 407.815(2), 407.1025(2), and 577.001(3)).

Certain definitions, specifying that the vehicles are equipped with low-pressure tires, are amended to instead specify that the vehicles are equipped with "nonhighway" tires, and provisions specifying the vehicles are equipped with a seat designed to be straddled by the operator, and handlebars for steering control, are repealed under the bill. These definitions are also modified to specify a maximum weight of 1,500 pounds rather than 600 pounds, (Sections 300.010(2), 407.815(2), and 407.1025(2)) or rather than 1,000 pounds (Section 577.001(3)). The enacted definitions of "all-terrain vehicle" are identical to one another.
The bill also modifies the definition of "recreational off-highway vehicle" by specifying a maximum width of 80 inches, rather than 67 inches. The bill also provides that the width shall be measured from the outsides of the tire rims, and specifies a maximum unladen dry weight of 3,500 pounds rather than 2,000 pounds (Section 301.010(49)).
Lastly, the definition of "utility vehicle" is modified to specify a maximum width of 80 inches, rather than 67 inches. The bill also provides that the width shall be measured from the outsides of the tire rims, and specifies a maximum unladen dry weight of 3,500 pounds rather than 2,000 pounds (Section 301.010(70)).

TRANSFER OF MOTOR VEHICLES (Sections 301.010, 301.140, 301.190, 301.210, 301.213, 301.280, and 301.560)
The bill modifies the definition of "owner" of a vehicle to include a person who has executed a buyer's order or retail installment

sales contract with a licensed motor vehicle dealer when there is an immediate right for the buyer to possess the vehicle (Section 301.010(44)).
Operation of a motor vehicle with temporary license plates or license plates transferred from a trade-in shall be legal for no more than 60 days when a dealer sells the vehicle with an agreement for the delayed transfer of title as provided in the bill (Sections 301.140.1 and 301.140.4).
Vehicle owners obtaining a vehicle as specified in the bill shall apply for a certificate of title within 30 days of receiving title from the dealer (Sections 301.190.1 and 301.190.5).
Under the bill, a vehicle transfer shall be "presumed" fraudulent and void unless the vehicle's title is assigned and passed to the buyer at the time of transfer, or unless the parties have agreed to delayed delivery of title as provided in the bill (Section 301.210.4). The bill specifies that licensed motor vehicle dealers may deliver a motor vehicle or trailer to a purchaser with a written agreement to pass the certificate of ownership with an assignment to the purchaser within 30 days after delivery (Section 301.210.5).
The agreement shall be in a form prescribed by the Director of the Department of Revenue, shall provide that if the dealer does not pass the assigned certificate of ownership to the purchaser within 30 days, the purchase shall be voidable at the purchaser's option, and the dealer shall re-purchase the vehicle as provided in the bill (Section 301.210.5(1)).
If the vehicle has incurred damages covered by the purchaser's insurance policy and the vehicle is determined to be a total loss, the insurance company may satisfy the claim by transferring all proceeds to the purchaser and recorded lienholders. The purchaser shall not assign insurance policy proceeds without express written permission of the insurer. In conjunction with satisfaction of the claim, if the insurer receives the totaled vehicle but clear title never vests with the purchaser as required, the insurer shall notify the dealer and the dealer shall reimburse the insurer for the salvage value of the vehicle. In exchange, the insurer shall assign its rights back to the dealer. If the dealer does not make payment to the insurer within 15 days of receiving notice, the dealer shall be liable to the insurer for the vehicle's salvage value, actual damages, and applicable court costs in return for the right to acquire title and apply for a salvage title (Section 301.210.5(2)).

As provided in the bill, completion of the requirements of the bill shall constitute sufficient evidence of ownership of the vehicle for all purposes other than a subsequent transfer of ownership. However, the purchaser may use a dealer-supplied copy of the agreement under this bill to transfer ownership of the vehicle to an insurance company in situations where the vehicle is declared

salvage or a total loss as the result of settlement of an insurance claim (Section 301.210.5(3)).
No motor vehicle dealer shall be authorized to sell vehicles in accordance with this bill until the dealer has provided to the Director of the Department of Revenue a bond or irrevocable letter of credit in an amount not less than $100,000 in lieu of the $50,000 bond otherwise required to act as a motor vehicle dealer (Section 301.210.5(4)).
This bill also repeals the existing framework for dealers accepting trade-in vehicles subject to existing liens, effective December 31, 2020 (Section 301.213).

Motor vehicle dealers' monthly sales reports submitted to the Department of Revenue shall include vehicles sold during the month in accordance with the bill (Section 301.280.1).

Lastly, the bill specifies the circumstances under which proceeds from a dealer applicant's bond or irrevocable letter of credit will be paid. In addition to relocating an existing provision regarding bond proceeds, the bill specifies that bond proceeds shall be paid to any buyer or interested lienholder as provided in the bill if the dealer fails to deliver the assigned certificate of ownership as agreed. The Department of Revenue shall release the bond proceeds upon receiving certain documentation and evidence, as specified in the bill, and that the vehicle has been or will be returned by the purchaser as required. Except for ordinary wear and tear or mechanical failures not caused by the purchase, the amount of proceeds paid to the purchaser shall be reduced by an amount equivalent to any damage, abuse, or destruction incurred by the vehicle while in the purchaser's possession. Within 30 days of receiving notice of a claim against bond or irrevocable letter of credit proceeds, the dealer may apply to a court of competent jurisdiction to contest the claim on the bond or letter of credit, including the amount of the claim or any adjustments made for damage, abuse, or destruction incurred (Section 301.560.1(3)).

MOTOR VEHICLE REGISTRATION PERIODS
This bill specifies that fees for the renewal of noncommercial motor vehicle registrations shall be payable no later than the last day of the month that follows the final month of the expired registration period. No renewal penalty shall be assessed, and no violation for expired registration shall be issued, until the second month that follows the expired registration period (Section 301.030).

FLEET VEHICLE REGISTRATIONS
This bill provides that the registration for fleet vehicles shall be fully payable at the time the license plates are ordered, except that when the plates are ordered after the first month of

registration, the fees shall be prorated (Section 301.032).

TITLING OF ABANDONED PROPERTY

This bill allows a salvage pool or salvage dealer and dismantler taking possession of a vehicle from an insurer that did not purchase the vehicle through the claims adjustment process, or a used motor vehicle dealer taking possession of a vehicle from a 501(c)(3) tax-exempt organization without negotiable title, to obtain a salvage certificate of title or junking certificate in its name if a vehicle remains unclaimed on the salvage pool's, salvage dealer and dismantler's, or used motor vehicle dealer's premises for more than 45 days. The salvage pool, salvage dealer and dismantler, or used motor vehicle dealer shall, 45 days prior to applying for title, notify any owners or recorded lienholders of the vehicle of the salvage pool's, salvage dealer and dismantler's, or used motor vehicle dealer's intent to apply for title if the vehicle is not removed from their premises. The application for title shall be on a form provided by the Department of Revenue, signed under penalty of perjury, and accompanied by a statement explaining how the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer came to possess the property, a vehicle description as specified in the bill, the current location of the property, a title application fee as required by law, a copy of the 45-day notice and certified mail receipts or proof of delivery by a courier, and, if the vehicle is not currently titled in the state, a law enforcement inspection report (Section 301.193).

Upon receipt of the application and required documents, the Director of the Department of Revenue shall verify the names and addresses of any owners and lienholders. If the director identifies any additional owner or lienholder who has not been notified, the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer shall notify the owners or lienholders in accordance with the bill. Thereafter, if no valid lienholders have notified the department of the existence of a lien, the department shall issue a salvage title or junking certificate in the name of the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer.

This bill also enacts provisions allowing insurers that purchase vessels or watercraft through the claims adjustment process to apply for a certificate of title in the same manner that insurers that purchase vehicles currently titled in the state through the claims adjustment process apply for a salvage title or junking certificate. An insurer purchasing a vessel or watercraft through the claims adjustment process for which the insurer is unable to obtain a negotiable title may make application to the Department of Revenue for a certificate of title. Application shall be made on a form provided by the Department, signed under penalty of perjury, and shall be accompanied by a declaration that the insurer has made at least 2 written attempts to obtain evidence of title, proof of

claims payment from the insurer, evidence that letters were sent to the owner, a statement explaining how the insurer came to possess the property, a description of the vessel or watercraft as specified in the bill, the current location of the property, and a title application fee as required by law. The insurer shall, 45 days prior to applying for title, notify any owners or lienholders of record for the vessel or watercraft that the insurer intends to apply for title as provided in the bill.

Upon receipt of the application and required documents, the Director of the Department of Revenue shall verify the names and addresses of any owners and lienholders. If the director identifies any additional owner or lienholder who has not been notified, the insurer shall notify the owners or lienholders in accordance with the bill. Thereafter, if no valid lienholders have notified the department of the existence of a lien, the department shall issue a certificate of title in the name of the insurer.

RESPONSIBILITIES OF THE HIGHWAY PATROL

This bill replaces certain references to officers of the Missouri State Water Patrol with references to "authorized or designated employees" of the Missouri State Highway Patrol.

The bill makes this change in a statute regarding the certification of a boat manufacturer's or boat dealer's bona fide place of business (Section 301.560), and in a statute regarding the inspection of certain documents and records (Section 301.564).

MOTOR VEHICLE HISTORY REPORTS

This bill provides that motor vehicle dealers shall not be liable for inaccuracies in third-party motor vehicle history reports when the inaccuracy is not based on information provided to the third-party preparer of the report by the dealer. This bill shall not apply if the dealer has actual knowledge of a vehicle's accident, salvage, or service history not reflected on a third-party motor vehicle report, as defined in the bill (Section 301.576) .

CENTRAL MISSOURI HONOR FLIGHT SPECIAL LICENSE PLATES This bill establishes a "Central Missouri Honor Flight" special license plate. The plate requires an annual emblem-use fee of $25, paid to Central Missouri Honor Flight and to be used for financial assistance to transport veterans to Washington D.C. to view veteran memorials, in addition to the $15 special personalized license plate fee and other requirements and fees as provided by law (Section 301.3069).

MERITORIOUS SERVICE MEDAL SPECIAL LICENSE PLATES

This bill establishes a "Meritorious Service Medal" special license plate. Applicants shall provide proof of having been awarded the medal as required by the Director of the Department of Revenue. There shall be an additional fee for issuance of the plates equal

to the $15 special personalized license plate fee. Meritorious Service Medal license plates shall not be transferable to any other person, except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person (Section 301.3159).

ASSOCIATION OF MISSOURI ELECTRIC COOPERATIVES SPECIAL LICENSE PLATE
This bill repeals a restriction on the vehicle types for which the Association of Missouri Electric Cooperatives may approve the use of its logo on special license plates, and directs the Department of Revenue to issue the special plates for non-apportioned vehicles of any classification for which it issues plates (Section 301.3174).

BACKSTOPPERS SPECIAL LICENSE PLATE
This bill establishes a "BackStoppers" special license plate. Upon making a $10 contribution to the BackStoppers General Operating Fund or the BackStoppers Education Fund as provided in the bill, a vehicle owner may apply for the plate. Applicants shall also pay a $15 fee in addition to regular registration fees, but no additional fee shall be charged for the personalization of BackStoppers special license plates (Section 301.3176).

MOTORCYCLE HELMET LAW
Currently, every person operating or riding a motorcycle or motortricycle is required to wear protective headgear (Sections 302.020 and 302.026).
This bill provides that persons under the age of 26 who are operating or riding as a passenger on a motorcycle or motortricycle shall wear a helmet when the vehicle is in motion. Similarly, a person who is 26 or older, is operating a motorcycle or motortricycle, and who has been issued an instruction permit shall wear a helmet when the vehicle is in motion. No political subdivision of the state shall impose a protective headgear requirement on the operator or passenger of a motorcycle or motortricycle. No person shall be stopped, inspected, or detained solely to determine compliance with these provisions (Section 302.020.2).
The bill also provides that qualified operators who are 26 or older may operate a motorcycle or motortricycle without a helmet if he or she is covered by a health insurance policy or other form of insurance which will provide the person with medical benefits for injuries incurred as a result of a motorcycle or motortricycle accident. Proof of such coverage shall be provided on request of law enforcement by showing a copy of the qualified operator's insurance card. No person shall be stopped, inspected, or detained solely to determine compliance with these provisions. (Section 302.026)

REAL ID
This bill removes "facial feature pattern characteristics" and "eye spacing" from the definition of biometric data (Section 302.170.1), repeals the requirement for the Department to store retained driver's license application documents on a system isolated from the Internet and to purge the documents from previous systems on which they were stored (Section 302.170.2). The bill also allows the Department of Revenue to retain documents at the request of and for the convenience of an applicant regardless of whether the applicant requests that the department review alternative documents as proof required for issuance of a license (Section 302.170.3(6)), and allows the department to use digital images and license signatures as required for the use of software for purposes of combating fraud (Section 302.170.5). Furthermore, the bill requires a "knowing" standard before a person can be prosecuted for unlawfully accessing or disclosing certain driver's license data (Section 302.170.8), and repeals the expiration date of the authority to comply with the federal REAL ID Act of 2005 (Section 302.170.15).

DRIVER'S LICENSES
This bill repeals obsolete references to Social Security numbers, and updates references to film photography to reflect the use of digital images (Section 302.181.1-4).

DIGITAL DRIVER'S LICENSES
This bill authorizes the Department of Revenue to design and implement a secure digital driver's license program that allows license applicants to obtain a digital driver's license in addition to a card-based license. The digital license shall be accepted for all purposes for which a card-based license is used. The department may contract with one or more entities to develop the digital driver's license system, and the department or entities may develop a mobile software application capable of being utilized through a person's electronic device to access the person's digital driver's license. The department shall suspend, disable, or terminate a person's participation in the digital driver's license program if the driver's driving privilege is suspended, revoked, denied, withdrawn, or cancelled as provided by law, or if the person reports their electronic device has been lost, stolen, or compromised.

MEDICAL ALERT NOTATIONS ON DRIVER'S LICENSES
This bill allows for medical alert notations to be placed on driver's licenses and non-driver's identification cards for posttraumatic stress disorder, diabetes, heart conditions, epilepsy, drug allergies, Alzheimer's or dementia, schizophrenia, autism, or other conditions as approved by the Department of

Revenue.
Persons applying for a medical alert notation shall waive liability for the release of any medical information to the department, anyone eligible for access to such medical information recorded on a driving record, and any other person who may view or receive notice of the medical information by virtue of having seen the license. The application shall include a space for applicants to obtain a sworn statement from a licensed physician or licensed psychologist verifying the diagnosis.
Individuals who have been issued licenses or identification cards bearing medical alert information may be issued a replacement that does not bear the medical alert information upon payment of the fee applicable to lost licenses or cards.
No medical alert information shall be printed on or removed from a license or identification card without the express consent of the licensee, or parent or guardian (Section 302.205).
These provisions have a delayed effective date of July 31, 2021.

COMMERCIAL DRIVER'S LICENSES
This bill provides for a process by which Commercial Driver's License (CDL) applicants with disabilities may request testing accommodations for the written and driving tests, and specifies that the accommodations shall state that a hearing test shall not be required for applicants who are deaf or hard of hearing. These provisions shall be null and void if the United States Secretary of Transportation determines they will result in a loss of federal highway funding.
The bill also specifies that any entity providing training to persons preparing to apply for a CDL shall provide reasonable accommodations for persons who are deaf or hard of hearing. These provisions shall be null and void if the United States Secretary of Transportation determines they or the provisions relating to disabled applicants requesting testing accommodations will result in a loss of federal highway funding (Sections 302.720 and 302.723).

MOTOR VEHICLE INSURANCE REPORTING
This bill repeals an exemption from motor vehicle insurance policy issuance, nonrenewal, and cancellation reporting requirements for insurers with a statistically insignificant number of policies in force (section 303.026.3(1)), and specifies that the director may require insurers to provide records of policies issued, cancelled, terminated, or revoked as frequently as he or she deems necessary (Section 303.026.3(2)).

MISSOURI AUTOMOBILE INSURANCE PLAN
This bill modifies existing law regarding apportionment of substandard insurance risks to create the Missouri Automobile Insurance Plan ("MOAIP"). Under the bill, MOAIP is authorized to

issue motor vehicle insurance policies to applicants who are unable to procure motor vehicle liability policies through ordinary methods, rather than funding issuance of the policies through other insurers. The bill further specifies that the Director of the Department of Commerce and Insurance (the "Director") shall consult with insurance companies "having a certificate of authority to do business in the state and actively writing motor vehicle liability policies" regarding the plan, rather than insurance companies "authorized to issue automobile liability policies" (Section 303.200.1).

MOAIP shall perform its functions under a plan of operation, approved by the director, and through a board of governors as prescribed in the plan of operation (Section 303.200.2). The plan of operation shall prescribe the issuance of motor vehicle insurance policies, which may include the administration of the policies by a third party, as specified in the bill (Section 303.200.3).

The bill requires MOAIP to obtain approval from the director before using forms, rates, or manuals (Section 303.200.4). MOAIP is subject to the applicable insurance laws of this state unless specifically exempted (Section 303.200.5), is required to file annual financial reports and to be subject to examination by the director, and shall have the authority to make assessments on member insurance companies in proportion to their market share (Section 303.200.6). Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the bill (Section 303.200.7).

VEHICLES TOWING COTTON TRAILERS

These provisions exempt vehicles towing trailers specifically designed to carry harvested cotton, with a total length of not more than 93 feet, from certain height, width, and length limitations, provided that the vehicles shall only be used to haul cotton, or to haul hay within the state to areas determined by the National Drought Mitigation Center to be affected by drought (Section 304.170).

FIRE PROTECTION VEHICLES

Currently, vehicles used in fire protection are exempted from certain restrictions on height, width, weight, length, and load. This bill repeals the exemption from weight and load restrictions. (Section 304.172)

The bill instead specifies that emergency vehicles designed to be used under emergency conditions to transport personnel and equipment and to "support the suppression of fires and" mitigate hazardous situations may have a maximum gross vehicle weight of 86,000 pounds as specified in the bill, "except that, such emergency vehicles shall only operate on the Dwight D. Eisenhower

National System of Interstate and Defense Highways" (Section 304.180).

ABANDONED OR DERELICT AIRCRAFT
This bill specifies that if a derelict or abandoned aircraft is discovered on an airport's property, the airport superintendent shall make a record of the date it was discovered, and inquire with the Federal Aviation Administration or an aircraft title search company as to the owner and any lienholders. The superintendent shall, within 10 days of receiving this information, notify the owner and any interested parties by certified mail of the aircraft's location, what fees and charges have accrued, that the aircraft is subject to an enforceable lien, that the airport may dispose of the aircraft if the owner or interested party does not move the aircraft and pay any accrued costs within 30 days, and that the airport may remove the aircraft in less than 30 days if it poses a danger to health or safety. If the owner of the aircraft can not be determined, the superintendent may post the required notice on the aircraft as specified in the provision (Section 305.802).
If the owner or other interested party does not remove the aircraft within 30 days and pay all accrued costs, or shows reasonable cause for a failure to do so, the superintendent may retain, trade, sell at auction, or dispose of the aircraft as specified in the bill. If the proceeds from sale of the aircraft is less than the fees and charges against it, the owner of the aircraft shall remain liable for the balance due. All expenses for the removal, storage, and sale of the aircraft shall be recoverable against the owner of the aircraft (Section 305.804)
This bill specifies a process for airport superintendents to file liens on derelict or abandoned aircraft (Section 305.806), and for release of the liens upon sale of the aircraft (Sections 305.808 and 301.810).

TEMPORARY BOATING SAFETY IDENTIFICATION CARDS
This bill extends, from December 31, 2022, to December 31, 2032, the sunset date for provisions regarding the issuance of temporary boating safety identification cards (Sections 304.172 and 304.180).

MUD FLAP REQUIREMENTS
This bill raises, from 8 inches to 12 inches, the maximum distance from the ground to which the bottom edge of dump trucks' mud flaps are required to extend (Section 307.015) .

RECREATION VEHICLE DEALERS
This bill modifies provisions requiring recreation vehicle (RV) manufacturers to repurchase RVs and certain associated items from dealers upon the termination of an RV dealer agreement.
In addition to the circumstances already specified by law, the bill

provides that the dealer may elect for the manufacturer to repurchase vehicles, parts, and equipment if the dealer voluntarily terminates the agreement in a manner permitted under the agreement, or if the manufacturer terminates or discontinues a franchise by discontinuing a line-make or by ceasing to do business in the state, or if the manufacturer changes the distributor or method of distribution of its products in this state or alters its sales regions or marketing areas within this state in a manner that eliminates or diminishes the dealer's market area.

The bill also replaces repurchase item categories for current model-year RVs, and for prior model year RVs drafted on the dealer's financing source or paid within 120 days prior to the end of the dealer agreement, with a single category consisting of all new untitled RV inventory acquired from the manufacturer in the past 18 months. The new category eliminates the specific requirement that the vehicles have not been used, and provides that the vehicles shall be repurchased at "one hundred percent of net invoice cost, including transportation, less applicable rebates and discounts to the dealer", rather than specifying that the repurchase price shall be reduced by the cost to repair any damages not required by law to be disclosed .

The manufacturer shall pay the dealer within 30 days of receipt of all items returned for repurchase as provided by law (Section 407.1329).

USE OF UNMANNED AIRCRAFT

This bill creates the offense of unlawful use of an unmanned aircraft near a correctional center, mental health hospital, or certain open air facilities, including sports stadiums holding 5,000 or more persons, as defined in the bill. A person commits such offense if he or she operates an unmanned aircraft within a distance of 400 feet of a correctional center, mental health hospital, or open air facility as specified in the bill or allows an unmanned aircraft to make contact with a correctional center, mental health hospital, or open air facility, including any person or object on the premises of or within the facility (Sections 217.850, 577.800, and 632.460).

The bill provides exceptions to the offense including a law enforcement agency, fire department, or utility company under specified circumstances. The offense of unlawful use of an unmanned aircraft near a correctional center or mental health hospital is an infraction unless the person uses the unmanned aircraft for the purpose of:

(1) Delivering a weapon or other article that may be used in such a manner to endanger the life of an offender or correctional center or mental health hospital employee, in which case it is a class B felony;

(2) Facilitating an escape from confinement, in which case it's a class C felony; or

(3) Delivering a controlled substance, in which case it is a class D felony.

Each correctional center or mental health hospital shall post a sign of the provisions of the offense. The sign must be at least 11" by 14" and be posted in a conspicuous location. The offense of unlawful use of an unmanned aircraft near an open air facility is a class A misdemeanor unless the person uses the unmanned aircraft for the purpose of:
(1) Delivering a weapon or other article that may be used in such a manner to endanger the life of an employee or guest, in which case it is a class B felony;
(2) Delivering a controlled substance, in which case it is a class D felony.

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HCS HB 2046 -- PROFESSIONAL REGISTRATION

PROFESSIONAL LICENSE RECIPROCITY (Section 324.009, RSMo)

This bill repeals Section 324.009 from HB 1511 that was signed into law by the Governor on 4/21/2020 and replaces it with a new Section 324.009.

The following individuals are currently excluded in statute from the provisions of this section: those with a certificate of license to teach in public schools; and those licensed by the Board of Registration for the Healing Arts, the Board of Nursing, the Board of Pharmacy, the State Committee of Psychologists, the Dental Board, the Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Architects, the Board of Optometry, and the Veterinary Medical Board.

This bill removes these exclusions and requires that licensure by reciprocity for these professions be the same as any other licensed profession in this state.

Currently, only a resident of Missouri is eligible to apply for a license by reciprocity, the bill allows any person to apply if the applicant for licensure by reciprocity has had a license for at least one year in another state, territory, or the District of Columbia. The applicant must be licensed at the same practice level in the other state. The bill removes the requirement that the other jurisdiction that issued the applicant's license must have substantially similar or more stringent requirements than the licensure requirements in Missouri. Instead, the bill requires that the other jurisdiction must have minimum education

requirements and, if applicable, work experience and clinical supervision requirements. If licensure in Missouri requires an examination on the law of Missouri before licensure, then an applicant can be required to take and pass an examination on the laws of Missouri before being granted a license by reciprocity.

The licensing body must review and grant or deny a license within 6 months of receiving an application under this section, unless the applicant is a military spouse, in which case the licensing body must make its decision within 30 days.

The bill explicitly prevents licensure by reciprocity if an applicant has had his or her license revoked in another jurisdiction, is currently under investigation in another jurisdiction, or has a complaint pending in another jurisdiction, or if the applicant does not have a license in good standing in the other jurisdiction or has a criminal record that would disqualify the applicant in Missouri. If another jurisdiction has taken disciplinary action against an applicant, the oversight body must determine if the cause for the disciplinary action was corrected and the matter resolved. The oversight body may deny a license by reciprocity until the matter is resolved in the other jurisdiction. This bill removes a provision that would allow an applicant to be denied a license if granting a license by reciprocity would endanger the public health, safety, or welfare.

The provisions of licensure by reciprocity do not apply to a profession that has a licensing compact with another state. A license issued by reciprocity is valid only in Missouri and does not make a licensee eligible to be part of an interstate compact.

The provisions of the section will not apply to any of the occupations listed in subsection 6 of Section 290.257 or licensed electrical contractors.

ELECTRONIC DEATH REGISTRATION SYSTEM (Section 193.145)

Currently, the medical certification from a medical provider is entered into the electronic death registration system. This bill requires an attestation from the medical provider who completed the medical certification to be entered into the system as well.

Additionally, if the State Registrar determines that information on a document or record filed with or submitted to a local registrar is incomplete, the State Registrar shall return the records or documents with the incomplete information to the local registrar for correction by the data provider, funeral director, or person in charge of the final disposition.

CORONER STANDARDS AND TRAINING COMMISSION (Section 58.035)

This bill establishes the Coroner Standards and Training Commission which shall establish training standards relating to the operation, responsibilities and technical skills of the office of county coroner. The membership of the Commission is set forth in the bill. The Commission shall establish training standards relating to the office of county coroner and shall issue a report on such standards.

COUNTY CORONER SALARY (Section 58.095)

Currently, $1,000 of a county coroner's salary shall only be payable if he or she completes at least 20 hours of classroom instruction each year relating to the operations of the coroner's office when approved by a professional association of county coroners of Missouri. This bill provides that the Coroners Standards and Training Commission shall establish and certify such training programs and their completion shall be submitted to the Missouri Coroners' and Medical Examiners' Association. Upon the Association's validation of certified training, it shall then submit the individual's name to the county treasurer and Department of Health and Senior Services indicating his or her compliance.

MISSOURI STATE CORONERS' TRAINING FUND (Section 58.208)

This bill creates the Missouri State Coroners' Training Fund. For any death certificate issued, there shall be a fee of $1 deposited into the fund which shall be used by the Missouri Coroners' and Medical Examiners' Association for the purpose of in-state training, equipment, and necessary supplies, and to provide aid to training programs approved by the Missouri Coroners' and Medical Examiners' Association. This fee shall be imposed and collected in addition to all other fees already being imposed and collected on the issuance of death certificates, resulting in the current total fee of $13 being increased to $14. Also, during states of emergency or disasters, local registrars may request reimbursement from the fund for copies of death certificates issued to individuals who are unable to afford the associated fees.

DEATH IN HOSPICE CARE (Sections 58.451 and 58.720)

When a death occurs under the care of a hospice, no investigation shall be required, under this bill, if the death is certified by the treating physician of the deceased or the medical director of the hospice as a named death due to disease or diagnosed illness. The hospice must give written notice to the medical examiner or coroner within 24 hours of the death.

The bill specifies that, if a coroner is not current on his or her training, the department may prohibit that coroner from signing any death certificates. In the event a coroner is unable to sign a death certificate, the county sheriff will appoint a medical professional to attest death certificates until the coroner can resume signing them or until another coroner is appointed or elected.

EXPANDED WORKFORCE ACCESS ACT (Section 324.025)

This bill creates the "Expanded Workforce Access Act of 2020". Beginning January 1, 2021, licensing authorities are required to grant a license to any applicant that has completed the 8th grade, completed a federally-approved apprenticeship program, and passed any necessary examination. The passing score for any examination cannot be higher than the passing score required for any non-apprenticeship license, and there cannot be an examination required for an apprenticeship license if there isn't one required for a non-apprenticeship license. For some types of apprenticeships, the number of working hours required cannot be more than the number of educational hours required for a non-apprenticeship license. These provisions do not apply to occupations specified in the bill.

PROHIBITED USES OF OCCUPATIONAL FEES (Section 324.035)

Under this bill, no board, commission, or committee within the Division of Professional Registration shall utilize occupational fees, or any other fees associated with licensing requirements, for the purpose of offering continuing education classes. Any board, commission, or committee within the division shall not contract or partner with any outside vendor or agency for such purpose.

Nothing in this bill shall be construed to preclude a board, commission, or committee within the Division from utilizing occupational licensure fees for the purpose of participating in conferences, seminars, or other outreach for the purposes of communicating information to licensees with respect to changes in policy, law, or regulations.

LICENSING OF PSYCHOLOGISTS (Sections 337.020 and 337.029)

Under current law, any person seeking to obtain a license as a psychologist shall make an application to the State Committee of Psychologists and shall pay the required application fee. The Committee is not permitted to charge an application fee until such time as the application has been approved, and if an application is denied, no application fee shall be charged. This bill repeals such provision.

Current law permits a psychologist licensed in another jurisdiction to receive a license in Missouri, provided the psychologist passes a written exam on Missouri law and regulations governing the practice of psychology. Such person must also meet one of several listed criteria set forth under current law. This bill removes one listed criteria allowing a psychologist who is currently licensed or certified as a psychologist in another jurisdiction that is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement to be eligible for a license in Missouri.

PSYCHOLOGIST CONTINUING EDUCATION REQUIREMENTS (Section 337.050)

Current law requires each licensed psychologist applying for a renewal of a license to submit proof of the completion of at least 40 hours of continuing education credit within the two-year period immediately preceding the date of the application for renewal.

This bill specifies that a minimum of three of the 40 hours of continuing education shall be dedicated to professional ethics.

ATHLETIC TRAINERS

This bill modifies provisions relating to athletic trainers, including a number of definitions.

The bill specifies that when billing a third party payer, an athletic trainer shall only bill such third party payer for services within the scope of practice of a licensed athletic trainer.

This bill requires an athletic trainer to refer any individual whose medical condition is beyond the scope of their education, training, and competence to a licensed physician.

If there is no improvement in an individual who has sustained an athletic injury within 21 days of initiation of treatment, or 10 visits, the athletic trainer shall refer the individual to a physician.

The practice of athletic training shall not include the reconditioning or rehabilitation of systemic neurologic or cardiovascular injuries, conditions, or diseases, except for an athlete participating in a sanctioned amateur or professional sport or recreational sport activity under the supervision of a treating physician.

No person shall hold himself or herself out as an athletic trainer, or to be practicing athletic training, by title or description,

unless such person has been licensed.

Currently, the Board is required to make available a roster of the name and business addresses of all athletic trainers licensed in the state. This bill removes the requirement that such information be annually prepared, and that copies be made available to any person upon request. In addition, this bill removes the requirement that the Board set the fee for the roster, and adopt an official seal.

Currently, any person seeking licensure after August 28, 2006, must be a resident, or in the process of establishing residency in the state, and have passed the National Athletic Trainers Association Board of Certification examination. This bill specifies that any person seeking licensure is required only to have passed the Board of Certification, Inc.'s examination.

All applications for initial licensure shall, under current law, be accompanied by an initial licensure fee which shall be paid to the Director of Revenue and deposited by the State Treasurer. Under this bill, all fees charged by the Board shall be collected and deposited into the Board of Registration for the Healing Arts Fund.

Currently, all licenses issued under these provisions expire on January 30 of each year. This bill changes the expiration date on all licenses pursuant to a schedule established by rule.

This bill adds a provision allowing the Board to deny a license or seek discipline if any person has practiced in the state of Missouri while no longer certified as an athletic trainer by the Board of Certification, Inc.

The bill requires the Missouri Athletic Trainer Advisory Committee to be composed of 6 members, rather than 5, to be appointed by the Board. Each member of the Committee shall be a resident of the state of Missouri for five years immediately preceding appointment, and remain a resident of Missouri throughout the term. The additional member shall be a member of the Board.

Currently, dentists licensed by the Missouri Dental Board, and optometrists licensed by the State Board of Optometry are exempt from athletic training licensing provisions. This bill specifies that dentists and optometrists are not exempt from athletic training licensing provisions.

This bill allows any athletic trainer holding a valid credential from other nations, states, or territories performing their duties for their respective teams or organizations if they restrict their duties only to their teams or organizations and only during the

course of their teams' or organizations' visit, not to exceed 30 days in one calendar year and exempts him or her from athletic training licensing provisions.

OPTOMETRISTS

This bill requires optometrists to have two hours of continuing education in Missouri jurisprudence every two years, which can count toward their current required hours.

FRESH START ACT (Section 324.012)

This bill establishes the Fresh Start Act of 2020.

Beginning January 1, 2021, no person shall be disqualified by a state licensing authority from pursuing or practicing in any occupation for which a license is required solely or in part because of a prior conviction of a crime in this state or another state, unless the crime is directly related to the duties and responsibilities for the licensed occupation.

If an individual is charged with any of the crimes set forth in the bill and is convicted, pleads guilty to, or is found guilty of a lesser included offense, and is sentenced to a period of incarceration, such conviction shall only be considered by state licensing authorities as a criminal offense that directly relates to the duties and responsibilities of a licensed profession for four years.

Beginning August 28, 2020, applicants for licensure who have pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any offenses specified in the bill may be considered by licensing authorities to have committed a criminal offense that directly relates to the duties and responsibilities of a licensed profession.

An individual with a criminal record may petition a licensing authority at any time for a determination of whether they will be disqualified from receiving a license. The licensing authority is required to inform the individual of his or her standing within 30 days of receiving the petition, and may charge a fee, no greater than $25, to recoup the costs.

If a licensing authority denies an individual a license solely or in part because of the individual's prior criminal conviction, the licensing authority shall notify the individual in writing of the reasons for the denial, that the individual has the right to a hearing to challenge the decision, the earliest date the person may reapply for a license, and that evidence of rehabilitation may be

considered upon reapplication. If the licensing authority grants a license to an individual, such decision shall be binding unless such individual commits a subsequent crime that directly relates to the occupation for which the individual is licensed, or upon discovery that such person failed to disclose information regarding a prior conviction in the license petition process.

Any written determination by the licensing authority that an applicant's criminal conviction is a specifically listed disqualifying conviction and is directly related to the duties and responsibilities for the licensed occupation shall be documented with written findings for each reason by clear and convincing evidence sufficient for a reviewing court. In any administrative hearing or civil litigation, the licensing authority shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license was sought.

This bill shall apply to any profession for which an occupational license is issued in this state, excluding peace officers or other law enforcement personnel, accountants, podiatrists, dentists, physicians and surgeons, pharmacists, nurses, veterinarians, teachers real estate brokers, real estate salespersons, or real estate broker-salespersons, or any persons under the supervision or jurisdiction of the Director of Finance, , and including any new occupational license created by a state licensing authority after August 28, 2020. Political subdivisions are prohibited from creating any new occupational licenses after August 28, 2020.

Any licensing board participating in a compact shall submit any information regarding a licensee's conviction of any criminal offense, regardless of whether or not such offense is directly related to the duties and responsibilities of the profession, to the relevant coordinated licensure information system.

Provisions of law relating to the denial of licensure, denial of license renewal, or revocation of a certificate of registration for any offense reasonably related to the qualifications, functions or duties of the occupation, an essential element of which is fraud, dishonesty, an act of violence or moral turpitude are repealed for the following occupations and professions, and a requirement that no person applying for such licensure have committed an offense directly related to the duties and responsibilities of the occupation as set forth in the bill, is added for: Acupuncturists; Anesthesiologist assistants; Architects, professional engineers, land surveyors, landscape architects; Athlete agents; Baccalaureate social workers; Barbers; Behavior analysts; Boxing and wrestling; Chiropractors; Cosmetologists; Dieticians; Electrical contractors; Endowed care cemetery operators; Geologists; Hearing aid fitters

and dealers; Interior designers; Interpreters for the deaf; Marital and family therapists; Massage therapists; Nursing home administrators; Occupational therapists; Optometrists; Physical therapists; Physical therapist assistants; Private investigators; Professional counselors; Real estate agents, brokers, appraisers, and escrow agents; Real estate appraisers and appraisal management companies; Respiratory care therapists; Social workers; Speech All applications for initial licensure shall, under current law, be accompanied by an initial licensure fee which shall be paid to the Director of Revenue and deposited by the State Treasurer. Under this bill, all fees charged by the Board shall be collected and deposited into the Board of Registration for the Healing Arts Fund.

All licenses issued under current law shall expire on January 30 of each year. Under this bill, all licenses shall expire pursuant to a schedule established by rule.

This bill adds a provision allowing the Board to deny a license or seek discipline if any person has practiced in the state of Missouri while no longer certified as an athletic trainer by the Board of Certification, Inc.

Under this bill, the Missouri Athletic Trainer Advisory Committee is to be composed of 6 members, rather than 5, to be appointed by the Board. Each member of the Committee shall be a resident of the state of Missouri for five years immediately preceding appointment, and remain a resident of Missouri throughout the term. The additional member shall be a member of the Board.

Current law exempts dentists licensed by the Missouri Dental Board, and optometrists licensed by the State Board of Optometry. Under this bill, dentists and optometrists are not exempt from athletic training licensing provisions.

Under this act, athletic trainers holding a valid credential from other nations, states, or territories performing their duties for their respective teams or organizations if they restrict their duties only to their teams or organizations and only during the course of their teams' or organizations' visit, not to exceed 30 days in one calendar year, in this state are exempt from athletic training licensing provisions.

GUIDELINES FOR REGULATION OF CERTAIN OCCUPATIONS (Section 324.047)

This bill provides that nothing in current law regarding prospective regulation of professions shall be construed to change any requirement for an individual to hold current private certification as a condition of licensure or renewal of licensure, and shall not require a private certification organization to grant

or deny private certification to any individual.

CHARITABLE PHARMARCIES (Section 338.220)

Current law sets forth classes of pharmacy permits or licenses. This bill adds "charitable pharmacy" as a Class Q pharmacy.

PHYSICIAN ASSISTANTS TO SERVE AS STAFF ON AMBULANCES (Sections 190.094, 190.105, 190.143, and 190.196)

Physician assistants may serve as staff on an ambulance. When attending a patient on an ambulance, the physician assistant shall be exempt from any mileage limitations in any collaborative practice arrangement prescribed under law.
LICENSES ACCOUNTANTS (Section 326.277, 326.280, and 326.289)

This bill amends requirements to become a licensed accountant after June 30, 2021, to also include a requirement that the applicant has completed at least 120 semester hours of college education with an accounting concentration and allows the board to obtain specified information regarding peer review from any approved American Institute for Certified Public Accountants peer review program.

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SS SCS HCS HB 2120 -- WATER SAFETY AND SECURITY

INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE FOR GAS CORPORATIONS (Section 393.1009 to 393.1015)
This bill modifies the definition of "appropriate pretax revenues" and "gas utility plant projects" for provisions of law relating to an infrastructure system replacement surcharge (ISRS) for gas corporations. By January 1, 2022, gas corporations must develop a pre-qualification process to file with the Public Service Commission for contractors to install ISRS-eligible gas utility plant projects. Any gas corporation whose ISRS is found by a court of competent jurisdiction to include illegal and inappropriate charges shall refund every current customer of the gas corporation who paid such charges, before the gas corporation can file for a new ISRS.
Any ISRS petition thereafter shall be accompanied with a verified statement that the gas corporation is using a competitive bidding process for installing no less than 25% of ISRS-eligible gas utility plant projects. Under this bill, the lowest and best bid in the competitive bidding process shall receive the contract to perform the project. The Public Service Commission shall prepare an annual report on the competitive bidding process for the General Assembly beginning December 31, 2023. The provisions of law relating to the ISRS for gas corporations shall expire on August 28, 2029.

COMMUNITY WATER SYSTEMS (Sections 640.141, 640.142, 640.144, and 640.145)

This bill specifies that within one year, every community water system in the state that uses an Internet-connected control system must create a plan that establishes policies and procedures for identifying and mitigating cyber risk. They must also create a valve inspection and a hydrant inspection program as specified in the bill and must submit a report upon the request of the Department of Natural Resources that certifies compliance with regulations regarding water quality sampling, testing, reporting, hydrant and valve inspections, and cyber security plans.

These requirements do not apply to cities with a population of more than 30,000 inhabitants, Jackson or St. Louis counties.

LEAD TESTING IN SCHOOLS (Section 701.200)

The bill permits, subject to appropriations, each school district to test a sample of a source of potable water in a public school building in that district serving students under first grade and constructed before 1996 for lead contamination as specified in the bill. The water samples may be submitted to a Department of Health and Senior Services-approved laboratory and the results of such testing may be submitted to the department. If any of the samples tested exceed the U.S. Environmental Protection Agency standard, the school district shall notify the parents or guardians of enrolled students. If the samples tested are less than or equal to the standard, the district may notify parents individually or on the school's website.

SMALL WIRELESS FACILITIES (Sections 67.5122 and 620.2459)

This provision extends program authorization for small wireless facilities from 2021 to 2025 and for the broadband Internet program in underserved areas from 2018 to 2027.

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HB 2456 -- REIMBURSEMENT ALLOWANCE TAXES

This bill extends the sunsets from September 30, 2020 to September 30, 2021, for the Ground Ambulance, Nursing Facility, Medicaid Managed Care Organization, Hospital, Pharmacy, and Intermediate Care Facility for the Intellectually Disabled Reimbursement Allowance taxes.

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CCS HCS SB 551 -- INSURANCE

RECIPIENTS OF DONATED ORGANS

Under this bill, no hospital, physician, procurement organization, or other person shall determine the ultimate recipient of an anatomical gift based upon a potential recipient's physical or mental disability or congenital condition, except to the extent that the disability or condition has been found by a physician, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift. A person with a disability or congenital condition shall not be required to demonstrate post-operative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient, compensatory support and assistance.

A court shall accord priority on its calendar and handle expeditiously any action brought to seek a remedy for purposes of enforcing compliance with this bill.

This bill shall not be deemed to require referrals or recommendations for or the performance of medically inappropriate organ transplants (Section 194.320, RSMo).

MISSOURI AUTOMOBILE INSURANCE PLAN

This bill modifies existing law regarding apportionment of substandard insurance risks to create the Missouri Automobile Insurance Plan ("MOAIP"). MOAIP is authorized to issue motor vehicle insurance policies to applicants who are unable to procure motor vehicle liability policies through ordinary methods, rather than funding issuance of the policies through other insurers. The bill further specifies that the Director of the Department of Commerce and Insurance (director) shall consult with insurance companies who have a certificate of authority to do business in the state and actively write motor vehicle liability policies. MOAIP shall perform its functions under a plan of operation approved by the director through a board of governors as specified in the plan of operation. The plan of operation shall prescribe the issuance of motor vehicle insurance policies, which may include the administration of the policies by a third party, as specified in the bill. MOAIP must obtain approval from the director before using forms, rates, or manuals. MOAIP is subject to the applicable insurance laws of this state unless specifically exempted, is required to file annual financial reports that are subject to examination by the director, and shall have the authority to make assessments on member insurance companies in proportion to their market share. Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the bill

(Section 303.200).

BREAST CANCER SCREENING

This bill modifies an insurance mandate relating to breast cancer screening and evaluation.

In addition to existing coverage requirements, the bill adds "detectors" to the X-ray equipment specifically listed as being covered under the mandate and specifies that coverage for certain breast cancer screening and evaluation services shall be provided to any woman deemed by her physician to have an above-average risk for breast cancer in accordance with American College of Radiology (ACR) guidelines, rather than specifically to women with a personal or family history of breast cancer.

Requires coverage of any additional or supplemental imaging, such as breast MRI or ultrasound, deemed medically necessary by a treating physician for proper screening or evaluation in accordance with applicable ACR guidelines. Furthermore, the bill requires coverage of ultrasound or MRI services when determined by a treating physician to be medically necessary for the screening or evaluation of breast cancer for any woman deemed by the treating physician to have an above-average risk of breast cancer in accordance with ACR guidelines for breast cancer screening.

Lastly, provisions relating to out-of-pocket expenditures are modified to apply to the additional modalities required to be covered under the bill (Section 376.782).

LIFE INSURANCE AND ORGAN DONORS

This bill prohibits insurers from using a person's status as a living organ donor as a sole factor in the offering, issuance, cancellation, price, or conditions of an insurance policy including the amount of coverage provided under an insurance policy.

Any materials related to live organ donation from a recognized live organ donation organization received by the departments of Commerce and Insurance or Health and Senior Services may be made available to the public.

INDUCEMENTS TO INSURANCE

The bill allows insurers and insurance producers to provide products or services in conjunction with a policy of property and casualty insurance for free, at a discount or at market value, if the products or services are intended to prevent or mitigate loss, provide loss control, reduce rates or claims, educate about risk of

loss, monitor or assess risk, identify sources of risk, develop strategies for the elimination or reduction of risk, or provide post-loss services.

The insurers or producers may offer gifts, goods, or merchandise containing advertising and promotional offers. These products or services shall not be considered an inducement to insurance, a rebate, nor any other impermissible consideration prohibited under law. These products or services are not required to be included in contract or policy form filings.

The Director of the Department of Commerce and Insurance may establish rules to exempt, but not restrict, additional categories of products or services with regard to the prohibitions against inducements to insurance (Section 379.402).

GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE MODEL ACT

This bill establishes the "Group Personal Lines Property and Casualty Insurance Model Act". This model act sets forth the requirements for group personal lines property and casualty insurance master policies. All eligible employees of an employer and members of a labor union or similar employee organization shall be eligible to participate unless such person rejects the coverage in writing. The master policy will be issued to the policyholder and all covered employees or members will receive a certificate of coverage setting forth a statement as to the insurance protection to which they are entitled. No master policy or certificate of insurance shall be issued or delivered in this state unless the rating plan and amendments thereto used in the determination of the master policy premium meet the applicable filing requirements in this state and the rates shall not be unfairly discriminatory if adjusted to reflect past and prospective loss experience or group expense factors.

The bill addresses policy coverage requirements, group rating requirements, the duties and limitations of insurers, solicitation, negotiation, conversion, and regulatory jurisdiction.

These provisions shall not apply to the mass marketing or any other type of marketing of individual personal lines property and casualty insurance policies, to policies of credit property or credit casualty insurance or to policies of personal automobile insurance or personal motor vehicle liability insurance.

This bill has an effective date of January 1, 2021 and any master policy that is currently in effect on that date has 12 months to comply with these provisions (Section 379.404).

MISSOURI BASIC PROPERTY INSURANCE INSPECTION AND PLACEMENT PROGRAM

This bill modifies the Missouri Basic Property Insurance Inspection and Placement Program. The bill requires 10 of the members of the program's governing committee to be elected as specified in the program's plan of operation, rather than prescribing entities from which the members shall be elected. Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the bill (Section 379.860).

MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION

The bill modifies the authority to create a medical malpractice insurance joint underwriting association by specifying that the composition of the association's board of directors shall be established by its plan of operation, and provides that member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties specified in the bill. This bill requires all policies of insurance written by the association to be written to "provide medical malpractice insurance coverage as provided in the plan of operation", rather than to "apply to injury which results from acts or omissions occurring during the policy period. The bill specifies that the association's board of directors shall be established by its plan of operation, rather than prescribing entities from which the members shall be elected (Sections 383.155, 383.160 and 383.175).

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SB 569 -- VICTIMS OF SEXUAL OFFENSES

This bill includes several provisions relating to victims of sexual offenses.

THE "JUSTICE FOR SURVIVORS ACT"

This bill establishes the "Justice for Survivors Act" and directs the Department of Health and Senior Services (DHSS) to establish a statewide telehealth network for forensic examinations of victims of sexual offenses by July 1, 2022. The director of DHSS shall select a statewide coordinator to provide mentoring, training, and assistance for medical providers conducting forensic examinations, including training on obtaining informed consent of the victim for evidence collection. The network shall also provide consultation services, guidance, and technical assistance through telehealth services by a Sexual Assault Nurse Examiner (SANE) or other similarly trained providers. The training may be offered in-person

and online. This bill also creates a fund for any grants, gifts, bequests, or donations for the development and maintenance of the network and the training offered.

Additionally, this bill requires any licensed hospital, by January 1, 2023, to perform a forensic examination using an evidentiary collection kit upon the request and consent of a victim of a sexual offense 14 years of age or older or the victim's guardian. Victims under 14 years of age shall be referred to a SAFE CARE provider; provided, that nothing in this act shall be interpreted to prevent a hospital from performing a forensic examination for a minor under 14 years of age upon the minor or guardian's request in accordance with state law and regulations.

An appropriate medical provider shall perform the examination and the hospital shall ensure that any provider performing the examination has received training conducting such examinations. If the provider is not a SANE or similarly trained physician or nurse, the hospital shall utilize telehealth services to provide guidance and support from a SANE, or other similarly trained professional, who shall observe the live examination and communicate with and support the onsite provider. The department may issue a waiver of the telehealth requirement if the hospital demonstrates a technological hardship, but such waivers shall be granted sparingly for no more than one year at a time, subject to renewal.

The department shall waive these requirements if the statewide telehealth network ceases operation, the hospital is notified, and the hospital cannot, in good faith, comply with the requirements of this act without the assistance or resources of the network. Such waiver shall remain in effect until the network resumes operation or until the hospital can comply with the requirements of this act without the assistance or resources of the network.

Current law regarding the reimbursement of such examinations and the provision of evidentiary collection kits shall apply to the forensic examinations under this act. Finally, each hospital shall, by October 1, 2021, report specified information to the department each year and the department shall make such information publicly available in aggregate, without identifying victims or medical providers(Sections 192.2520 and 197.315).

THE "SEXUAL ASSAULT SURVIVORS' BILL OF RIGHTS"

This bill also establishes the "Sexual Assault Survivors' Bill of Rights". Victims of sexual assault have a right to consult with employees or volunteers of rape crisis centers during any examination or interview, the right to receive notice of these rights prior to an examination or interview, the right to a prompt

analysis of the forensic evidence, and other specified rights (Section 595.201).

THE "MISSOURI RIGHTS OF VICTIMS OF SEXUAL ASSAULT TASK FORCE"

This bill creates the "Missouri Rights of Victims of Sexual Assault Task Force" to consist of two members from the Senate and the House of Representatives, with a member from each party, appointed by the President Pro Tem and the Speaker of the House, and other members as specified in the bill. The task force shall make certain recommendations as provided in the bill. The task force shall collect data regarding sexual assault reporting, arrest, prosecution rates, access to sexual assault victims services, and any other important data, as well as collect feedback from stakeholders, practitioners, and leadership throughout the state and local law enforcement, victim services, forensic science practitioners, and health care communities. The task force shall submit a report on its findings to the Governor and the General Assembly no later than December 31, 2021. The task force shall expire on December 31, 2021 (Section 595.202).

EVIDENTIARY COLLECTION KITS

This bill modifies current law regarding procedures for tracking evidentiary collection kits. Currently, the Attorney General shall establish an electronic tracking system for evidentiary collection kits and their components, including individual specimen containers. Additionally, current law requires the Attorney General to permit sexual assault victims or their designees access to the system to monitor the current status of their kits. This bill requires such victims to register with the system to track and obtain reports on the status and location of their kits through a secure web-based or similar system.

Appropriate medical providers, law enforcement agencies, laboratories, court personnel, persons or entities involved in the final disposition or destruction of the kits, and all other entities and persons having custody of the kits shall participate in the tracking system. The Department of Public Safety, with the advice of the Attorney General and the assistance of the Department of Health and Senior Services, shall develop and retain within the state a central repository for unreported evidentiary collection kits that is temperature-controlled to preserve the integrity of the kits and diminish degradation. Unreported kits shall be retained for 5 years; except in the case of minor victims, the retention period shall be until 5 years after the victim reaches 18 years of age. Records entered into the electronic tracking system shall be confidential and not subject to disclosure under state law.

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SS#2 SCS SB 591 -- RELATING TO CIVIL ACTIONS

This bill modifies provisions relating to civil actions, including unlawful merchandising practices and punitive damages. The provisions of this bill shall apply to any cause of action filed on or after the effective date.

UNLAWFUL MERCHANDISING PRACTICES FOR NEW RESIDENCES

This bill provides that an unlawful merchandising practice shall not include any advertisement, merchandise, or transaction in which the merchandise consists of a new residence in a transaction in which the buyer is offered and accepts an express warranty in the sale contract by the builder or by a third party warranty paid for by the builder and the sale contract includes a disclaimer. The bill defines "residence" as a single-family house, duplex, triplex, quadruplex, or unit in a multiunit residential structure in which the title to each individual unit is transferred to an owner under a condominium or cooperative system and includes common areas and common elements (Section 407.020, RSMo).

PROCEDURE FOR UNLAWFUL MERCHANDISING PRACTICES CLAIMS

A person seeking to recover damages for unlawful merchandising practices shall establish that the person acted as a reasonable consumer, that the alleged unlawful act would cause a reasonable person to enter into the transaction that resulted in damages, and the individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty. A court may dismiss a claim for failure to show a likelihood that the alleged unlawful act would mislead a reasonable consumer. In a class action, any class representative shall establish these requirements. All other members of the class shall establish individual damages in a manner determined by the court.

In addition to current damages available, a court may provide equitable relief as it deems necessary to protect the party from the unlawful acts. No action may be brought under these provisions to recover damages for personal injury or death in which a claim arises out of the rendering of or failure to render health care services. Furthermore, this bill provides that any award of attorney's fees shall bear a reasonable relationship to the amount of the judgment. However, when the judgment grants equitable relief, the attorney's fees shall be based on the amount of time

reasonably expended (Section 407.025).

PUNITIVE DAMAGES - GENERAL

This bill provides that punitive damages shall only be awarded if the plaintiff proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others, and the plaintiff is awarded more than nominal damages. Punitive damages may be awarded against an employer due to an employee's conduct in certain situations, as provided in the bill. When an employer admits liability for the actions of an agent in a claim for compensatory damages, the court shall grant limited discovery consisting only of employment records and documents or information related to the agent's qualifications.

A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. The amount of punitive damages shall not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the court determines that the trier of fact could reasonably conclude that the standards for a punitive damage award, as provided in the bill, have been met. The responsive pleading shall be limited to a response of the newly amended punitive damages claim.

Currently, if the defendant has previously paid punitive damages in another state for the same conduct, following a hearing, the court may credit the jury award of punitive damages by the amount previously paid. This bill provides that the defendant may also be credited for punitive damages paid in a federal court.

These provisions shall not apply to claims for unlawful housing practices under the Missouri Human Rights Act (Sections 510.261, 510.263, and 510.265).

PUNITIVE DAMAGES - MEDICAL MALPRACTICE

This bill modifies the definition of "punitive damages" as it relates to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services.

In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider

intentionally caused damage or demonstrated malicious misconduct. Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute intentional conduct or malicious misconduct (Sections 538.205 and 538.210).

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HCS SCS SB 599 -- FINANCIAL INSTRUMENTS

This bill modifies provisions relating to financial instruments.

LINKED DEPOSITS

Currently, the State Treasurer must create an investment policy that includes an asset allocation plan that limits the total amount of state moneys that may be invested in a particular investment. The asset allocation plan must also set diversification limits that include a restriction limiting the total amount of time deposits (not including linked deposits) of state money placed with any one single banking institution to no more than 10% of all time deposits of state money. This bill changes that limit to 15% of all time deposits of state money authorized under the asset allocation plan (Section 30.260, RSMo).

Currently, it is required that market rate is to be determined at least once a month by the State Treasurer using a process that gives consideration of prevailing rates offered for certificate of deposits by well-capitalized Missouri financial institutions and the advance rate established by the Federal Home Loan Bank of Des Moines. This bill requires the treasurer to also give consideration to any other calculation based on current market investment indicators determined by the State Treasurer (Section 30.260).

Currently, the State Treasurer may invest in linked deposits; however the total amount deposited at any one time may not exceed, in the aggregate, $720 million and no more than $110 million of the aggregate shall be used for link deposits to small businesses. This bill changes those limits to $800 million and $190 million, respectively (Section 30.753).

This bill requires the State Treasurer to give priority to the funding of renewed linked deposit applications over the funding of new linked deposit applications (Section 30.758).

MISSOURI LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM

Currently, member contributions for the Missouri Local Government Employees' Retirement System are 0% or 4% of compensation. This

bill allows each political subdivision to elect an alternative member contribution amount of 2% or 6% of compensation. If a political subdivision elected a benefit program for certain members covered concurrently by Social Security and another for those members not covered concurrently by Social Security, the political subdivision may also elect one member contribution for those members who are covered and another contribution amount for those members who are not covered (Section 70.705).

MISSOURI DEVELOPMENT FINANCE BOARD

The bill modifies the definition of "project" for purposes of the Missouri Development Finance Board Act to include any transfer, expenditure or working capital of the state, any agency or department of the state or any development agency (Section 100.255).

MISSOURI FAMILY TRUST COMPANY ACT FAMILY MEMBERS

The bill expands the types of entities that may be served by a family trust company to include an irrevocable trust of which one or more family members are the only permissible distributees (Section 362.1015).

REGISTRATION OF FAMILY TRUST COMPANIES

Currently, any family trust company that is not a foreign family trust company is required to file an organizational statement. This bill repeals that requirement and instead requires a family trust company or a foreign family trust company to pay a one-time $5,000 filing fee, file an initial registration with the Secretary of State, and file an application for a certificate of authority (Section 362.1030).

AUTHORITY TO MANAGE A FAMILY TRUST COMPANY

Currently, exclusive authority to manage a family trust company may be vested in a limited liability company if the board of directors or managers consists of three directors or managers. This bill modifies that provision by allowing exclusive authority to manage a family trust company to be vested in a limited liability company if the board of directors or managers consists of at least three directors or managers (Section 362.1037).

ORGANIZATIONAL INSTRUMENT

The bill modifies various provisions affecting organizational instruments filed by family trust companies. An organizational instrument of a family trust company must state that the purpose

for which the company is formed is to engage in any and all activities permitted under the Missouri Family Trust Company Act. Additionally, the requirement that certain relatives be designated in the organizational instrument is repealed. Such relatives are instead required to be designated in the initial and annual registration reports filed by the family trust company. Furthermore, a provision is repealed prohibiting a family trust company from having more than one designated relative (Sections 362.1015 and 362.1040).

PURCHASES MADE BY FAMILY TRUST COMPANIES WHILE ACTING AS A FIDUCIARY

The bill provides that, among other criteria, a family trust company cannot, while acting as a fiduciary, make certain purchases directly from underwriters, broker-dealers, or in the secondary market unless the company discloses its intent to do so in writing to all family members for whom the investment is to be made (Section 362.1070).

CREDIT UNIONS

The bill makes several changes to credit union regulations.

TRIPLICATE AND DUPLICATE FILINGS

Currently, credit unions are required to make certain filings with the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance in triplicate or duplicate. This bill modifies these provisions to require a single filing, rather than three or two (Sections 370.010, 370.030, 370.350, 370.355, and 370.358).

CERTIFICATE OF ORGANIZATION REQUIREMENTS

Currently, a certificate of organization is required to create a credit union to state the par value of the general shares. This bill changes that requirement to regular shares (Section 370.020).

OTHER FORMS OF DELIVERY

Currently, the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance is required to mail copies of certain filings, as well as notice to all interested parties for certain meetings pertaining to credit union business. This bill permits any other form of delivery as an alternative to mail delivery (Sections 370.071, 370.151, and 370.358).

ELECTRONIC BALLOTS

Currently, a credit union is allowed to charge initial or recurring membership fees, provided such fees have been approved by a majority of the membership in attendance at any regular or special meeting or by a mail ballot. This bill allows such fees to be charged if approved by an electronic ballot as well (Section 370.071).

Currently, the bylaws of a credit union, when approved by the membership, may provide for mail ballots for the election of officers. This bill allows for the use of electronic ballots for the election of officers as well (Section 370.170 and 370.358).

REPORTS AND EXAMINATIONS OF CREDIT UNIONS

Currently, a credit union is required to make a report of its condition on or before January 31 of each year. This bill requires reports to follow the reporting requirements of federal credit union insurers. Furthermore, it is the responsibility of the president or the president's designee to verify the report (Section 370.110).

The bill establishes a provision allowing the Director of the DCU to accept an examination of a credit union made by the federal credit union insurer instead of the director conducting an annual examination of a credit union (Section 370.120).

The bill increases the length of time a credit union has to make a report before the Director of the DCU revokes its certificate of approval from 15 days to 30 days (Section 370.130).

BOARD OF DIRECTORS MEMBERSHIP

The bill modifies provisions relating to the board membership of credit unions by repealing a provision requiring the election of a president, vice president, secretary, and treasurer and requiring instead the election of a chair, vice chair, secretary, and treasurer. Moreover, the positions of secretary and treasurer may be held by the same person if the bylaws of the credit union so provide (Section 370.190, 370.355, 370.358, and 370.359).

POWERS OF CREDIT UNIONS AND BOARDS OF DIRECTORS

In addition to powers currently granted, the board of directors of a credit union is permitted to:

(1) Authorize the employment and compensation of the chief executive officer;

(2) Approve annual operating budgets for the credit union;

(3) Declare dividends on regular shares;

(4) Accept resignations and fill vacancies of the board, credit committee, and supervisory committee;

(5) Amend the bylaws; and

(6) Hear appeals of people denied membership by the credit union.

The bill removes provisions that permit the board of directors of a credit union to:

(1) Fix the amount of the surety bond that is required of each officer having custody of funds; and

(2) Declare dividends (Section 370.200).

AUTHORIZATION OF LOANS OR ADVANCES

Currently, the credit committee or credit manager is required to approve every loan or advance made by the credit union to its members. This bill removes that provision and instead requires the credit committee or credit manager to follow the bylaws, policies, and procedures established by the board of directors regarding loans and advances (Section 370.220).

SUPERVISORY COMMITTEE MEMBERSHIP

The bill requires the supervisory committee, if the credit union bylaws so provide, to elect a chair from their own number (Section 370.230).

The bill removes a provision that bonds approved by the board of directors must be filed with the Director of the DCU within 45 days (Section 370.235).

CHARGES ON CREDIT UNION MEMBERS

Currently, credit unions are allowed to make a charge no more than once in a 12-month period to a member's share account if the member fails to keep the credit union informed about his or her current address. The bill modifies that to allow a quarterly charge and removes a provision that the charge be for the actual cost of determining the correct address. The bill also removes a provision limiting the charge to $5 (Section 370.260).

ENTRANCE OR MEMBERSHIP FEES

The bill repeals a provision allowing credit unions to charge entrance fees or membership fees on beneficiaries, trustees, or grantors of a trust, unless a member in their own right (Sections 370.270 and 370.275).

CREDIT UNIONS MAY WITHHOLD PAYMENTS

A credit union may refuse to make a payment from an account to a depositor, shareholder, any trust or payable-on-death account beneficiary, or any other person claiming an interest in the account under certain circumstances detailed in the bill, as long as the credit union notifies persons claiming an interest in the court. The credit union is not liable for damages as a result of an action taken under this provision (Section 370.288).

LOANS TO MEMBERS

The bill repeals a provision allowing members to receive a loan in installments instead of one sum if the loan is for purchasing necessary supplies for growing crops. The bill additionally repeals a provision allowing a borrower to repay the whole or any part of a loan on any day on which the credit union is open (Section 370.310).

EXPULSION OF MEMBERS

The bill allows the president or executive officer designated by the board to expel a member pursuant to the board's written policy. A person expelled may appeal such decision pursuant to such policy (Section 370.340).

FUNDS HELD IN RESERVE FOR LIFE CARE CONTRACTS

This bill specifies that the "entire amount" of entrance fee funds held in reserve for a life care contract shall be earned by "and available for release to" the care provider as provided by law, provided that the reserve and interest thereon shall not exceed "100%", rather than "one and one-half times the percentage", of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care contracts.

The requirement to hold reserve funds may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations, provided that the total amount equals or exceeds the amount otherwise required.

CREDIT INSURANCE

Currently, insurance written in connection with a loan or other credit transaction with a duration of more than 10 years is not subject to regulation. This bill increases the time period from 10 years to 15 years (Section 385.015).

TRADITIONAL INSTALLMENT LOANS - POLITICAL SUBDIVISION REGULATIONS

The bill requires any fee charged to any traditional installment loan lender, which is not charged to all lenders licensed or regulated by the Division of Finance, to be a disincentive created by a political subdivision in violation of the provisions of law governing traditional installment loan lending.

The bill additionally allows traditional installment loan lenders to charge, in addition to any other contractual fees, a convenience fee or surcharge for payments made by a debit or credit card.

Furthermore, any traditional installment loan lender who prevails against a political subdivision in an action shall receive its actually incurred costs, including attorney fees, from such political subdivision (Section 408.512).

SECURITIES

This bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act (Sections 409.605 to 409.630).

Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or commissioner may provide information on the vulnerable person to the reporting individual upon request (Section 409.610).

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days (Section 409.615).

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability (Section 409.620).

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the commissioner, or law enforcement (Section 409.625).

The commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation by September 1, 2021 (Section 409.630).

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

(1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;

(2) Consent of service of process and a payment of a fee of $100; and

(3) Payment of $50 fee for any late filing (Section 409.3-302).

This bill raises the maximum civil penalty under the Senior Savings Protection Act from $5,000 to $25,000 for each violation. The bill also raises the maximum penalty after a hearing from $1,000 to $25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from $5,000 to $15,000 for each violation (Sections 409.4-412 and 409.6-604).

MORTGAGE LOAN ORIGINATORS

Currently, mortgage loan originators have prelicensing education requirements of at least 20 hours. This bill states that a prelicensing education course completed by an applicant will not satisfy the education requirement if the course precedes an application by a certain time period, as determined by the Nationwide Mortgage Licensing System and Registry (NMLSR) (Section 443.717).

The bill requires certain persons, as outlined in the bill, related to a mortgage loan originator to furnish their fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any governmental agency for a state, national, and international criminal history background check. The bill allows the Director of the Division of Finance within the Department of Commerce and Insurance to use the NMLSR as an agent for transmitting information

to and from the Federal Department of Justice or any other governmental agency (Section 443.825).

The bill removes a provision that the director can make rules requiring advertisements of mortgage loans to include the name and office address of the licensee, which must match the name and address on file with the director (Section 443.855).

Currently, the law requires that each residential mortgage loan broker maintain at least one full-service office in Missouri. The bill allows this requirement to be waived for persons exclusively engaged in the business of loan processing or underwriting (Section 443.857).

FINANCIAL INSTRUMENTS

This bill prohibits a court from dividing securities among multiple recipients in such a way that negotiable securities become nonnegotiable securities. However, a court may divide securities into increments equal to a multiple of the allowable tradeable amount or denomination accepted by the industry, as defined in the official statement or offering document of the original security.

If these provisions prevent the distribution of property as another law requires, a court may:

(1) Distribute securities and other property in a way so that the total value of property each recipient receives is as close to the proper proportion as practicable;

(2) Liquidate the securities and distribute the resulting money among recipients; or

(3) Take any other action within its power, including a combination of the options above (Section 476.419).

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SS SB 600 -- DANGEROUS FELONIES

OFFENSE OF CONSPIRACY

Under this bill, if two or more defendants are charged with being joint participants in a conspiracy, it is presumed there is no substantial prejudice in charging both defendants in the same indictment or in their being tried together.

Currently, guilt for an offense may be based upon a conspiracy to commit an offense when a person, with the purpose of promoting the commission of the offense, agrees with another person that they will engage in conduct to commit the offense. A person cannot be

convicted of an offense based upon a conspiracy to commit the offense unless he or she commits an overt act in furtherance of the offense.

The bill modifies the offense of conspiracy. Under this bill, a person commits the offense of conspiracy if a person agrees, with one or more persons, to commit any class A, B, or C felonies, or any unclassified felonies that exceed 10 years of imprisonment, and one or more persons do any act in furtherance of the agreement. The offense of conspiracy to commit an offense is a Class C felony. Additionally, this bill repeals the provisions barring a person from being charged, convicted, or sentenced for both the conspiracy to commit the offense and the actual offense (Sections 545.140, 562.014, and 557.021).

DEFINITION OF DANGEROUS FELONY

The bill adds to the definition of "dangerous felony" the offense of armed criminal action, the offense of conspiracy to commit an offense when the underlying offense is a dangerous felony, and the offense of vehicle hijacking when punished as a class A felony (Section 556.061).

OFFENSES NOT ELIGIBLE FOR PROBATION

The bill provides that any person found guilty of, or pleading guilty to: the offense of second degree murder when the person knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person; any dangerous felony involving a deadly weapon; or any dangerous felony where the person has been previously found guilty of a class A or B felony or a dangerous felony shall not be eligible for probation, suspended imposition or execution of sentence, or a conditional release term and shall be sentenced to a term of imprisonment (Section 557.045).

OFFENSE OF VEHICLE HIJACKING

The bill creates the offense of vehicle hijacking, which is committed when an individual knowingly uses or threatens the use of physical force upon another individual to seize or attempt to seize possession or control of a vehicle. This offense is punished as a class B felony unless one of the aggravating circumstances listed in the bill was present during the commission of the offense, in which case it is punished as a class A felony (Section 570.027).

OFFENSE OF ARMED CRIMINAL ACTION

Currently, a person who commits the offense of armed criminal action is subject to a term of imprisonment of not less than 3 years for the first offense, 5 years for the second offense, and 10 years for any subsequent offense, in addition to any punishment for the crime committed by, with, or through the use of a deadly weapon.

This bill changes the prison term for this offense to three to 15 years for the first offense, five to 30 years for the second offense, and at least 10 years for any subsequent offense. These prison terms shall be served in addition to and consecutively with

any punishment for the offense committed with the use of a deadly weapon. Additionally, this bill provides that if the person convicted of armed criminal action is unlawfully possessing a firearm, the minimum prison term for the first offense is five years, the second offense is 10 years, and the third offense is 15 years.

No person convicted for the offense of armed criminal action shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for the minimum period of imprisonment (Section 571.015).

UNLAWFUL POSSESSION OF A FIREARM

Currently, the offense of unlawful possession of a firearm is a class D felony. This bill increases the penalty for unlawful possession of a firearm by a person convicted of a dangerous felony to a class C felony (Section 571.070).

CRIMINAL STREET GANGS

This bill establishes the "Missouri Criminal Street Gangs Prevention Act". The bill modifies the definition of a "criminal street gang" by defining such an organization to have as one of its motivating, rather than primary, activities the commission of one or more criminal acts. The definition of "pattern of criminal street gang activity" is modified to include "dangerous felony" as one of the offenses that would constitute a pattern.

Currently, any person who actively participates in any criminal street gang with knowledge that its members engage in a pattern of criminal street gang activity and who willfully promotes such criminal conduct shall be punished by one year in the county jail or one to three years of imprisonment in a state correctional facility. This bill provides that such a person who actively participates in any criminal street gang that engages in a pattern of criminal conduct shall be guilty of a class B felony.

Further, this bill changes the required mental state and penalty for any person who is convicted of a felony or misdemeanor that is committed for the benefit of, at the direction of, or in association with, a criminal street gang. This bill provides that such action must be with the purpose, rather than the specific intent, to promote, further, or assist in any criminal conduct by gang members. The bill repeals the applicability of this provision to a misdemeanor.

A person convicted under this bill shall serve a term in addition to and consecutively with the punishment for the felony conviction a term of two years, unless the felony is committed within 1000 feet of a school, in which case the term shall be three years. Finally, if a person is convicted of a dangerous felony under this bill, he or she shall be punished by an additional five years (Sections 578.419, 578.423, and 578.425).

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CCS HCS SB 631 -- ELECTIONS

This bill modifies election laws. In its main provisions the bill:

(1) Allows any state employee that is not subject to the Merit System or the Uniform Classification and Pay System to run for the nomination, or as a candidate for election, to a partisan political office (Section 36.155, RSMo);

(2) Allows persons required to file financial interest statements to make a written request to redact the name and employer of their dependent children under 21 years of age (Section 105.485);

(3) Creates an additional absentee ballot voting justification that applies in instances where the voter has contracted, or is at risk to contract, severe acute respiratory syndrome Coronavirus 2. At risk individuals are defined based on CDC recommendations that are specified in the bill. Notary signature verification is not required and absentee ballot statements will have a format referencing the coronavirus justification. Any ballot envelope used for mail-in ballots shall be the same as the ballot envelope used for absentee ballots, provided the envelope has options listed to clearly indicate which ballot the voter is casting. The Coronavirus justification to vote an absentee ballot will expire on December 31, 2020 (Sections 115.277, 115.289, 115.285, and 115.291);

(4) Allows any registered voter to cast a mail-in ballot during 2020 in order to avoid the risk of contracting or transmitting severe acute respiratory Coronavirus 2. Applications for a mail-in ballot may be made in person or by mail as specified in the bill. Voters casting a mail-in ballot are required to execute and submit a notarized statement under penalty of perjury with the ballot. Knowingly making, delivering, or mailing a fraudulent mail-in ballot application is a class one election offense. Additionally, the false execution of a mail-in ballot is a class one election offense. The prosecuting attorney or the attorney general may prosecute any false execution of a mail-in ballot. Upon receipt of an application, the election authority will deliver a mail-in ballot as specified in the bill. No information which encourages a vote for or against a candidate or issue shall be provided to any voter with the ballot. Ballots must be returned by mail no later than the closing of polls on election day. Any ballot received after such time shall not be counted. These provisions contain an emergency clause and expire on December 31, 2020 (Section 115.302);

(5) Changes the filing fee from $200 to $500 for candidates for statewide office or United States Senator; from $100 to $300 for candidates for Representative in Congress, circuit judge, or State Senator; and from $50 to $150 for candidates for State

Representative. County office filing fees will increase from $50 to $100. The bill also changes the filing fee from $1000 to $5000 for candidates for President to be on the presidential primary ballot (Section 115.357, 115.761);

(6) Modifies Senatorial district political party committee meeting dates. Currently, the members of each senatorial district political party committee are required to meet on the Saturday after each general election for the purpose of electing members to the state political party committee. In lieu of that requirement, this bill permits the chair of the Congressional district committee where the Senatorial district is principally located to call for a meeting to be held concurrently with the election of Senatorial officers for the purpose of electing members to the state political party committee (Section 115.621);

(7) Authorizes the Secretary of State to issue and enforce subpoenas when it is necessary to conduct an investigation of certain election offenses. These powers may only be exercised by the secretary or an authorized representative of the secretary at the specific written direction of the secretary or his or her chief deputy. Failure to comply with a subpoena may be enforced through court order. These provisions expire August 28, 2025 (Section 115.642); and

(8) Extends the sunset date of certain filing fees charged by the Secretary of State from December 31, 2021, to December 31, 2026 (Sections 347.400, 417.018).

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SS SB 644 -- PUBLIC HEALTH

SPONSOR: Hoskins

This bill modifies the definition of a "service dog" to be a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. This bill also adds "mental health service dog" to the definition of a service dog. A mental health service dog, or a psychiatric service dog, is a dog that has been individually trained for an owner who has a psychiatric disability, medical condition, or developmental disability. The dog is trained to perform tasks to mitigate or assist the owner with difficulties directly related to the disability (Section 209.200).

Under this bill, any person knowingly misrepresenting a dog as a

service dog, as described in the bill, for the purposes of receiving accommodations regarding service dogs under the Americans with Disabilities Act shall be guilty of a class C misdemeanor for the first offense and a class B misdemeanor for each subsequent offense. Additionally, any person knowingly misrepresenting any animal as an assistance animal, as described in the bill, for the purposes of receiving accommodations regarding assistance animals under the Fair Housing Act or the Rehabilitation Act shall be guilty of a class C misdemeanor for the first offense and a class B misdemeanor for each subsequent offense (Section 209.204).
The Governor's Council on Disability shall prepare and make available online a placard for posting in a front window or door of a business stating that service dogs are welcome and that misrepresenting a service dog is a violation of Missouri law. The council shall also prepare and make available a brochure detailing guidelines regarding service dogs and assistance animals (Section 209.204).

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CCS HCS SCS SB 653 -- FOSTER CARE

DATA SHARING

This bill allows the Children's Division within the Missouri Department of Social Services to exchange electronic reports and share data with any entity as needed to protect children and access other social services. The department is required to implement a system allowing the electronic exchange of such data by August 28, 2020 (Sections 210.116 and 210.652, RSMo).

CHILD PROTECTION AND CASE MANAGEMENT

This bill requires the division to complete a standard risk assessment within 72 hours of a report of abuse or neglect as part of its structured decision-making protocols. The division and the Office of the State Court Administrator shall develop a joint safety assessment tool before December 31, 2020 to replace the current risk assessment. The safety assessment tool must be implemented before January 1, 2022.

The bill elaborates on the principles guiding the child protection system to prioritize home and community-based services and supports successful outcomes. The department is required to create a response and evaluation team that reviews and evaluates the practice of the division and any contractors. This system will be used to support contract negotiations, placement and referrals, and enhanced payments.

Finally, the bill creates new procedures for “temporary alternative

placement agreements” that allow voluntary placement of a child with a relative in cases where a parent is temporarily unable to care for a child but removal from the home, through court action, is not appropriate (Sections 210.112, 210.123, 210.145, and 210.790).

This bill modifies the "Foster Parents' Bill of Rights" to require the Children's Division and its contractors to provide written notification of these rights at the time the child is placed with a prospective foster parent, even if the parent has yet to be licensed as a foster parent. Additionally, the division and its contractors shall provide full access to the child's medical, psychological, and psychiatric records, including records prior to the child coming into care, at the time the child is placed with a foster parent. Access shall include providing information and authorization for foster parents to review or to obtain the records directly from the service provider. The bill also requires the court to allow foster parents to testify in any proceedings involving a child in their care and if not given that opportunity, they may seek remedial writ relief pursuant to Missouri Supreme Court Rules 84, 94, and 97. No docket fee shall be required to be paid by the foster parent and the division shall not remove a child from placement with the foster parent based solely upon the foster parent's filing of a petition for a remedial writ or while the writ is pending, unless removal is necessary for the health and safety of the child.

The bill also prohibits the division from requiring foster parents to conduct or be present for supervised visits with a child in their care and states that the court shall only require a child to appear in court if necessary for making a decision and after considering all of the information provided by the division and family support team, the appropriateness of the courtroom environment, and the hardship to the child and current guardians (Sections 210.566 and 211.135 and 211.171).

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HCS SB 656 -- VETERANS

SPONSOR: Cierpiot

This bill modifies numerous provisions related to veterans.

HONOR GUARD APPRECIATION DAY

This bill designates every August 19th as "Honor Guard Appreciation Day" in Missouri (Section 9.302, RSMo).

GHOST ARMY RECOGNITION DAY

This bill designates every June 6th as "Ghost Army Recognition Day" in Missouri (Section 9.305).

BUDDY CHECK 22 DAY

This bill designates the 22nd day of each month as "Buddy Check 22 Day" to encourage citizens check in on veterans and to raise awareness of the problem of suicide facing military personnel (Section 9.311).

MISSOURI KOREAN WAR VETERANS MEMORIAL

This bill designates the Missouri Korean War Veterans Memorial located in Kansas City, Missouri as the official Korean War veterans memorial for the state of Missouri (Section 10.230).

OFFICIAL GOLD STAR MEMORIAL MONUMENTS OF THE STATE OF MISSOURI

This bill designates the Gold Star Families Memorial Monument at the College of the Ozarks, the Gold Star Memorial Monument and Pavilion at Jefferson Barracks Park, and the Gold Star Memorial Monument at the Missouri Capitol in Jefferson City as official Gold Star Memorial Monuments of the state of Missouri (Section 10.237-10.239).

ATTORNEY GENERAL MILITARY PROGRAM

This bill requires the Attorney General to design, implement, and oversee a program to assist members of the military and their families in finding and retaining legal counsel. The program shall be marketed to attorneys in addition to military families and shall publicize pro bono legal services available to military families. The Attorney General shall collaborate with the Missouri Bar in the administration of the program (Section 27.115).

JOB OPPORTUNITIES FOR VETERANS

This bill requires the Missouri Veterans' Commission to seek out business organizations that are interested in hiring veterans for available job opportunities (Section 42.017).

TEACHER LICENSING FOR MILITARY SPOUSES

This bill provides that a provisional certificate issued to any qualified military spouse who is hired to teach in a Missouri public school is valid for three years. Additionally, within 30 days after receiving an application and of completion of the required background check, the State Board of Education shall issue

a full certificate of license to a spouse of a member of the Armed Forces who meets certain residence requirements if all necessary fees are paid and all other licensing requirements are met (Section 168.021).

STATE OMBUDSMAN & VETERANS' HOMES

This bill authorizes the Office of State Ombudsman for Long-Term Care Facility Residents to receive, respond to, and resolve complaints made by or on behalf of residents of Missouri veterans' homes relating to the action, inaction, or decisions of providers or agencies affecting resident health, safety, welfare, or rights. The State Ombudsman or representatives of the office, in addition to all current authority granted by state statute, shall have the authority to enter any veterans' home and have access to residents in a reasonable time and manner and have access to resident records with the permission of the resident or the resident's guardian. Additionally, the office shall analyze and monitor the development and implementation of federal, state, and local law and regulations regarding Missouri veterans' homes (Section 192.2305).

DEVELOPMENTAL DISABILITY SERVICES FOR MILITARY FAMILIES

This bill provides that Missouri members of the Armed Forces and their immediate family shall have their eligibility for MO HealthNet developmental disability services temporarily suspended for any period of time during which such person temporarily resides outside of Missouri for reasons relating to military service. Upon returning to the state, the eligibility shall be immediately restored. If the military member or an immediate family member is not a legal resident of this state, but would otherwise be eligible for developmental disability services, the individual shall be eligible for such services during the time in which the individual is temporarily present in Missouri for reasons relating to military service (Section 208.151).

SERVICE DOGS AND ANIMALS

This bill modifies the definition of a "service dog" to be a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Additionally, this bill adds "mental health service dog" to the definition of a service dog. A mental health service dog, or a psychiatric service dog, is a dog that has been individually trained for an owner who has a psychiatric disability, medical condition, or developmental disability. The dog is trained to perform tasks to mitigate or assist the owner with difficulties directly related to the disability.

Under this bill, any person knowingly misrepresenting a dog as a service dog, as described in the bill, for the purposes of receiving accommodations regarding service dogs under the Americans with Disabilities Act shall be guilty of a Class C misdemeanor for the first offense and a Class B misdemeanor for each subsequent offense. Additionally, any person knowingly misrepresenting any animal as an assistance animal, as described in the bill, for the purposes of receiving accommodations regarding assistance animals under the Fair Housing Act or the Rehabilitation Act shall be guilty of a Class C misdemeanor for the first offense and a Class B misdemeanor for each subsequent offense. Any person violating these provisions shall also be civilly liable for any actual damages resulting from such misrepresentation.

The Governor's Council on Disability shall prepare and make available online a placard for posting in a front window or door of a business stating that service dogs are welcome and that misrepresenting a service dog is a violation of Missouri law. The Council shall also prepare and make available a brochure detailing guidelines regarding service dogs and assistance animals (Sections 209.150 to 209.204).

CHILD PROTECTION FOR MILITARY FAMILIES

This bill requires the Children's Division to attempt to ascertain whether the suspected perpetrator or any person responsible for the care, custody, and control of a child is a member of the Armed Forces after receiving a report on alleged abuse or neglect of a child.

This bill allows appropriate staff of the United States Department of Defense to receive access to investigation records contained in the central registry of the Children's Division and records maintained by the Children's Division within the Department of Social Services following a report of child abuse and neglect in cases where the suspected perpetrator or any person responsible for the care, custody, and control of the subject child is a member of the Armed Forces.

Additionally, this bill requires the division to report findings in cases where the person responsible for the care, custody, and control of a child is a member of the Armed Forces to the most relevant family advocacy program or other relevant person authorized by the United States Department of Defense to receive reports (Sections 210.109 and 210.150).

PURPLE HEART SPECIAL LICENSE PLATES

Currently, a recipient of the Purple Heart medal shall be charged only regular registration fees to be issued Purple Heart special license plates from the Department of Revenue.

This bill exempts Purple Heart special license plates from vehicle registration fees for the first set of the plates issued to an eligible person.

Under the bill, any registered co-owner of the vehicle shall be entitled to use and renew the plates until he or she remarries, or for the rest of his or her life if he or she does not remarry (Section 301.451).

CENTRAL MISSOURI HONOR FLIGHT SPECIAL LICENSE PLATES

This bill establishes a "Central Missouri Honor Flight" special license plate. The plate requires an annual emblem-use fee of $25, paid to Central Missouri Honor Flight and to be used for financial assistance to transport veterans to Washington D.C. to view veteran memorials, in addition to the $15 special personalized license plate fee and other requirements and fees as provided by law (Section 301.3069).

MERITORIOUS SERVICE MEDAL SPECIAL LICENSE PLATES

This bill establishes a "Meritorious Service Medal" special license plate. Applicants shall provide proof of having been awarded the medal as required by the Director of the Department of Revenue. There shall be an additional fee for issuance of the plates equal to the $15 special personalized license plate fee. Meritorious Service Medal license plates shall not be transferable to any other person, except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person (Section 301.3159).

CONCEALED CARRY PERMITS FOR MILITARY MEMBERS

This bill authorizes an active military member of the armed forces to renew his or her permit to carry a concealed weapon by mail. A permit may be picked up in person or sent by certified mail (Section 571.104).

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HCS SB 676 -- TAXATION

This bill modifies several provision relating to taxation

PROPERTY TAX ASSESSMENTS

Currently, the St. Louis County Assessor is required to conduct a physical inspection of residential real property prior to increasing the assessed valuation of a property by more than 15% since the last assessment, and requires written notification of such inspection. This bill applies such provision to all counties (Section 137.115).

For property tax assessments and appeals of such assessments, currently, in first class counties, taxpayers shall appeal to the County Board of Equalization by the third Monday in June and the County Board of Equalization shall meet on the first Monday in July. This bill modifies such deadlines to provided that taxpayers shall appeal to the board by the second Monday in July, and the board shall meet on the third Monday in July (Sections 137.385 and 138.090).

For property assessment appeals to the boards of equalization in the City of St. Louis, St. Charles County, and St. Louis County, currently provides that the assessor shall have the burden to prove that the valuation does not exceed the true market value of the property. Additionally, if a physical inspection of a property is required for assessment, the assessor shall have the burden to prove that such inspection was performed. If the assessor fails to provide sufficient evidence that the inspection was performed, the property owner shall prevail on the appeal as a matter of law.

This bill applies such provisions to appeals in all counties for which the increase in assessed valuation for the subject property exceeds 15% (Section 138.060).

INCOME TAXES

Currently, a taxpayer is allowed to deduct from his or her Missouri adjusted gross income a portion of his or her federal income taxes paid. This bill provides that federal income tax credits received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act shall not be considered when determining the amount of federal income tax liability allowable as a deduction under current law (Section 143.171).

Currently, taxpayers are required to itemize deductions to include any federal income tax refund amounts in his or her Missouri adjusted gross income if such taxpayer previously claimed a deduction for federal income tax liability on his or her Missouri income tax return. This bill provides that any amount of a federal income tax refund attributable to a tax credit received under the CARES Act shall not be included in the taxpayer's Missouri adjusted gross income (Section 143.121).

TAXATION OF PARTNERSHIPS

This bill requires taxpayers in a partnership to report and pay any tax due as a result of federal adjustments from an audit or other action taken by the IRS or reported by the taxpayer on an amended federal income tax return. Such report shall be made to the Department of Revenue on forms prescribed by the department, and payments of additional tax due shall be made no later than 180 days after the final determination date of the IRS action, as defined in the bill.

Partners and partnerships shall also report final federal adjustments as a result of partnership level audits or administrative adjustment requests, as defined in the bill. Such payments shall be calculated and made as described in the bill. Partnerships shall be represented in such actions by the partnership's state partnership representative, which shall be the partnership's federal partnership representative unless otherwise designated in writing.

Partners shall be prohibited from applying any deduction or credit on any amount determined to be owed under this bill.

The department shall assess additional tax, interest, and penalties due as a result of federal adjustments under this bill no later than three years after the return was filed, as provided in current law, or one year following the filing of the federal adjustments report under this bill. For taxpayers who fail to timely file the federal adjustments report as provided under this bill, the department shall assess additional tax, interest, and penalties either by three years after the return was filed, one year following the filing of the federal adjustments report, or six years after the final determination date, whichever is later.

Taxpayers may make estimated payments of the tax expected to result from a pending IRS audit. Such payments shall be credited against any tax liability ultimately found to be due. If the estimated payments made exceed the final tax liability, the taxpayer shall be entitled to a refund or credit for the excess amount, as described in the bill.

The provisions of this bill shall apply to any adjustments to a taxpayer's federal taxable income or federal adjusted gross income with a final determination date occurring on or after January 1, 2021 (Section 143.425).

TERRORIST ATTACK VICTIMS TAX RELIEF

This bill provides an income tax exemption for victims who die as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September 11, 2001, or as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002. Such income tax exemption shall apply for the period beginning in the tax year such injuries occurred and ending in the tax year of such victim's death.

The tax exemption provided by this bill shall not apply to the amount of any tax imposed which would be computed by only taking into account the items of income, gain, or other amounts determined to be taxable under federal law, as described in the bill.

This bill shall not apply to any individual as a participant or conspirator in any such attack or a representative of such an individual.

Provisions in current law requiring a claim for refund to be filed within three years from the time the return is filed shall not apply to refunds claimed pursuant to this bill (Section 143.991).

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SS SCS SB 718

This bill has numerous provisions related to military affairs.

MILITARY FAMILY MONTH

The bill designates November as "Military Family Month" in Missouri to recognize the daily sacrifices of military families. (Section 9.297, RSMo)

BUDDY CHECK 22 DAY

This bill designates the 22nd day of each month as "Buddy Check 22 Day" to encourage citizens check in on veterans and to raise awareness of the problem of suicide facing military personnel (Section 9.300).

ATTORNEY GENERAL MILITARY PROGRAM

The bill requires the Attorney General to design, implement, and oversee a program to assist members of the military and their

families in finding and retaining legal counsel. The program shall be marketed to attorneys in addition to military families and shall publicize pro bono legal services available to military families. The Attorney General shall collaborate with the Missouri Bar in the administration of the program and shall utilize existing staffs, volunteers, and programs. The Department of Defense and military facilities in Missouri are encouraged to promote this program. Additionally, any additional funds needed to implement this program shall be subject to appropriations(Section 27.115).

SURVIVING SPOUSES IN THE MERIT SYSTEM

This bill modifies the definition of "surviving spouse" in provisions of law relating to the merit system (Section 36.020).

DEPARTMENT OF MILITARY FORCES

This bill creates the Department of Military Forces which shall be headed by the Adjutant General and shall administer the militia and programs of the state relating to military forces. The office of Adjutant General and the militia are transferred from the Department of Public Safety to the Department of Military Forces.

These provisions are contingent upon the passage of a constitutional amendment that provides for the establishment of the Department of Military Forces (Sections 41.035 and 650.005).

TEACHER LICENSING FOR SPOUSES OF MILITARY MEMBERS

This bill provides that a provisional certificate issued to any qualified spouse of a member of the military who is hired to teach in a Missouri public school is valid for three years.

Additionally, within 30 days after receiving an application and of completion of the required background check, the State Board of Education shall issue a full certificate of license to a spouse of an active duty member of the Armed Forces who meets certain residence requirements if all necessary fees are paid and all other licensing requirements are met (Section 168.021).

STATE OMBUDSMAN AND VETERANS' HOMES

This bill authorizes the Office of State Ombudsman for Long-Term Care Facility Residents to receive, respond to, and resolve complaints made by or on behalf of residents of Missouri veterans' homes relating to the action, inaction, or decisions of providers or agencies affecting resident health, safety, welfare, or rights. The State Ombudsman or representatives of the Office, in addition

to all current authority granted by state statute, shall have the authority to enter any veterans' home and have access to residents in a reasonable time and manner and have access to resident records with the permission of the resident or the resident's guardian. Additionally, the office shall analyze and monitor the development and implementation of federal, state, and local law and regulations regarding Missouri veterans' homes (Section 192.2305).

DEVELOPMENTAL DISABILITY SERVICES FOR MILITARY FAMILIES

This bill provides that Missouri members of the Armed Forces and their immediate family shall have their eligibility for MO HealthNet developmental disability services temporarily suspended for any period of time during which such person temporarily resides outside of Missouri for reasons relating to military service. Upon returning to the state, the eligibility shall be immediately restored. If the military member or an immediate family member is not a legal resident of this state, but would otherwise be eligible for developmental disability services, the individual shall be eligible for such services during the time in which the individual is temporarily present in Missouri for reasons relating to military service (Section 208.151).

CHILD PROTECTION FOR MILITARY FAMILIES

This bill requires the Children's Division to attempt to ascertain whether the suspected perpetrator or any person responsible for the care, custody, and control of a child is a member of the Armed Forces after receiving a report on alleged abuse or neglect of a child.

This bill allows appropriate staff of the United States Department of Defense to receive access to investigation records contained in the central registry of the Children's Division and records maintained by the Children's Division following a report of child abuse and neglect in cases where the suspected perpetrator or any person responsible for the care, custody, and control of the subject child is a member of the Armed Forces.

Additionally, this bill requires the division to report findings in cases where the person responsible for the care, custody, and control of a child is a member of the Armed Forces to the most relevant family advocacy program or other relevant person authorized by the United States Department of Defense to receive reports (Sections 210.109 and 210.150).

MOTOR VEHICLE INSURANCE

This bill requires the Adjutant General to ensure that members of

the state military forces receive notice of certain protections relating to motor vehicle insurance, and encourages the secretaries of the branches of the United States Armed Forces to likewise notify members under their jurisdictions.

The bill specifically notes that the term "adverse underwriting decision" shall include a decision to charge an increased premium (Sections 379.122).

MISSOURI WORKS PROGRAM

This bill modifies the Missouri Works program to provide that, for qualified military projects, the benefit shall be based on part-time and full-time jobs created by the project (Sections 620.2005 and 620.2010).

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SCS SB 739 -- ANTI-DISCRIMINATION AGAINST ISRAEL ACT

This bill creates the "Anti-Discrimination Against Israel Act". This act prohibits public entities from entering into certain contracts with a company unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of goods or services from the State of Israel or any company, or person or entity, doing business with or in the State of Israel. Any contract failing to comply with the provisions of this bill shall be void against public policy.

This bill does not apply to contracts with a total potential value of less than $100,000 or to contractors with fewer than 10 employees.

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SB 913 -- PEER REVIEW FOR DESIGN PROFESSIONAL

This bill relates to provisions of the peer review process for architects, landscape architects, professional land surveyors, and professional engineers that are set to expire on January 1, 2023. This bill repeals the expiration of those provisions.

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SJR 38 -- SPECIAL INTEREST

Upon voter approval, this proposed Constitutional amendment

modifies laws pertaining to the influence of special interest groups on the state legislature.

GIFT BAN

Currently, a member of the General Assembly, a staff member of a member of the General Assembly, or a person employed by the General Assembly to receive a gift of no more than $5 per occurrence from a lobbyist or lobbyist principal. This amendment prohibits all such gifts from lobbyists or lobbyist principals (Article III, Section 2(b)).

CAMPAIGN CONTRIBUTION LIMITATIONS

The bill provides that in any election to the office of State Senator, the amount of contributions made to or accepted by any candidate or candidate committee from any person other than the candidate shall not exceed $2,400, rather than $2,500. The amendment additionally repeals a provision subjecting campaign contribution limitations for state senate and state house races to inflation (Article III, Section 2(c)).

REDISTRICTING

Independent Bipartisan Citizens Commissions

Currently, the nonpartisan state demographer is responsible for preparing new redistricting plans for the House of Representatives and the Senate, which plans may be disapproved by bipartisan commissions nominated by the major political parties and appointed by the Governor. This bill repeals the post of nonpartisan state demographer and gives all redistricting responsibility to the currently-existing commissions, renamed as the House Independent Bipartisan Citizens Commission and the Senate Independent Bipartisan Citizens Commission, respectively. The membership of each commission is modified such that each commission consists of members (20 each, under the current Congressional apportionment) to be appointed by the Governor from lists provided by the state committee and Congressional district committees of each of the two political parties casting the highest vote for Governor at the last preceding gubernatorial election. For each commission, each state committee shall submit a list of five nominees to the Governor and each Congressional district committee shall submit a list of two nominees to the Governor. The Governor shall select two nominees from each list submitted by each state committee and one nominee from each list submitted by each Congressional district committee. No member of either commission may be a member of the other commission (Article III, Sections 3 & 7).

REDISTRICTING CRITERIA

The order of priority for the criteria that is to be used in preparing redistricting plans are as follows:

(1) No district shall be drawn in a manner which would result in the denial or abridgment of the right of any person to vote on account of race or color. Furthermore, no district shall be drawn such that members of a community of protected citizens have less of an opportunity than other members of the electorate to participate in the political process and elect representatives of their choice.

(2) Districts shall be as nearly equal as practicable in population and shall be drawn on the basis of one person, one vote. Districts shall not deviate from the ideal population by more than 1%, provided that deviation may be up to 3% if necessary to follow political subdivision lines.

(3) Districts must be established in a manner that complies with all requirements of federal law, specifically including the Voting Rights Act of 1965.

(4) Districts must consist of contiguous territory as compact as may be, to the extent permitted in conjunction with the above criteria.

(5) To the extent permitted in conjunction with the above criteria, communities must be preserved, as described in the amendment.

(6) Districts must be drawn to achieve partisan fairness and competitiveness, provided that all preceding criteria shall take precedence. Furthermore, current law provides that, in any redistricting plan, the difference between the total "wasted votes" of the two major political parties divided by the total votes cast for such parties shall be as close to zero as practicable. This amendment modifies that requirement by prohibiting such difference from exceeding 15%.

REDISTRICTING TIMELINE

Each commission must file a tentative redistricting plan and proposed maps with the Secretary of State within five months of appointment. A final statement of such plan and maps must be filed within six months with the approval of at least seven-tenths of the respective commission (14 out of 20 members under the current Congressional apportionment). If either commission fails to file its plan with the Secretary of State within such time period, then the commission failing to do so shall stand discharged and the

respective chamber of the General Assembly shall be redistricted using the same criteria listed above by a commission of six members appointed by the Supreme Court from among the judges of the appellate courts of the state of Missouri.

ACTIONS CHALLENGING REDISTRICTING PLANS

Any action expressly or implicitly alleging that a redistricting plan violates the Missouri Constitution, federal law, or the United States Constitution must be filed in the Circuit Court of Cole County and shall name the respective commission that approved the challenged plan as a defendant. In order to bring such an action, a plaintiff must be a Missouri voter who resides in a district that exhibits an alleged violation and who would be remedied by a differently drawn district. If the court renders a judgment in which it finds that a completed redistricting plan exhibits the alleged violation, the court may only adjust those districts necessary to bring the map into compliance. The Supreme Court shall have exclusive appellate jurisdiction upon the filing of a notice of appeal within 10 days after the judgment has become final.

2020 MMACJA SUMMER CONFERENCE
LEGISLATIVE UPDATE

BILLS SENT TO THE GOVERNOR
GOVERNOR ACTION AS OF JULY 10, 2020
(to be updated in August 2020)

HB1330 - Authorizes the conveyance of certain state property

Sponsor
Rep. Rudy Veit (R)
Summary

This bill authorizes the Governor to sell, transfer, grant, convey, remise, release, and forever quitclaim all interest in specific properties, described in the bill, along with an easement, located in Cole County, Missouri; the City of Fulton, Callaway County; St. Francois County, Ste. Genevieve County, and the City of Moberly, Randolph County.

There is an emergency clause for the conveyances in St. Francois County.

Last Action
05/27/2020 G - Sent to the Governor

HB1386 - Modifies provisions relating to lobbyists

Sponsor
Rep. Jim Murphy (R)
Summary

This bill modifies the definition of "legislative lobbyist" for purposes of lobbying laws to exclude legislative liaisons. In these provisions "legislative liaison" is defined as any state employee hired to communicate with members of the General Assembly on behalf of any elected official of the state; the judicial branch of state government; or any department, agency, board, or commission of the state, provided such entity is a part of the executive branch of state government. Any state employee employed as a legislative liaison who performs lobbying services for any other entity shall register as a lobbyist with respect to such lobbying services.

Last Action
05/27/2020 G - Sent to the Governor

HB1387 - Establishes the "Authorized Electronic Monitoring in Long-Term Care Facilities Act"

Sponsor
Rep. Jim Murphy (R)
Summary

This bill establishes the "Authorized Electronic Monitoring in Long-Term Care Facilities Act", which specifies the parameters of electronic monitoring by residents of long-term care facilities (Section 198.610, RSMo).

The bill describes unauthorized monitoring and prohibits the facility and the Department of Health and Senior Services from being civilly or criminally liable for such monitoring (Section 198.614).

The bill requires the department to promulgate rules that prescribe a form to be completed and signed by every resident that explains the liabilities and rights for residents who place covert or authorized electronic monitoring devices, and the procedures to request authorized monitoring (Section 198.616).

The bill also describes who may consent to electronic monitoring (Section 198.618) and how that monitoring shall be requested, including the form, with the consent of any other residents in the room and the conditions of their consent (Section 198.620).

The bill requires the facility and any resident conducting electronic monitoring to post a conspicuous sign indicating that rooms, or the room of the resident is being monitored. It also states that facilities must accommodate requests for monitoring and shall not refuse to admit an individual that requests electronic monitoring. For purposes of abuse and neglect, the bill outlines time lines and reporting requirements for people who might view footage on behalf of a resident and specifies when a video recording may be used as evidence. Finally, the bill specifies when the department may sanction facilities or their administrators who violate these provisions (Sections 198.622 to 198.628).

The bill also makes it a class B misdemeanor to intentionally hamper, obstruct, tamper with, or destroy devices installed or data collected under these provisions, or to conduct unauthorized monitoring after a written warning to cease and desist from that conduct (Section 198.632).

Last Action
05/27/2020 G - Sent to the Governor

HB1414 - Modifies provisions relating to the protection of children

Sponsor
Rep. Sheila Solon (R)
Summary

PROTECTION OF FOSTER CHILDREN

This bill requires Children's Division within the Department of Social Services to complete a standard risk assessment within 72 hours of a report of abuse or neglect as part of its structured decision-making protocols for responding to abuse and neglect. The division and the Office of the State Court Administrator shall develop a joint safety assessment tool before December 31, 2020 to replace the current risk assessment. The safety assessment tool must be implemented before January 1, 2022.

The bill also prohibits the division from requiring foster parents to conduct or be present for supervised visits with a child in their care and states that the court shall only require a child to appear in court if necessary for making a decision and after considering all of the information provided by the division and family support team and the appropriateness of the courtroom environment and the hardship to the child and current guardians. However, the bill also

clarifies that according to the foster care bill of rights, a child maintains a right to attend any hearing (Sections 210.145, 210.566, and 211.135, RSMo).

HOMELESS YOUTH

A homeless child or youth or an unaccompanied youth, or their parent or guardian, shall not be charged a fee for copies of birth records for the child or youth. An unaccompanied youth shall not be required to have the consent or signature of his or her parent or guardian for a copy of his or her own birth record. Only one birth certificate under this provision shall be provided at no cost and additional certificates shall be provided upon payment of the statutory fee. Additionally, any homeless child or homeless youth shall be eligible for MO HealthNet benefits, subject to federal approval of a state plan amendment.

Finally, a minor's ability to contract shall include obtaining mental health services if he or she meets certain qualifications specified in current law. Status as an unaccompanied youth may be demonstrated by a letter verifying the minor is an unaccompanied youth signed by:

(1) A director or designee of a governmental or nonprofit agency that receives public or private funding to provide services to homeless persons;

(2) A local education agency liaison for homeless children or youth designated under federal law or a school social worker or counselor; or

(3) A licensed attorney representing the minor in any legal matter(Sections 193.265, 208.151, and 431.056).

Any entity or licensed provider who contracts with a minor under this bill shall be immune from any civil or criminal liability based on the entity's or provider's determination to contract with the minor, unless the entity's or provider's determination is the result of the entity's or provider's negligence or willful or wanton acts or omissions.

CHILD CARE FACILITY DEFINITIONS AND BACKGROUND CHECKS

This bill provides new definitions of "child care", "child care facility", and "child care provider". Specifically, this bill defines "child care" for the purpose of child care facility licensure as the care of a child away from his or her own home for any part of the 24-hour day for compensation or otherwise. "Child care" is a voluntary supplement to parental responsibility for the child's protection, development, and supervision. A "child-care facility" shall be a house or other place conducted or maintained by any person who advertises or holds himself or herself out as providing child care for more than six children or for more than three children under two years of age, for any part of the 24-hour day, for compensation or otherwise.

It also provides definitions for "Montessori school", "neighborhood youth development program", "nursery school", "person", "school system", and "summer camp" and clarifies other conditions and requirements related to defining what entities need to be licensed to provide child care. This bill removes the requirement to renew licenses every two years and updates the requirements for background checks to agree with the change in raising the age for certification as an adult in the commission of a crime to age 18, updates the list of crimes that makes a person ineligible to be a child care provider, and clarifies the procedures and

designated department to oversee the background check process for licensed, licensed-exempt and unlicensed facilities.

Finally, the bill also updates the appeal process for a person denied a license based on the results of a background check (Sections 210.025, 210.201, 210.211, 210.221, 210.252, 210.254, and 210.1080).

CHILD PROTECTION FOR MILITARY FAMILIES

This bill requires the Children's Division within the Department of Social Services upon receipt of a report of child abuse to attempt to ascertain whether or not the suspected perpetrator is a member of the military, and the Children's Division must report its findings to the most relevant program authorized by the Department of Defense or the most relevant person authorized by the Department of Defense (Sections 210.109 and 210.150).

FOSTER CARE REFORM

These sections elaborate on the principles guiding the child protection system to prioritize home and community-based services and supports and successful outcomes. To that end, it requires creation of a response and evaluation team that will review and evaluate the practice of the division and any contractors. This system will be used to support contract development, placement and referrals, and enhanced payments.

The bill also creates "temporary alternative placement agreements" that allow voluntary placement of a child with a relative in cases where a parent is temporarily unable to care for a child, but removal from the home, through court action is not appropriate.

The bill establishes protections from civil liability for employees of state-funded child assessment centers. Any adult whose parents have had their parental rights terminated through a nonconsensual termination of parental rights proceeding shall have access to their complete records, including all identifying information (Sections 210.112, 210.123, 210.135, and 453.121). FOSTER PARENT RIGHTS This bill modifies the "Foster Parents' Bill of Rights" to require the Children's Division and its contractors to provide written notification of these rights at the time the child is placed with a prospective foster parent, even if the parent has yet to be licensed as a foster parent. Additionally, the Division and its contractors shall provide full access to the child's medical, psychological, and psychiatric records, including records prior to the child coming into care, at the time the child is placed with a foster parent. Access shall include providing information and authorization for foster parents to review or to obtain the records directly from the service provider. If a foster parent alleges a court failed to allow the foster parent to be heard orally or in writing in a court hearing involving a child in his or her care, the foster parent may seek remedial writ relief pursuant to Missouri Supreme Court Rules 84, 94, and 97. No docket fee shall be required to be paid by the foster parent. The Division shall not remove a child from placement with the foster parent based solely upon the foster parent's filing of a petition for a remedial writ or while the writ is pending, unless removal is necessary for the health and safety of the child (Sections 210.566 and 211.171).

SUBSTANCE ABUSE TREATMENT WAIVER

This provision allows the Department of Social Services to seek a waiver of the Institutions for Mental Disease (IMD) exclusion for the comprehensive substance abuse treatment and rehabilitation program as administered by the Department of Mental Health. Operating through a global pandemic disclosed a need for additional flexibility in administering this program in accordance with federal requirements (Section 1).

Last Action
05/27/2020 G - Sent to the Governor

HB1467 - Modifies provisions relating to Public Employee Retirement Systems.
Sponsor
Rep. Patricia Pike (R)
Summary

This bill modifies the Missouri Local Government Employees Retirement system (LAGERS) member employer contribution elections for retirement benefit funding.

Currently, an employer can elect to cover the full cost of funding the retirement benefit of its eligible employees or require all eligible employees to contribute 4% of their gross wages to help pay for the retirement benefit.

This bill expands the available contribution options by allowing employers to additionally elect a 2% or 6% contribution rate that all eligible employees would make to help pay for the retirement benefit. The bill allows a political subdivision to elect one benefit program for members whose employment is concurrently covered by federal Social Security and a different benefit program for members whose employment is not concurrently covered by federal Social Security, as provided in Section 70.655, RSMo. The political subdivision is also allowed, by majority vote of the governing body, to make one election concerning member contributions for members concurrently covered by federal Social Security and one election concerning member contributions for members whose employment is not concurrently covered by federal Social Security. (Section 70.705).

STATE EMPLOYEE RETIREMENT SYSTEMS

Currently, if a member elected a joint & survivor benefit payment option at retirement, survivor benefits are paid out to the spouse designated, regardless of marital status of the member and spouse.

Under this bill, any member of the Missouri Department of Transportation and Highway Patrol Employees' Retirement System and the Missouri State Employees' Retirement System receiving a reduced annuity with his or her spouse as the designated beneficiary may cancel his or her election and receive a monthly benefit, with no survivor benefits, equal to the actuarial equivalent of the joint and survivor benefit payment if the marriage is dissolved on or after January 1, 2021, and the dissolution decree provides for the sole retention of the annuity and that the spouse shall not be entitled to survivor benefits. In no event shall the monthly benefit be more than the single life annuity amount entitled to the member as if his or her spouse had died on the date of the dissolution.

Additionally, a member who divorced their designated spouse before January 1, 2021, may have their annuity adjusted if the dissolution decree provided for sole retention of the

retirement benefits by the member and the member obtained an amended dissolution decree after January 1, 2021. If the dissolution decree did not provide for the sole retention by the member, the member may also adjust their retirement allowance if an amended dissolution decree providing for the member's sole retention is obtained.

Any increase shall be prospective and shall be effective the first of the month following the date of receipt by the system of a certified copy of the dissolution decree (Sections 104.010, 104.090, 104.395, 104.1027).

MISSOURI STATE EMPLOYEES RETIREMENT SYSTEM

This bill allows vested members of the Missouri State Employees' Retirement System covered under the closed plan or Year 2000 plan who are no longer employees to elect to receive a lump sum payment equal to 60%, or a higher percentage chosen by the board, of the present value instead of a deferred annuity if the member is employed in a position covered by the judicial retirement plan. Any member making an election shall forfeit all creditable service, future rights in the annuity, and long-term disability benefits. If the member subsequently becomes an employee entitled to a benefit from the system, such a member shall be considered a new employee under the Missouri State Employees' Plan 2011 (Section 104.1089).

PUBLIC SCHOOL RETIREMENT SYSTEM

This bill exempts information pertaining to the salaries and benefits of the executive director and employees of the Board of the Public School Retirement System of Missouri from being confidential (Section 169.020).

Last Action
05/27/2020 G - Sent to the Governor

HB1511 - Modifies provisions relating to professional licensing reciprocity

Sponsor
Rep. Steven Lynch (R)

Summary

This bill allows any resident or nonresident military spouse to apply for an occupational license in Missouri, as long as he or she holds a valid current license issued by another state or territory of the United States. The bill includes resident and nonresident spouses of active duty members who have been transferred or are scheduled to be transferred to Missouri, who have been transferred or are scheduled to be transferred to an adjacent state and are domiciled in Missouri, who have moved to Missouri on a permanent change-of-state basis, who are permanent residents of Missouri, or who have Missouri as their home of record.

This bill requires an oversight body to issue a license within 30 days for any resident or nonresident military spouse who meets the requirements of licensure reciprocity.

Currently, the law shall be interpreted so as to imply no conflict between it and any compact, or reciprocity agreement with other states in effect on August 28, 2018. This bill specifies that should any conflict arise between the reciprocity section and the provisions of any compact or reciprocity agreement, the provisions of such compact or agreement shall prevail.

This bill specifies that a resident or nonresident military spouse is eligible, under this bill, to apply for a license with any board, department, agency, or office of a jurisdiction that issues licenses.

This bill repeals the provisions relating to the issuance of a temporary courtesy license to a nonresident spouse of an active duty member of the military.

Last Action
04/21/2020 G - Signed by the Governor

HB1655 - Modifies provisions relating to official documents

Sponsor
Rep. Hannah Kelly (R)
Summary

SECRETARY OF STATE RECORDS

This bill requires the Secretary of State to allow public inspection of the original rolls of laws passed by the General Assembly. The Constitution of Missouri shall be made available in print and online (Sections 2.020, 2.110).

NOTARY PUBLIC REGULATIONS

The bill modifies provisions relating to the certification of documents, including processes for the Recorder of Deeds and procedures for notaries public. In its main provisions the bill:

(1) Changes laws relating to land conveyances and recorder of deeds. If a document is required by law to be an original, on paper, or in writing for the purpose of recording, the document may be in electronic form. Furthermore, a requirement of notarization for a document or signature is satisfied if the electronic signature of the authorized person is attached to or logically associated with the document or signature. The bill also allows satisfaction of the document requirements if a paper copy of an electronic document bearing an electronic signature along with all other required information is certified by a notary. The form and requirements of such certification are provided for in this bill. The notary shall confirm that the electronic document contains an electronic signature that is capable of independent verification, shall personally print or supervise the printing of the document, and shall not make any changes to the document. A document conveying real property, recorded by a clerk, and not certified by a notary according to the bill shall put third persons on notice of the conveyance and is effective as if the document had been certified. The bill does not apply to the recording of certain plats, maps, or surveys of real property. For the purposes of proving or acknowledging a written instrument affecting real property by an officer, a person may appear before the officer by physical presence or by means of communication technology. (Sections 59.568, 59.569, and 442.145);

(2) In order to be commissioned as a notary, a person must be at least 18 years old, reside or have a regular place of work or business in Missouri, be a legal resident of the United States, read and write English, pass an examination, and submit an application with the Secretary of State. The Secretary is given discretion to deny any application for reasons specified in the bill. Once the Secretary has granted an application for a notary commission, the commission

shall be presented to the appropriate county clerk and the applicant shall take an oath of office and present a $10,000 bond within 60 days of the commission being issued. Notary commissions last for a period of four years, or until the commission is revoked by the Secretary or resigned by the person holding the commission. A notary commission issued to a person prior to the effective date of this bill shall not be invalidated. However, once such commission expires, the bill applies to an application for any new commissions (Sections 486.605 to 486.635);

(3) Authorizes a notary, judge, clerk, or deputy clerk of any Missouri court, or other person authorized by Missouri law to perform a specific notarial act to perform specified notary services (Sections 486.640 to 486.695, Sections 486.740 to 486.770, and Section 486.1160)

(4) Restricts the manner in which a notarial act may be performed. Additionally, for every notarial act involving a document, a notary shall properly complete a notarial certificate which shall include specified information. The maximum fees that can be charged for performing a notarial act range from $1 to $5, depending on the type of notarial act requested. The bill permits a notary to charge a travel fee. However, a notary may not discriminate in the charging of fees based on the characteristics of the principal if such attributes would be a basis for employment discrimination under Missouri law. In addition to the other fees allowed, a remote online notary may charge a remote online notary transaction fee. The bill also has specific requirements for any notarized document sent to another state or nation;

(5) Enacts notary journal requirements. Notaries are required to keep a chronological journal of notarial acts for a period of no less than 10 years following the last notarial act. The bill stipulates the information that is required to be recorded in the journal. The journal may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, pursuant to subpoena power as authorized by law, or surrendered at the direction of the Secretary. Nothing in this provision shall prevent a notary public from seeking appropriate judicial protective orders. Requirements for electronic journals are specified (Sections 486.700 to 486.715, Sections 486.945 to 486.950, and Sections 486.1180 to 486.1190);

(6) Requires notaries to use an official seal when notarizing a paper document and the bill regulates what information must be present on and adjacent to the seal. At the expiration of the notary commission or upon resignation of the commission, the seal must be destroyed. If the notary commission has been revoked, the seal shall be delivered to the Secretary for disposal. Failure to do so could result in a fine of $500, at the discretion of the secretary (Sections 486.725 to 486.735);

(7) Requires vendors and manufacturers to register with the secretary prior to selling or manufacturing notary seals. Furthermore, prior to providing a notary seal to a purchaser claiming to be a notary, the vendor or manufacturer shall require such person to present a notary commission. A vendor or manufacturer failing to comply with these requirements shall be subject to a fine of $1,000 for each violation. For multiple violations, a vendor's permission to sell or manufacture notary seals may be withdrawn by the Secretary (Section 486.735);

(8) Stipulates that notaries may be liable for damages proximately caused by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization. A surety for a notary's bond shall be liable to any person for damages proximately caused that

person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability shall not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants. An employer of a notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer. Civil liability applies to electronic notaries and remote online notaries (Section 486.805);

(9) Authorizes the Secretary to revoke or suspend notary commissons under certain circumstances. The Secretary is required to revoke a notary commission if the notary fails to maintain a residence or a regular place of work or business in this state or if the notary fails to maintain status as a legal resident of the United States (Sections 486.810 to 486.820);

(10) Creates the misdemeanor crime on the part of a notary if he or she fails to require the presence of a principal at the time of a notarial act or to identify a principal through personal knowledge or satisfactory evidence, or executes a false certificate. A notary who performs any other act prohibited by the bill or fails to perform a required act shall be guilty of a misdemeanor, punishable by a fine of no more than $500 or imprisonment of not more than 6 months, or both. Any person who is not a notary and who knowingly acts as or otherwise impersonates a notary shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding $500 or imprisonment for not more than six months, or both. Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary or who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding $500 (Section 578.700);

(11) Creates requirements for electronic notaries. In addition to courses required for commissioning as a notary, an electronic notary shall complete a course consisting of notarial laws, procedures, and ethics relating to electronic notarization. Allows acknowledgements, jurats, signature witnessings, and copy certification to be performed electronically (Sections 486.900 to 486.1010); and

(12) Regulates remote online notaries. The Secretary shall develop and maintain standards for remote online notarization. In developing standards, the Secretary shall consider the standards established by the National Association of Secretaries of State and national standard setting bodies. The Secretary shall also approve remote online notarization software as long as the software meets certain requirements defined in the bill. In addition to courses required for commissioning as a notary, an remote online notary shall complete a course consisting of notarial laws, procedures, and ethics relating to remote online notarization. The bill provides that acknowledgments and jurats may be performed remotely online by using communication technology (Sections 486.1100 to 486.1205).

Last Action
07/06/2020 G - Signed by the Governor

HB1682 - Prohibits vapor product usage in indoor areas of public schools or on school buses

Sponsor

Rep. David Wood (Resigned) (R)

Summary

DESIGNATIONS FOR HEALTH AWARENESS

This bill designates the month of May as "Mental Health Awareness Month" , the month of July as "Minority Mental Health Awareness Month", The month of September as "Deaf Awareness Month" and "Infant and Maternal Mortality Awareness Month", the month of August as "Minority Organ Donor Month" which will encourage citizens to participate in appropriate awareness and educational activities that emphasize the importance of good mental health and the effects of mental illness on Missourians. The bill also establishes the 22nd day of each month as "Buddy Check Day" to raise awareness to the cause of veteran suicides (RSMo. Sections 9.152, 9.166, 9.182, 9.300, and Section 3 and 4)).

LONG TERM DIGNITY ACT

This bill establishes the "Long-Term Care Dignity Act". Beginning January 1, 2021, an individual may open a long-term care savings account and designate the account to be used to pay a designated qualified beneficiary's eligible long-term care expenses.

Also creates an income tax deduction for contributions to a longterm savings account in the amount of 100% of the contribution, not to exceed the taxpayer's Missouri adjusted gross income for the tax year the deduction is claimed and not to exceed $8,000 for an individual or $16,000 for married individuals filing jointly. Moneys withdrawn from the account shall be subject to recapture and the account holder subject to a penalty if it has been less than one year since the first deposit in the account or the moneys have been used for any purpose not specified (Sections 143.1160, 191.1601,191.1603, and 191.1607).

ACCESS TO AUTOMATED EXTERNAL DEFIBRILLATOR

Requires any training or course in cardiopulmonary resuscitation to include instruction in the proper use of an automated external defibrillator (Sections 190.092 & 190.1005).

PHYSICIAN ASSISTANTS SERVING AS STAFF ON AMBULANCES

A physician assistant is included in the list of those that are qualified to meet the requirement to be in patient compartment in ambulance with volunteer staff, additionally, a physician assistant is exempt from mileage limits in ambulance in a collaborative practice arrangement (Sections 190.094, 190.105, 190.143, and 190.196).

PROVISIONS RELATING TO DO NOT RESUSCITATE ORDERS

This bill modifies provisions related to outside the hospital donot-resuscitate orders from inside and outside of the state of Missouri. Emergency medical services personnel are authorized to comply with such order from another state if such order is on a standardized written form as outlined in the bill. Emergency medical services personnel do not have to

comply with this order if the patient or patient's representative expresses to such personnel the desire to be resuscitated (Sections 190.606 & 190.612).

PROHIBITION OF VAPOR PRODUCTS

This bill prohibits the use of vapor products, as defined in Section 407.925, RSMo, in any indoor area of a public school or school bus. The bill allows a school board to adopt additional policies relating to vapor product, and removes the penalty language from the current statute (Section 191.775).

POSTPARTUM DEPRESSION CARE ACT

This bill creates the "Postpartum Depression Care Act" and specifies that all hospitals and ambulatory surgical centers that provide labor and delivery services shall, prior to discharge following pregnancy, provide pregnant women and, if possible, new fathers and other family members information about postpartum depression, including its symptoms, treatment, and available resources. The Department of Health and Senior Services, in cooperation with the Department of Mental Health, shall provide written information that the hospitals and ambulatory surgical centers may use and shall include such information on its website (Sections 191.940 and 208.151)

MEDICINAL MARIJUANA TELEHEALTH

The bill adds physician certifications for medicinal marijuana to telemedicine language requiring physicians to interview a patient face to face before providing a certification (Section 191.1146).

OMBUDSMAN LONG-TERM CARE

This bill extends the current powers and duties, as defined in the bill, of the Office of State Ombudsman for Long-Term Care Facility Residents to include Missouri veterans' homes (Section 192.2305).

ADMINISTRATION OF CONTROLLED SUBSTANCES

This bill permits a non-dispensing practitioner to accept the unused controlled substance when the controlled substance is prescribed to the patient and delivered to the practitioner to administer to the patient. Practitioners are required to maintain records and secure the medication. (Section 195.070)

MODIFIES PROVISIONS RELATING TO DRUG PRESCRIPTIONS

This bill prohibits the requirement of a prescription for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in law.

This provision shall expire when state's methamphetamine laboratory seizure incidents, as reported by the Missouri State Highway Patrol, exceed 300 incidents in a year.

All current local ordinances and regulations regarding prescriptions for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in law that are in effect prior to August 28, 2020, shall be void and of no effect on August 28, 2020.

This bill also changes the amounts that can be sold, dispensed, or otherwise provided to a person in a 30-day period without a prescription from a maximum of 9 grams to a maximum of 7.2 grams and adds an annual limit of 43.2 grams. (Sections 195.417 & 579.060)

MEDICAL MARIJUANA EDIBLES

This bill prohibits the sale of edible marijuana-infused products, packaging, or logos in the shape of a human, animal, or fruit, but geometric shapes shall be permitted. Each package, or packages within a package, containing 10 or more milligrams of tetrahydrocannabinols (THC) shall be stamped with a universal symbol and the amount of THC, as described in the bill.

Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services (DHSS) found to have violated this provision shall be subject to sanctions, including an administrative penalty (Section 195.805).

MEDICAL MARIJUANA BACKGROUND CHECKS

The bill specifies that DHSS shall require all officers, managers, contractors, employees, and other support staff of licensed or certified medical marijuana facilities, and all owners of such facilities who will have access to the facilities or the facilities' supply of medical marijuana, to submit fingerprints to the Highway Patrol for a state and federal criminal background check. The Highway Patrol shall notify the Department of any criminal history record information or lack thereof discovered on the individual. All such records shall be accessible and available to the Department.

This provision has an emergency clause (Section 195.815).

EPINEPHRINE AUTO-INJECTOR DEVICES

This bill adds "qualified first responders" to the definition of "authorized entities" authorized to dispense prescription epinephrine auto-injectors (epi-pens).

Additionally, current law requires certain emergency health care entities and other organizations to maintain epi-pens according to the rules and regulations of DHSS. Under this bill, the director of DHSS, if a licensed physician, or a licensed physician operating on behalf of the director, may issue a statewide standing order for epi-pens for adult patients to fire protection districts in nonmetropolitan areas of Missouri.

Possession and use of epi-pens under this bill is limited to only such qualified first responders who have completed a training course and maintain the epi-pens pursuant to Department rules.

Additionally, every use of an epi-pen shall be reported to a emergency health care provider.

Under this bill, the use of an epi-pen is considered first aid or emergency treatment for purposes of liability under the law and shall not constitute the unlawful practice of medicine.

This bill further establishes the "Epinephrine Auto-injector Devices for Fire Personnel Fund". The Fund shall be used solely by the department for the purpose of providing epi-pens to qualified first responder agencies pursuant to this bill (Sections 196.990 and 321.621).

STATE-SETTLED OPIOID CAUSES OF ACTION

Under this bill, the proceeds of any monetary settlement or portion of a global settlement between the Attorney General and any drug manufacturers, distributors, or combination thereof to resolve an opioid-related cause of action in a state or federal court shall only be utilized to pay for opioid addiction treatment and prevention services and health care and law enforcement costs related to opioid addiction treatment and prevention. Under no circumstances shall such moneys be utilized to fund other services, programs, or expenses not reasonably related to opioid addiction treatment and prevention.

This bill creates the "Opioid Addiction Treatment and Recovery Fund", which shall consist of the settlement funds, as well as any other appropriations, gifts, grants, donations, or bequests. To be administered by various departments as outlined and specified in the bill (Section 196.1050).

DISSOLUTION OF A HOSPITAL DISTRICT

This bill provides that, upon the dissolution of a county hospital district in Ripley County levying a sales tax for the purpose of funding the district, the sales tax shall be automatically repealed and 25% of the funds remaining in the special trust fund shall be distributed to the county public health center and 75% shall be distributed to a federally qualified health center located in the county (Section 205.202).

PERSONAL CARE ASSISTANCE SERVICES

This bill requires the consumer to permit the vendor to comply with its quality assurance and supervision process, including annual face-to-face home visits and monthly case management activities. During the home visits, the vendor shall document if the attendant providing services as set forth in the plan of care and report to the department if the attendant is not providing services, which may result in a suspension of services to the consumer.

The bill repeals language permitting DHSS to establish certain pilot projects for telephone tracking systems. This bill also requires vendors to notify consumers during orientation that falsification of personal care attendant time sheets shall be considered and reported as fraud.

The bill specifies that a vendor shall submit an annual financial statement audit or annual financial statement review performed by a certified public accountant to the department upon request.

Beginning July 1, 2022, the department shall require the vendor to maintain a business location in compliance with any and all city, county, state, and federal requirements. Additionally, this bill requires the department to create a consumer-directed services division

provider certification manager course. No state or federal funds shall be authorized or expended for personal care assistance services if a direct employee of the vendor is conducting the home visit and is also the personal care attendant, unless such person provides services solely on a temporary basis on no more than three days in a 30 period.

Currently, a consumer's services may be discontinued if the consumer has falsified records. This bill adds language to include providing false information of his or her condition, functional capacity, or level of care needs.

This bill requires the consumer, the personal care attendant, and the vendor to report to the department if the consumer's health or his or her ability to self-direct care has significantly changed.

Finally, the Department shall, subject to appropriations, develop an interactive assessment tool for utilization by the Division of Senior and Disability Services when implementing the assessment and authorization process for home and community-based services authorized by the division(Sections 208.909, 208.918, 208.924, and 208.935).

REMOTE DISPENSING SITE PHARMACIES

Under this bill, an intern pharmacist working at a remote dispensing site pharmacy may be remotely supervised by a pharmacist working at a supervising pharmacy. The bill defines a "remote dispensing site pharmacy" as any location in Missouri where the practice of pharmacy occurs, that is licensed as a pharmacy to dispense prescription drugs, and is staffed by one or more qualified pharmacy technicians or intern pharmacists who are supervised by a pharmacist at a supervising pharmacy through a continuous, real-time audio and video link.

A supervising pharmacy that operates a remote dispensing site pharmacy, and the remote dispensing site pharmacy, shall be licensed as a pharmacy by the Board of Pharmacy as described in the bill.

The remote dispensing site pharmacy shall be under the supervision and control of a supervising pharmacist employed by the supervising pharmacy. Such pharmacist shall not be required to be immediately physically present to supervise any activities at the remote dispensing site pharmacy, but shall make monthly visits to the remote dispensing site pharmacy to ensure compliance with this bill.

A pharmacist shall not be designated or act as the supervising pharmacist for more than two remote dispensing site pharmacies at one time. A pharmacist at the supervising pharmacy shall verify each prescription before such prescription leaves the remote dispensing site pharmacy. Verification of prescriptions shall occur as set forth in the bill.

Unless a pharmacist is onsite at the remote dispensing site pharmacy, counseling shall be done by a supervising pharmacist via a HIPAA-compliant continuous real-time video and audio link prior to any drug or medical device being dispensed. Such system shall retain the initials or unique identifier of the pharmacist performing the consultation. The pharmacist shall have access to all relevant patient information maintained by the remote dispensing site pharmacy.

A remote dispensing site pharmacy shall be located at least 10 miles from an existing retail pharmacy unless such pharmacy is part of a community mental health center, federally qualified health center, rural health clinic, or outpatient clinical setting, or if the applicant with the proposed remote dispensing site pharmacy demonstrates that the pharmacy will promote public health. A remote dispensing site pharmacy shall be staffed by a pharmacist for at least 8 hours per month who shall have certain responsibilities set forth in the bill.

If the average number of prescriptions dispensed per day by the remote dispensing site pharmacy exceeds 150, over a 90-day period, such remote pharmacy shall apply to the Board for licensure as a Class A, B, or C pharmacy within 10 days.

Unless otherwise approved by the Board, the supervising pharmacy shall be located in Missouri and within 50 miles of a remote dispensing site pharmacy to ensure sufficient support and to ensure that necessary personnel or supplies may be delivered within a reasonable period of time.

This bill adds "remote dispensing site pharmacy" as a Class R pharmacy (Sections 338.035, 338.210, 338.215, 338.220, and 338.260).

CHARITABLE PHARMACIES

Current law sets forth classes of pharmacy permits or licenses. This bill adds "charitable pharmacy" as a Class Q pharmacy (Section 338.220).

LICENSING REQUIREMENTS FOR NURSING HOME ADMINISTRATION

This bill expands the criteria for qualification for a nursing home administrator to include an associates degree and provides that emergency license for administrators be limited to 120 days with criteria outlined in bill (Section 344.030).

SPEECH PATHOLOGISTS OR AUDIOLOGISTS

This bill modifies current language to allow applicants for speech pathologist or audiologist to hold a master's or doctoral degree from a program that was awarded "accreditation candidate" status, or is accredited as set forth under current law (Section 345.050).

REIMBURSEMENT OF HEALTH CARE CLAIMS

Currently, a health carrier that has not paid a claimant on or before the 45th processing day from the date of receipt of the claim shall pay the claimant interest and a penalty based on the unpaid balance of the claim as of the 45th processing day. On claims exceeding $35,000 on the unpaid balance of the claim, the health carrier under this bill shall pay the claimant 1% interest per month and a penalty in an amount equal to 1% of the claim per day for a maximum of 100 days and thereafter shall pay the claimant 2% interest per month.

Currently, any claim or portion of a claim that has been properly denied before the 45th processing day shall not be subject to interest or penalties. Under this bill, denied claims before the 45th processing day shall begin to accrue interest and penalties during the claimant's appeal with the health carrier until such claim is paid, if the claim is approved. If the appeal does not result in an approved claim and a petition is filed with a court of

competent jurisdiction to recover payment of the claim, interest and penalties shall continue to accrue for no more than 100 days from the day the first appeal was filed with the health carrier and continue to accrue until 10 days after the court finds that the claim shall be paid to the claimant (Section 376.383).

PHARMACY BENEFITS MANAGERS

Under this bill, pharmacy benefits managers (PBM) shall notify health carriers in writing of any conflict of interest, including, but not limited to, common ownership or any other relationship between the PBM and any other health carrier with which the PBM contracts.

Additionally, this bill specifies that no entity subject to the jurisdiction of Missouri shall act as a PBM without a license issued by the Department of Commerce and Insurance. The Department may cause a complaint to be filed with the Administrative Hearing Commission against the holder of a PBM license for the reasons specified in the bill. Proceedings shall be conducted before the Administrative Hearing Commission as provided by law. The department may take action against a PBM's license, as specified in the bill, upon a finding that a rule has been violated (Sections 376.387 and 376.393).

BREAST CANCER SCREENING INSURANCE

In addition to existing coverage requirements, the bill adds "detectors" to the X-ray equipment specifically listed as being covered under the current insurance mandate.

The bill also specifies that coverage for certain breast cancer screening and evaluation services shall be provided to any woman deemed by her physician to have an above-average risk for breast cancer in accordance with American College of Radiology (ACR) guidelines, rather than specifically to women with a personal or family history of breast cancer.

The bill also requires coverage of any additional or supplemental imaging, such as breast MRI or ultrasound, deemed medically necessary by a treating physician for proper screening or evaluation in accordance with applicable ACR guidelines.

Furthermore, the bill requires coverage of ultrasound or MRI services when determined by a treating physician to be medically necessary for the screening or evaluation of breast cancer for any woman deemed by the treating physician to have an above-average risk of breast cancer in accordance with ACR guidelines for breast cancer screening.

Lastly, provisions relating to out-of-pocket expenditures are modified to apply to the additional modalities required to be covered under the bill (Section 376.782).

LIFE CARE CONTRACTS

This bill specifies that the "entire amount" of entrance fee funds held in reserve for a life care contract shall be earned by "and available for release to" the care provider as provided by law, provided that the reserve and interest thereon shall not exceed 100%, rather than one and one-half times the percentage, of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care contracts. The requirement to hold reserve funds may be met in whole or in part by other reserve funds held

for the purpose of meeting loan obligations, provided that the total amount equals or exceeds the amount otherwise required(Section 376.945).

HEALTH CARRIER CLAIM OVERPAYMENT

This bill provides that an amount that a health carrier claims was overpaid for a health care service can only be collected, withheld, or recouped from the provider or third party to which the overpaid amount was originally paid. The notice of withholding or recoupment shall inform the provider or third party of the health care service, date of service, and patient for which the recoupment is being made (Section 376.1345).

HEALTH CARE PRACTITIONER CREDENTIALING

This bill provides that if a health carrier receives a credentialing application, the carrier shall have 10 days from sending notice of the application's receipt to request additional information from the practitioner. The application shall be deemed complete upon receipt of the additional information. Within two working days of receipt of the additional information, the carrier shall send notice to the practitioner that the practitioner has submitted a completed application. If the carrier does not request additional information, the application shall be deemed completed as of the date the notice of receipt was sent by the carrier to the practitioner.

The bill specifies that the carrier's credentialing decision and notification to the practitioner of such decision shall be made within 60 days of receipt of the "completed credentialing application", rather than 60 "business" days of receiving the practitioner's "credentialing information".

If a practitioner's application is approved, the carrier shall provide payments for covered health services performed by the practitioner during the credentialing period if the services were on behalf of an entity that had a contract with the carrier during the credentialing period. A health carrier shall not require a practitioner to be credentialed to receive payments for covered health services if the practitioner is providing coverage for an absent credentialed practitioner during a temporary period as outlined in the bill.

All claims eligible for payment under these provisions shall be subject to the prompt payment statute(Section 376.1578).

CONFIDENTIALITY OF CERTAIN HEALTH RECORDS

Under this bill, any reports or records in the possession of the DHSS's Missouri State Public Health Laboratory, which were the result of testing performed at the request of any municipal, county, state, or federal law enforcement agency, shall be considered closed records until such investigation becomes inactive (Section 610.100).

COVID 19 TESTING

If a health care provider recommends a Covid 19 test it shall be provided at no cost to the patient. DHS may utilize federal funds or grants to cover the cost of such testing (Section 1).

This provision contains an emergency clause.

PROGRAM WAIVER

The bill allows DSS to seek a waiver of the Institutions for Mental Disease exclusion for substance treatment and rehabilitation programs (Section 2).

Last Action
05/27/2020 G - Sent to the Governor

HB1711 - Allows certain shelf stable packaged foods to be donated to and distributed by charitable organizations.
Sponsor
Rep. Tim Remole (R)
Summary
This bill adds shelf stable packaged venison to the foods that a charitable or not-for-profit organization can distribute in good faith with limited liability arising from an injury or death due to the condition of the food.
Last Action
05/27/2020 G - Sent to the Governor

HB1768 - Specifies that the Department of Economic Development shall maintain a record of all funds obtained under the Broadband Internet Grant Program
Sponsor
Rep. Louis Riggs (R)
Summary

This bill modifies provisions related to communication services.

NEIGHBORHOOD IMPROVEMENT DISTRICTS AND COMMUNITY IMPROVEMENT

DISTRICTS

This bill modifies the powers of neighborhood improvement districts and community improvement districts to include the ability to partner with telecommunications companies or broadband service providers in order to construct or improve telecommunications facilities (Sections 67.453 and 67.1461, RSMo).

LINEAR FOOT FEES

A grandfathered political subdivision shall not charge a linear foot fee for use of its right-of-way to a small local exchange telecommunications company as of December 31, 2019, provided that the small local exchange telecommunications company is providing Internet access to customers within rural areas of the state (Section 67.1846).

UNIFORM SMALL WIRELESS FACILITY DEPLOYMENT ACT

This bill extends the sunset date for the Uniform Small Wireless Facility Deployment Act from January 1st, 2021, to January 1st, 2025 (Section 67.5122).

OPERATING DESIGNATIONS OF CERTAIN TELECOMMUNICATIONS COMPANIES

Under the bill, any corporation formed for the purpose of being a telephone or telegraph company or operating under the General and Business Corporation Law of Missouri, may amend the articles of association to include a statement referencing the corporation's operating designation as an exempt organization as described in the Internal Revenue Code (Section 392.020).

RURAL BROADBAND ACCESS FUNDING

This bill requires the Department of Economic Development to maintain a record of all federal grants awarded to entities for the purposes of providing, maintaining, and expanding rural broadband in the state. In cases in which federal funds have been awarded but later retained, withheld, or otherwise not distributed to the original grant recipient due to failure to meet performance standards or other criteria, the Department of Economic Development will seek to have the funds awarded to another eligible, qualified Missouri broadband provider (Sections 620.2451).

Under this bill, a grant recipient of funds from the Missouri Broadband Grant Program must return such funds if the grant recipient fails to establish retail broadband Internet speeds of at least 25 megabits per-second download and three megabits per-second upload (Section 620.2456).

Currently, the broadband Internet grant program for unserved and underserved areas of the state will expire on August 28, 2021. This bill extends the program until June 30, 2027 (Section 620.2459).

Last Action
07/02/2020 G - Signed by the Governor

HB1854 - Modifies provisions relating to political subdivisions

Sponsor
Rep. Donna Pfautsch (R)
Summary

AUDITS OF COUNTY OFFICES (Section 29.230, RSMo)

Under current law, the State Auditor is permitted to conduct performance audits when performing an audit of a county office. This act prohibits the State Auditor from conducting a performance audit when conducting an audit in a third class county not initiated pursuant to a petition if:

(1) The county commission has adopted a resolution electing not to be subject to such an audit; and

(2) The county has undergone an audit by a certified public accountant within the preceding two years.

The county commission is required to send the resolution and audit report to the State Auditor.

POLITICAL RESTRICTIONS FOR CERTAIN STATE EMPLOYEES (Section 36.155)

Under current law, any individual holding a position of state employment that is subject to the State Personnel Law is also subject to various restrictions on participating in political activities, including running for partisan political office. This act provides that any state employee that is not subject to the Merit System (Section 36.030) or the Uniform Classification and Pay System (Section 36.031) may run for the nomination, or as a candidate for election, to a partisan political office.

This provision contains an emergency clause.

MISSOURI LOCAL GOVERNMENT EXPENDITURE DATABASE (Section 37.1090 through Section 37.1098)

This bill establishes the "Missouri Local Government Expenditure Database". The database shall be available free of charge on the Office of Administration's website and shall include information about expenditures made during each fiscal year that begins after December 31, 2022.

The database shall include the following information: the amount of the expenditure; the date the expenditure was paid; the vendor to whom the expenditure was paid, unless such information is confidential; the purpose of the expenditure; and the municipality or county that made or requested the expenditure.

A municipality or county may choose to voluntarily participate in the database. Each municipality or county participating in the database shall provide electronically transmitted information to the Office of Administration biannually as provided in the act.

Additionally, if 5% of the registered voters in a municipality or county request to participate, the municipality or county shall participate in the database. Residents may request participation by submitting a written letter by certified mail to the governing body of the municipality or county and the Office of Administration. After receiving the requisite number of requests, a municipality or county shall begin participating in the database, but is not required to report expenditures incurred before one complete 6 month reporting period.

The Office of Administration shall provide financial reimbursement to any participating municipality or county for actual expenditures incurred from participation in the database.

COUNTY REGULATION OF COUNTY PROPERTY (Section 49.266)

Currently, the county commissions in all non-charter counties are authorized to promulgate regulations concerning the use of county property. This bill authorizes the county commission in all first, second, third, and fourth classification counties to promulgate such regulations.

Additionally, please note that Section 49.266 appears twice in this bill because it is doubly-enacted due to the Cole County Circuit Court decision in Calzone v. Koster, et al. (2016).

This bill repeals the version enacted by SB 672 (2014) and amends the version in effect prior to SB 672 (2014).

WARRANTS FILED BY COUNTY CLERKS (Section 50.166)

Under current law, a county clerk may transmit in the form of a warrant the amount due for a grant, salary, pay, and expenses to the county treasurer.

This bill provides that, upon request, the county treasurer shall have access to any financially relevant document in the possession of any county official for the purposes of processing a warrant. If the warrant is received in the absence of a check, then the county treasurer shall have access to the information necessary to process the warrant.

Additionally, no official of any county shall refuse a request from the county treasurer for access to or a copy of any document in the possession of a county office that is financially relevant to the salaries of county officers and assistants. No county treasurer shall refuse to release funds for the payment of any properly approved expenditure.

2ND CLASS COUNTY CORONER SALARIES (Section 50.327)

Under current law, the compensation for non-charter county coroners is based on salary schedules established by law.

This bill provides that, upon majority approval of the salary commission, the annual compensation of a non-charter county coroner of any county of the second classification may be increased up to $14,000 greater than the compensation provided by the salary schedule established by law.

COUNTY REVENUE VIOLATIONS (Section 54.140) Page 25 of 95

Under current law, any county treasurer or other county officer who fails or refuses to perform duties required of him or her under the law is guilty of a misdemeanor, shall be punished by a fine and, in addition to such punishment, his or her office shall become vacant.

This bill repeals the provision that a county treasurer's or other county officer's office shall become vacant upon violation.

CANDIDATES FOR COUNTY RECORDER (Sections 59.021 & 59.100)

This bill provides that each candidate for county recorder shall provide an affidavit to the election authority that indicates the candidate is able to satisfy the bond requirements under the law.

A recorder elected before January 1, 2021, shall have bond of no less than $1,000. A recorder elected after December 31, 2020, shall have a bond no less than $5,000.

BOONE COUNTY PROPERTY MAINTENANCE AND NUISANCE CODES (Section 64.207)

This bill authorizes Boone County to adopt property maintenance regulations and ordinances as provided in the bill. The unavailability of a utility service due to nonpayment is not a violation of the property maintenance code.

Under this bill, the property maintenance code must require the county commission to create a process for selecting a designated officer to respond to written complaints of the condition of a rented residence that threaten the health or safety of the tenants. When a written complaint is filed, the owner of any rental residence must be served with a notice specifying the condition alleged in the complaint and state a reasonable date by which abatement of the condition must commence. If work to abate the condition does not commence as determined by the designated officer, the complaint shall be given a hearing before the county commission. If the county commission finds that the rented residence has a dangerous condition that is harmful to the health, safety, or welfare of the tenant, the county commission shall issue an order that the condition be abated. If the owner violates an order issued by the county commission the owner may be punished by a penalty, which shall not exceed a Class C misdemeanor.

COUNTY PLANNING COMMISSION MEETING EXPENSES(Section 64.805)

Currently, members of the county planning commission may be reimbursed for meeting expenses up to $25 per meeting. This bill increases the reimbursement amount to $35.

CAPITAL IMPROVEMENT SALES TAX (Sections 67.730 & 94.838))

This bill makes technical corrections to provisions of law authorizing Clay and Platte counties to propose a capital improvement sales tax.

Current law authorizes the City of Lamar Heights to levy a sales tax of up to 2% on retail sales of food at cafes, cafeterias, lunchrooms, or restaurants for the purpose of funding the construction, maintenance, and operation of capital improvements. This bill allows such sales tax to be levied at a rate not to exceed 6% and allows the revenues to be used for general revenue purposes.

CERTAIN TAXING DISTRICTS (Section 67.1545, 238.207, 238.235, & 238.237)

Current law authorizes community improvement districts (CIDs) and transportation development districts (TDDs) to impose a sales tax on purchases made within such districts if approved by a majority of voters living withing the district. This bill requires such sales taxes to be approved by a majority of the voters of the municipality in which the district is located. Additionally, current law authorizes TDDs to charge and collect tolls or fees for the use of a project if approved by a majority of voters within the district. This bill requires such tolls or fees to be approved by a majority of voters within the municipality in which the TDD is located.

EARLY CHILDHOOD SALES TAX (Section 67.1790)

This bill allows Greene County and any city within the county to impose a sales tax, upon approval of a majority of the voters, not to exceed one-fourth of one percent for the purpose of funding early childhood education in the county or city.

APPOINTMENT OF MEMBERS OF BOARDS AND COMMISSIONS IN FOURTH CLASS CITIES (Section 79.235)

If a statute or ordinance authorizes the mayor of a city of the fourth classification with no more than 2,000 inhabitants to appoint a member of a board or commission, any requirement that the appointed person be a resident of the city shall be deemed satisfied if the person owns real property or a business in the city.

If the board to which a person is appointed is for the purpose of managing a city's municipal utilities, then any requirement that the appointed person be a resident of the city shall be satisfied if the following conditions are met:

(1) The board has no authority to set utility rates or to issue bonds;

(2) The person resides within a 5-mile radius of the city limits;

(3) The person owns real property or a business in the city;

(4) The person or the person's business is a customer of the public utility that is owned and operated by the city; and

(5) The person has no pecuniary interest in, or is not a member of, any other utility of the type managed by the board.

TRANSIENT GUEST TAXES (Sections 67.1011, 67.1360, 94.842, & 94.1014)

This bill authorizes the City of Butler to submit to the voters a transient guest tax not to exceed 6% of the charges per occupied room per night. The vote shall occur on a general election day not earlier than the 2022 general election.

This bill adds the City of Cameron to the list of cities authorized to propose a transient guest tax for the promotion of tourism.

This bill authorizes the City of Springfield to submit to the voters a transient guest tax not to exceed 7.5% of the charges per occupied room per night. Such tax shall be used solely for capital investments that can be demonstrated to increase the number of overnight visitors.

Upon approval by the voters, the city may adopt rules and regulations for the internal collection of the tax, or may enter into an agreement with the Department of Revenue for the collection of the tax.

This bill authorizes the City of Ashland to submit to the voters a transient guest tax not to exceed 5% of the charges per occupied room per night. Such tax shall be used for the promotion of tourism, growth of the region, economic development, and public safety, as described in the bill.

PUBLIC SAFETY SALES TAXES (Sections 94.900 and 94.902)

This bill adds the cities of Clinton, Lincoln, Branson West, Cole Camp, Hallsville, Kearney, Smithville, and Claycomo to the list of cities and villages authorized to levy a sales tax upon voter approval for the purposes of improving public safety.

FINANCIAL REPORTS OF POLITICAL SUBDIVISIONS (Section 105.145)

Under current law, any transportation development district having gross revenues of less than $5,000 in a fiscal year for which an annual financial statement was not timely filed to the State Auditor is not subject to a fine.

This bill provides that any political subdivision that has gross revenues of less than $5,000 or that has not levied or collected sales or use taxes in the fiscal year for which the annual financial statement was not timely filed shall not be subject to a fine.

Additionally, if failure to timely submit the annual financial statement is the result of fraud or other illegal conduct by an employee or officer of the political subdivision, the failure shall not be subject to a fine if the statement is filed within 30 days of discovery of the fraud or illegal conduct.

If the political subdivision has an outstanding balance or fines at the time it files its first annual financial statement after January 1, 2021, the Director of Revenue shall make a one-time downward adjustment to such outstanding balance in an amount that reduces the outstanding balance by 90%. If the Director of Revenue determines a fine is uncollectible, the Director shall have the authority to make a one-time downward adjustment to any outstanding penalty.

The Director of Revenue shall initiate the process to disincorporate a political subdivision if such political subdivision has an outstanding balance for fines or penalties and fails to file an annual financial statement as provided in the bill. A resident of a political subdivision may file an affidavit with the Director of Revenue with information regarding the political subdivision's failure to report.

The question of whether a political subdivision may be subject to disincorporation shall be submitted to the voters of the political subdivision as provided in the bill. Upon the affirmative vote of a majority of voters in the political subdivision, the Director of Revenue shall file an action to disincorporate the political subdivision in the circuit court with jurisdiction over the political subdivision. The circuit court shall enforce such orders and carry out remedies as provided in the bill. Additionally, the Attorney General shall have the authority to file an action in a court of competent jurisdiction against any political subdivision that fails to comply with this bill.

FILING PERIOD FOR CANDIDATES IN POLITICAL SUBDIVISIONS (Section 115.127)

Under current law, the period for filing a declaration of candidacy in certain political subdivisions and special districts is from 8:00 a.m. on the 16th Tuesday prior to the election until 5:00 p.m. on the 11th Tuesday prior to the election.

This bill changes that period to 8:00 a.m. on the 17th Tuesday prior to the election until 5:00 p.m. on the 14th Tuesday prior to the election.

SENATORIAL DISTRICT POLITICAL PARTY COMMITTEES (Section 115.621)

Under current law, the members of each senatorial district political party committee are required to meet on the Saturday after each general election for the purpose of electing members to the state political party committee. In lieu of that requirement, this bill permits the chair of the congressional district committee where the senatorial district is principally located to call for a meeting to be held concurrently with the election of senatorial officers.

USE OF PUBLIC FUNDS IN ELECTIONS (Section 115.646)

This bill prohibits the contribution or expenditure of public funds by any school district or by any officer, employee, or agent of any school district to:

(1) Support or oppose the nomination or election of any candidate for public office;

(2) Support or oppose the passage or defeat of any ballot measure;

(3) Any committee supporting or opposing candidates or ballot measures; or

(4) For paying debts or obligations of any candidate or committee previously incurred for the above purposes.

Any purposeful violation of this bill is punishable as a class four election offense.

PROPERTY TAX ASSESSMENT NOTIFICATIONS (Section 137.180)

For property tax assessments, current law provides that assessors shall notify property owners of an increase in the property owner's assessed valuation by June 15. This bill requires such notifications in St. Louis County to include information regarding the assessment method and computation of value for such property and, for properties valued using sales of comparable properties, a list of such comparable properties and the address or location and purchase prices from sales thereof that the assessor used in determining the assessed valuation of the owner's property.

PROPERTY TAX APPEALS ATTORNEY FEES (Section 138.434)

Current law allows certain counties and St. Louis City to reimburse taxpayers who successfully appeal a property tax assessment to the State Tax Commission for appraisal costs, attorney fees, and court costs, with such reimbursements limited to $1,000 for residential appeals and the lesser of $4,000 or 25% of the tax savings resulting from the appeal for other non-residential appeals. Beginning January 1, 2021, this bill increases such limits for St. Louis County to $6,000 for residential appeals and the lesser of $10,000 or 25% of the tax savings resulting from the appeal for other non-residential appeals.

TAXATION OF PARTNERSHIPS (Section 143.425)

This bill requires taxpayers in a partnership to report and pay any tax due as a result of federal adjustments from an audit or other action taken by the IRS or reported by the taxpayer on an amended federal income tax return. Such report shall be made to the Department of Revenue on forms prescribed by the Department, and payments of additional tax due shall be

made no later than 180 days after the final determination date of the IRS action, as defined in the bill.

Partners and partnerships shall also report final federal adjustments as a result of partnership level audits or administrative adjustment requests, as defined in the bill. Such payments shall be calculated and made as described in the bill. Partnerships shall be represented in such actions by the partnership's state partnership representative, which shall be the partnership's federal partnership representative unless otherwise designated in writing.

Partners shall be prohibited from applying any deduction or credit on any amount determined to be owed under this bill.

The Department shall assess additional tax, interest, and penalties due as a result of federal adjustments under this bill no later than three years after the return was filed, as provided in current law, or one year following the filing of the federal adjustments report under this bill. For taxpayers who fail to timely file the federal adjustments report as provided under this bill, the Department shall assess additional tax, interest, and penalties either by three years after the return was filed, one year following the filing of the federal adjustments report, or six years after the final determination date, whichever is later.

Taxpayers may make estimated payments of the tax expected to result from a pending IRS audit. Such payments shall be credited against any tax liability ultimately found to be due. If the estimated payments made exceed the final tax liability, the taxpayer shall be entitled to a refund or credit for the excess amount, as described in the bill.

The provisions of this bill shall apply to any adjustments to a taxpayer's federal taxable income or federal adjusted gross income with a final determination date occurring on or after January 1, 2021.

BALLOT LANGUAGE RELATING TO LOCAL USE TAX (Section 144.757)

This bill modifies ballot language required for the submission of a local use tax to voters by including language stating that the approval of the local use tax will eliminate the disparity in tax rates collected by local and out-of-state sellers by imposing the same rate on all sellers.

DISSOLUTION OF CERTAIN COUNTY HOSPITAL DISTRICTS (Section 205.202)

This bill provides that, upon the dissolution of a county hospital district in Ripley County levying a sales tax for the purpose of funding the district, the sales tax shall be automatically repealed and 25% of the funds remaining in the special trust fund shall be distributed to the county public health center and 75% shall be distributed to a federally qualified health center located in the county.

FIRE PROTECTION DISTRICT DIRECTOR (Section 321.015)

Currently, a person cannot hold any lucrative office or employment under this state or a political subdivision and hold the office of fire protection district director. This bill creates an exception to this prohibition for employees of law enforcement agencies.

ATTENDANCE FEES FOR BOARD MEMBERS (Section 321.190 & 321.603)

This bill further modifies the attendance fee for a board member attending a board meeting from $100 to $150 for board members of districts in both non-charter and charter counties.

This bill also repeals provisions that prohibit a member from being paid more than one attendance fee if such member attended multiple meetings in certain time periods and, in its place, authorizes board members to be paid for attending not more than one meeting per calendar week.

BOUNDARIES OF FIRE PROTECTION DISTRICTS (Section 321.300)

Under this bill, if one or more fire protection districts serve any portion of a city with a charter form of government located in a county with a charter form of government with a population of 900,000 or more inhabitants which has a municipal fire department, the boundaries of either district may be expanded so as to include areas within the city into the boundaries of the fire protection district, but shall not expand beyond the city limits of such city as it existed on July 1, 2020.

Such a change in the district boundaries shall be accomplished if the governing body of the city files with the board of any such fire protection district a written consent for the board to seek approval of the circuit court for an extension of the district's boundaries to the registered voters of the area.

If a majority of the voters voting on the proposition vote in favor of the extension of the boundaries of the district, then the court shall enter an order declaring the extension of the boundaries of the fire district to be final and conclusive.

FIRE PROTECTION SALES TAXES (Section 321.552)

Current law authorizes ambulance and fire protection districts in certain counties to propose a sales tax at a rate of up to 0.5%. This bill allows such districts to propose a sales tax of up to 1.0%.

CIVIL ACTIONS BROUGHT BY INMATES IN COUNTY JAILS (Section 506.384)

Currently, offenders under supervision or in the custody of the Department of Corrections may not bring a civil action against the Department unless all administrative remedies are exhausted. This bill also prevents inmates or detainees in county jails from bringing a civil action until all administrative remedies are exhausted.

RECORDS OF MUNICIPALLY OWNED UTILITIES (Section 610.021)

This bill adds individually identifiable customer usage and billing records for customers of a municipally owned utility, unless the records are requested by the customer or authorized for release by the customer, to the list of records that may be closed under the Sunshine Law. A municipally owned utility shall make available to the public the customer's name, billing address, location of service, and dates of service provided for any commercial service account.

MISSOURI WORKS PROGRAM (Section 620.2005 & 620.2010)

This bill modifies the Missouri Works program to provided that, for qualified military projects, the benefit shall be based on part- time and full-time jobs created by the project.

Last Action
05/27/2020 G - Sent to the Governor

HB1896 - Adds provisions relating medical marijuana and other controlled substances.
Sponsor
Rep. Lane Roberts (R)
Summary

This bill prohibits a state agency from disclosing to the federal government any information of a person who applied for a medical marijuana card. Any violation of this is a class E felony.

Under the provisions of this bill, the Department of Health and Senior Services (DHSS) shall require all employees, officers, managers, staff, and owners of marijuana facilities to submit fingerprints for criminal background checks to the State Highway Patrol. The fingerprint submissions must be a part of the medical marijuana facility application. All fingerprint cards and fees must be sent to the State Highway Patrol. The fingerprints will also be forwarded to the FBI for a federal criminal background check.

This bill shall be effective upon its passage and approval or July 1, 2020, whichever occurs later (Sections 191.1146, 195.815, and Section B, RSMo).

This bill specifies that if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, DHSS shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the DHSS objects to the change. If the DHSS promulgates emergency rules under this bill, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this bill updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002 and further updates by the Drug Enforcement Agency in the Federal Register (Sections 195.015 and 195.017).

This bill prohibits the requirement of a prescription for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or psuedoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in current law. A prescription shall be required for such drug in excess of the statutory limits. This bill also changes the amounts that can be sold, dispensed, or otherwise provided to a person in a 30 day period from a maximum of 9 grams to a maximum of 7.5 grams.

Additionally, this establishes a prescription abuse registry. The DHSS shall, by January 1, 2022, establish and maintain a prescription abuse registry. Individuals 18 years or older may request to be listed in the registry. Individuals may request to be removed as specified in the bill after five years from the date such individual was listed in the registry.

Information contained in the registry shall be confidential. The DHSS shall enable health care providers to access the registry for the sole purpose of determining whether an individual is listed in the registry and shall only provide a response that confirms or denies the individual's presence in the registry. The bill specifies that a department, agency, instrumentality, political subdivision, state or federal law enforcement agency, or any individual other than a health care provider shall not have access to the registry.

Any person who knowingly and unlawfully accesses or discloses information in the registry and any person authorized to have access who knowingly uses or discloses such information in violation of the provisions of this bill shall be guilty of a Class E felony. Additionally, this bill provides a private cause of action for persons whose data has been disclosed to an unauthorized person. Recovery under this cause of action shall include liquidated damages of $2,500 and compensatory economic and non- economic damages, attorney's fees, and court costs. Punitive damages are available for intentional and malicious unauthorized disclosure (Sections 195.417 and 579.060).

This bill prohibits the sale of edible marijuana-infused products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including candies, gummies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Any medical marijuana licensed or certified entity regulated by the DHSS found to have violated this bill shall be subject to sanctions, including an administrative penalty. The DHSS shall develop a process by which a licensed or certified entity may seek approval of a product design, package, or label prior to manufacture or sale to determine compliance with these provisions (Section 195.805).

This bill adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, or producing or attempting to distribute, deliver, manufacture, or produce more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class A felony. If it involves more than 10 milligrams, it is a class B felony. Additionally, one gram or more of flunitrazepam (Rohypnol) or any amount of gamma-hydroxybutyric acid (GHB) is a class B felony for the first offense and a class A felony for the second or subsequent offense. (Section 579.065).

The bill adds to the offense of trafficking drugs in the second degree knowingly possessing or having under one's control, purchasing or attempting to purchase, or bringing into the state more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class B felony. If it involves more than 10 milligrams, it is a class C felony. Additionally, the offense is a class C felony for the first offense and class B felony for the second or subsequent offense for the trafficking of less than one gram of flunitrazepam (Rohypnol) (Section 579.068).

Last Action
05/27/2020 G - Sent to the Governor

HB1963 - Modifies provisions relating to Transportation

Sponsor

Rep. Travis Fitzwater (R)
Summary

REMOTE DRIVER'S LICENSE RENEWALS (Section 32.300)

This act authorizes the Department of Revenue to design and implement a remote driver's license renewal system accessible through the Department's internet website connection or through one or more self-service terminals located within the state. The system shall comply with federal law as specified in the act. Drivers may apply for no more than one consecutive renewal remotely, and shall apply within six months before or after the license expires as required for conventional renewal. Applicants for remote renewal shall not be required to complete the highway sign recognition test unless the Department has technology allowing the test to be conducted remotely. In lieu of the current vision test requirement, applicants for remote renewal shall certify under penalty of law that their vision satisfies the legal requirements and that he or she has undergone an eye exam in the last 12 months. The applicant shall authorize the exchange of relevant medical information as provided in the act, and shall be at least 21 years of age but not more than 50 years of age. The applicant's ophthalmologist or optometrist shall have 4 business days to confirm or deny the vision and medical information of the applicant, and if no response is received within the time allotted, the Department shall accept the information provided by the applicant.

These provisions are similar to provisions in SB 906 (2020), provisions in SB 200 (2019), provisions in SCS/HB 584 (2019), and provisions in HCS/HB 679 (2019).

QUALIFIED AIR FREIGHT FORWARDERS (Section 143.441)

This act adds "qualified air freight forwarders", as defined in the act, to the definition of "corporation" as a transportation corporation for the purposes of corporate income allocation.

These provisions are identical to HB 2213 (2020), identical to provisions in HCS/HB 1333 (2020) and HCS/HB 2303 (2020), and substantially similar to SB 801 (2020), provisions in SB 659 (2020), provisions in SCS/SB 648 (2020), provisions in HB 2238 (2020), and SS/SCS/SBs 46 & 50 (2019).

LEASE OR RENTAL COMPANIES (Section 144.070.6)

This act provides that registered fleet owners of rental or lease motor vehicles, rather than vehicle lease or rental companies, shall post a bond with the Department of Revenue upon applying for a license to operate.

TAXATION OF AVIATION JET FUEL (Section 144.805)

Current law provides a sales tax exemption for aviation jet fuel used by common carriers engaged in the interstate air transportation of passengers and cargo, with such exemption set to expire on December 31, 2023. This act extends such expiration date until December 31, 2033.

These provisions are identical to SB 1003 (2020), provisions in HCS/HB 1333 (2020), and provisions in HCS/HB 2303 (2020).

BILL GRIGSBY MEMORIAL HIGHWAY (Section 227.476)

This act designates the portion of State Highway 9 from Nodaway Street to Park College Entrance Drive in Platte County "Bill Grigsby Memorial Highway.

These provisions are identical to HB 1747 (2020).

TUBE TRANSPORT SYSTEMS (Section 227.600)

This act modifies the Missouri Public-Private Partnerships Transportation Act to authorize the Missouri Highways and Transportation Commission to form a public-private partnership to construct a "tube transport system", as defined in the act.

The power of eminent domain shall not apply to a tube transport system.

The provisions of a tube transport system authorized under the act shall sunset on August 28, 2025, unless reauthorized by the General Assembly in subsequent 5-year periods.

POLICE OFFICER CHRISTOPHER RYAN MORTON MEMORIAL HIGHWAY (Section 227.803)

This act designates the portion of State Highway 7 from County Road 221 West continuing to Calvird Drive in the city of Clinton in Henry County as "Police Officer Christopher Ryan Morton Memorial Highway".

POLICE OFFICER GARY LEE MICHAEL, JR. MEMORIAL HIGHWAY (Section 227.804)

This act designates the portion of State Highway 13 from State Highway 52 West continuing to Calvird Drive in the city of Clinton in Henry County shall be designated as "Police Officer Gary Lee Michael, Jr. Memorial Highway".

COMPOSITION OF OFF-HIGHWAY VEHICLES (Sections 300.010, 301.010, 407.815, 407.1025, and 577.001)

This act modifies the definitions of certain off-highway vehicles.

This act provides that in addition to the other requirements specified in the definition, a vehicle need only meet the seating and handlebar requirements "or" the maximum width requirement to meet the definition of "all-terrain vehicle", and specifies that the width shall be measured from the outsides of the tire rims. (Sections 300.010(2), 301.010(1), 407.815(2), 407.1025(2), and 577.001(3)). Certain definitions, specifying that the vehicles are equipped with low-pressure tires, are amended to instead specify that the vehicles are equipped with "nonhighway" tires, and provisions specifying the vehicles are equipped with a seat designed to be straddled by the operator, and handlebars for steering control, are repealed under the act. These definitions are also modified to specify a maximum weight of 1,500 pounds rather than 600 pounds, (Sections 300.010(2), 407.815(2), and 407.1025(2)) or rather than 1,000 pounds (Section 577.001(3)). The enacted definitions of "all-terrain vehicle" are identical to one another.

The act also modifies the definition of "recreational off-highway vehicle" by specifying a maximum width of 80 inches, rather than 67 inches. The act also provides that the width shall be measured from the outsides of the tire rims, and specifies a maximum unladen dry weight of 3,500 pounds rather than 2,000 pounds. (Section 301.010(49))

Lastly, the definition of "utility vehicle" is modified to specify a maximum width of 80 inches, rather than 67 inches. The act also provides that the width shall be measured from the outsides of the tire rims, and specifies a maximum unladen dry weight of 3,500 pounds rather than 2,000 pounds. (Section 301.010(70))

These provisions are identical to SCS/SB 876 (2020).

TRANSFER OF MOTOR VEHICLES (Sections 301.010, 301.140, 301.190, 301.210, 301.213, 301.280, and 301.560)

The act modifies the definition of "owner" of a vehicle to include a person who has executed a buyer's order or retail installment sales contract with a licensed motor vehicle dealer when there is an immediate right for the buyer to possess the vehicle. (Section 301.010(44))

Operation of a motor vehicle with temporary license plates or license plates transferred from a trade-in shall be legal for no more than 60 days when a dealer sells the vehicle with an agreement for the delayed transfer of title as provided in the act. (Sections 301.140.1 and 301.140.4)

Vehicle owners obtaining a vehicle as specified in the act shall apply for a certificate of title within 30 days of receiving title from the dealer. (Sections 301.190.1 and 301.190.5)

Under the act, a vehicle transfer shall be "presumed" fraudulent and void unless the vehicle's title is assigned and passed to the buyer at the time of transfer, or unless the parties have agreed to delayed delivery of title as provided in the act. (Section 301.210.4). The act specifies that licensed motor vehicle dealers may deliver a motor vehicle or trailer to a purchaser with a written agreement to pass the certificate of ownership with an assignment to the purchaser within 30 days after delivery. (Section 301.210.5). The agreement shall be in a form prescribed by the Director of the Department of Revenue, shall provide that if the dealer does not pass the assigned certificate of ownership to the purchaser within 30 days, the purchase shall be voidable at the purchaser's option, and the dealer shall re-purchase the vehicle as provided in the act. (Section 301.210.5(1)). If the vehicle has incurred damages covered by the purchaser's insurance policy and the vehicle is determined to be a total loss, the insurance company may satisfy the claim by transferring all proceeds to the purchaser and recorded lienholders. The purchaser shall not assign insurance policy proceeds without express written permission of the insurer. In conjunction with satisfaction of the claim, if the insurer receives the totaled vehicle but clear title never vests with the purchaser as required, the insurer shall notify the dealer and the dealer shall reimburse the insurer for the salvage value of the vehicle. In exchange, the insurer shall assign its rights back to the dealer. If the dealer does not make payment to the insurer within 15 days of receiving notice, the dealer shall be liable to the insurer for the vehicle's salvage value, actual damages, and applicable court costs in return for the right to acquire title and apply for a salvage title. (Section 301.210.5(2)). As provided in the act, completion of the requirements of the act shall constitute sufficient evidence of ownership of the vehicle for all purposes other than a subsequent transfer of ownership. However, the purchaser may use a dealer-supplied copy of

the agreement under this act to transfer ownership of the vehicle to an insurance company in situations where the vehicle is declared salvage or a total loss as the result of settlement of an insurance claim. (Section 301.210.5(3)). No motor vehicle dealer shall be authorized to sell vehicles in accordance with this act until the dealer has provided to the Director of the Department of Revenue a bond or irrevocable letter of credit in an amount not less than $100,000 in lieu of the $50,000 bond otherwise required to act as a motor vehicle dealer. (Section 301.210.5(4))

This act also repeals the existing framework for dealers accepting trade-in vehicles subject to existing liens, effective December 31, 2020. (Section 301.213)

Motor vehicle dealers' monthly sales reports submitted to the Department of Revenue shall include vehicles sold during the month in accordance with the act. (Section 301.280.1)

Lastly, the act specifies the circumstances under which proceeds from a dealer applicant's bond or irrevocable letter of credit will be paid. In addition to relocating an existing provision regarding bond proceeds, the act specifies that bond proceeds shall be paid to any buyer or interested lienholder as provided in the act if the dealer fails to deliver the assigned certificate of ownership as agreed. The Department of Revenue shall release the bond proceeds upon receiving certain documentation and evidence, as specified in the act, and that the vehicle has been or will be returned by the purchaser as required. Except for ordinary wear and tear or mechanical failures not caused by the purchase, the amount of proceeds paid to the purchaser shall be reduced by an amount equivalent to any damage, abuse, or destruction incurred by the vehicle while in the purchaser's possession. Within 30 days of receiving notice of a claim against bond or irrevocable letter of credit proceeds, the dealer may apply to a court of competent jurisdiction to contest the claim on the bond or letter of credit, including the amount of the claim or any adjustments made for damage, abuse, or destruction incurred. (Section 301.560.1(3))

These provisions are similar to SCS/SB 780 (2020).

MOTOR VEHICLE REGISTRATION PERIODS (Section 301.030)

This act specifies that fees for the renewal of noncommercial motor vehicle registrations shall be payable no later than the last day of the month that follows the final month of the expired registration period. No renewal penalty shall be assessed, and no violation for expired registration shall be issued, until the second month that follows the expired registration period.

These provisions are identical to SB 686 (2020), and to a provision in the truly agreed to and finally passed CCS#2/HCS/SCS/SB 147 (2019).

FLEET VEHICLE REGISTRATIONS (Section 301.032)

This act provides that the registration for fleet vehicles shall be fully payable at the time the license plates are ordered, except that when the plates are ordered after the first month of registration, the fees shall be prorated.

These provisions are identical to HB 2444 (2020).

TITLING OF ABANDONED PROPERTY (Section 301.193)

This act allows a salvage pool or salvage dealer and dismantler taking possession of a vehicle from an insurer that did not purchase the vehicle through the claims adjustment process, or a used motor vehicle dealer taking possession of a vehicle from a 501(c)(3) tax-exempt organization without negotiable title, to obtain a salvage certificate of title or junking certificate in its name if a vehicle remains unclaimed on the salvage pool's, salvage dealer and dismantler's, or used motor vehicle dealer's premises for more than 45 days. The salvage pool, salvage dealer and dismantler, or used motor vehicle dealer shall, 45 days prior to applying for title, notify any owners or recorded lienholders of the vehicle of the salvage pool's, salvage dealer and dismantler's, or used motor vehicle dealer's intent to apply for title if the vehicle is not removed from their premises. The application for title shall be on a form provided by the Department of Revenue, signed under penalty of perjury, and accompanied by a statement explaining how the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer came to possess the property, a vehicle description as specified in the act, the current location of the property, a title application fee as required by law, a copy of the 45-day notice and certified mail receipts or proof of delivery by a courier, and, if the vehicle is not currently titled in the state, a law enforcement inspection report.

Upon receipt of the application and required documents, the Director of Revenue shall verify the names and addresses of any owners and lienholders. If the Director identifies any additional owner or lienholder who has not been notified, the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer shall notify the owners or lienholders in accordance with the act. Thereafter, if no valid lienholders have notified the Department of the existence of a lien, the Department shall issue a salvage title or junking certificate in the name of the salvage pool, salvage dealer and dismantler, or used motor vehicle dealer.

This act also enacts provisions allowing insurers that purchase vessels or watercraft through the claims adjustment process to apply for a certificate of title in the same manner that insurers that purchase vehicles currently titled in the state through the claims adjustment process apply for a salvage title or junking certificate. An insurer purchasing a vessel or watercraft through the claims adjustment process for which the insurer is unable to obtain a negotiable title may make application to the Department of Revenue for a certificate of title. Application shall be made on a form provided by the Department, signed under penalty of perjury, and shall be accompanied by a declaration that the insurer has made at least 2 written attempts to obtain evidence of title, proof of claims payment from the insurer, evidence that letters were sent to the owner, a statement explaining how the insurer came to possess the property, a description of the vessel or watercraft as specified in the act, the current location of the property, and a title application fee as required by law. The insurer shall, 45 days prior to applying for title, notify any owners or lienholders of record for the vessel or watercraft that the insurer intends to apply for title as provided in the act.

Upon receipt of the application and required documents, the Director of Revenue shall verify the names and addresses of any owners and lienholders. If the Director identifies any additional owner or lienholder who has not been notified, the insurer shall notify the owners or lienholders in accordance with the act. Thereafter, if no valid lienholders have notified the Department of the existence of a lien, the Department shall issue a certificate of title in the name of the insurer.

These provisions are similar to SB 820 (2020) and HCS/HB 1952 (2020).

RESPONSIBILITIES OF THE HIGHWAY PATROL (Sections 301.560 and 301.564)

This act replaces certain references to officers of the Missouri State Water Patrol with references to "authorized or designated employees" of the Missouri State Highway Patrol.

The act makes this change in a statute regarding the certification of a boat manufacturer's or boat dealer's bona fide place of business (section 301.560), and in a statute regarding the inspection of certain documents and records (section 301.564).

These provisions are identical to SB 774 (2020).

MOTOR VEHICLE HISTORY REPORTS (Section 301.576)

This act provides that motor vehicle dealers shall not be liable for inaccuracies in third-party motor vehicle history reports when the inaccuracy is not based on information provided to the third-party preparer of the report by the dealer. This act shall not apply if the dealer has actual knowledge of a vehicle's accident, salvage, or service history not reflected on a third-party motor vehicle report, as defined in the act.

These provisions are identical to HCS/HB 1959 (2020), and similar to SB 809 (2020).

CENTRAL MISSOURI HONOR FLIGHT SPECIAL LICENSE PLATES (Section 301.3069)

This act establishes a "Central Missouri Honor Flight" special license plate. The plate requires an annual emblem-use fee of $25, paid to Central Missouri Honor Flight and to be used for financial assistance to transport veterans to Washington D.C. to view veteran memorials, in addition to the $15 special personalized license plate fee and other requirements and fees as provided by law.

These provisions are identical to provisions in HCS/HB 1473 (2020).

MERITORIOUS SERVICE MEDAL SPECIAL LICENSE PLATES (Section 301.3159)

This act establishes a "Meritorious Service Medal" special license plate. Applicants shall provide proof of having been awarded the medal as required by the Director of the Department of Revenue. There shall be an additional fee for issuance of the plates equal to the $15 special personalized license plate fee. Meritorious Service Medal license plates shall not be transferable to any other person, except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person.

These provisions are identical to HB 2249 (2020) and to provisions in HCS/HB 1473 (2020).

ASSOCIATION OF MISSOURI ELECTRIC COOPERATIVES SPECIAL LICENSE PLATE (Section 301.3174)

This act repeals a restriction on the vehicle types for which the Association of Missouri Electric Cooperatives may approve the use of its logo on special license plates, and directs

the Department of Revenue to issue the special plates for non-apportioned vehicles of any classification for which it issues plates.

These provisions are identical to SCS/SB 867 (2020), HCS/HB 2040 (2020), and provisions in HCS/HB 1473 (2020).

BACKSTOPPERS SPECIAL LICENSE PLATE (Section 301.3176)

This act establishes a "BackStoppers" special license plate. Upon making a $10 contribution to the BackStoppers General Operating Fund or the BackStoppers Education Fund as provided in the act, a vehicle owner may apply for the plate. Applicants shall also pay a $15 fee in addition to regular registration fees, but no additional fee shall be charged for the personalization of BackStoppers special license plates.

These provisions are identical to HB 2429 (2020).

MOTORCYCLE HELMET LAW (Sections 302.020 and 302.026)

Currently, every person operating or riding a motorcycle or motortricycle is required to wear protective headgear.

This act provides that persons under the age of 26 who are operating or riding as a passenger on a motorcycle or motortricycle shall wear a helmet when the vehicle is in motion. Similarly, a person who is 26 or older, is operating a motorcycle or motortricycle, and who has been issued an instruction permit shall wear a helmet when the vehicle is in motion. No political subdivision of the state shall impose a protective headgear requirement on the operator or passenger of a motorcycle or motortricycle. No person shall be stopped, inspected, or detained solely to determine compliance with these provisions. (Section 302.020.2)

The act also provides that qualified operators who are 26 or older may operate a motorcycle or motortricycle without a helmet if he or she is covered by a health insurance policy or other form of insurance which will provide the person with medical benefits for injuries incurred as a result of a motorcycle or motortricycle accident. Proof of such coverage shall be provided on request of law enforcement by showing a copy of the qualified operator's insurance card. No person shall be stopped, inspected, or detained solely to determine compliance with these provisions. (Section 302.026)

These provisions are similar to SCS/SB 590 (2020), and to provisions in the truly agreed to and finally passed CCS#2/HCS/SCS/SB 147 (2019).

REAL ID (Section 302.170)

This act removes "facial feature pattern characteristics" and "eye spacing" from the definition of biometric data (Section 302.170.1), repeals the requirement for the Department to store retained driver's license application documents on a system isolated from the internet and to purge the documents from previous systems on which they were stored (Section 302.170.2). The act also allows the Department of Revenue to retain documents at the request of and for the convenience of an applicant regardless of whether the applicant requests that the Department review alternative documents as proof required for issuance of a license (Section

302.170.3(6)), and allows the Department to use digital images and license signatures as required for the use of software for purposes of combating fraud (Section 302.170.5). Furthermore, the act requires a "knowing" standard before a person can be prosecuted for unlawfully accessing or disclosing certain driver's license data (Section 302.170.8), and repeals the expiration date of the authority to comply with the federal REAL ID Act of 2005 (Section 302.170.15).

These provisions are identical to provisions in SB 906 (2020).

DRIVER'S LICENSES (Section 302.181.1-4)

This act repeals obsolete references to Social Security numbers, and updates references to film photography to reflect the use of digital images.

These provisions are identical to provisions in SB 906 (2020).

DIGITAL DRIVER'S LICENSES (Section 302.181.10)

This act authorizes the Department of Revenue to design and implement a secure digital driver's license program that allows license applicants to obtain a digital driver's license in addition to a card-based license. The digital license shall be accepted for all purposes for which a card-based license is used. The Department may contract with one or more entities to develop the digital driver's license system, and the Department or entities may develop a mobile software application capable of being utilized through a person's electronic device to access the person's digital driver's license. The Department shall suspend, disable, or terminate a person's participation in the digital driver's license program if the driver's driving privilege is suspended, revoked, denied, withdrawn, or cancelled as provided by law, or if the person reports their electronic device has been lost, stolen, or compromised.

These provisions are identical to provisions in SB 906 (2020), and similar to provisions in SB 200 (2019), provisions in SCS/HB 584 (2019), and provisions in HCS/HB 679 (2019).

MEDICAL ALERT NOTATIONS ON DRIVER'S LICENSES (Section 302.205)

This act allows for medical alert notations to be placed on driver's licenses and non-driver's identification cards for posttraumatic stress disorder, diabetes, heart conditions, epilepsy, drug allergies, Alzheimer's or dementia, schizophrenia, autism, or other conditions as approved by the Department of Revenue.

Persons applying for a medical alert notation shall waive liability for the release of any medical information to the Department, anyone eligible for access to such medical information recorded on a driving record, and any other person who may view or receive notice of the medical information by virtue of having seen the license. The application shall include a space for applicants to obtain a sworn statement from a licensed physician or licensed psychologist verifying the diagnosis.

Individuals who have been issued licenses or identification cards bearing medical alert information may be issued a replacement that does not bear the medical alert information upon payment of the fee applicable to lost licenses or cards.

No medical alert information shall be printed on or removed from a license or identification card without the express consent of the licensee, or parent or guardian.

These provisions have a delayed effective date of July 31, 2021.

These provisions are identical to HCS/HB 1334 (2020), and similar to HCS/HB 207 (2019), provisions in HCS/SB 371 (2019), provisions in HB 1613 (2018), and provisions in SCS/HCS/HBs 2277 & 1983 (2018).

COMMERCIAL DRIVER'S LICENSES (Sections 302.720 and 302.723)

This act provides for a process by which Commercial Driver's License (CDL) applicants with disabilities may request testing accommodations for the written and driving tests, and specifies that the accommodations shall state that a hearing test shall not be required for applicants who are deaf or hard of hearing. These provisions shall be null and void if the United States Secretary of Transportation determines they will result in a loss of federal highway funding.

The act also specifies that any entity providing training to persons preparing to apply for a CDL shall provide reasonable accommodations for persons who are deaf or hard of hearing. These provisions shall be null and void if the United States Secretary of Transportation determines they or the provisions relating to disabled applicants requesting testing accommodations will result in a loss of federal highway funding.

These provisions are identical to SB 748 (2020), and similar to SB 234 (2019), HB 241 (2019), and provisions in HCS/SB 371 (2019).

MOTOR VEHICLE INSURANCE REPORTING (Section 303.026)

This act repeals an exemption from motor vehicle insurance policy issuance, nonrenewal, and cancellation reporting requirements for insurers with a statistically insignificant number of policies in force (section 303.026.3(1)), and specifies that the Director may require insurers to provide records of policies issued, cancelled, terminated, or revoked as frequently as he or she deems necessary (section 303.026.3(2)).

These provisions are identical to provisions in SB 906 (2020).

MISSOURI AUTOMOBILE INSURANCE PLAN (Section 303.200)

This act modifies existing law regarding apportionment of substandard insurance risks to create the Missouri Automobile Insurance Plan ("MOAIP"). Under the act, MOAIP is authorized to issue motor vehicle insurance policies to applicants who are unable to procure motor vehicle liability policies through ordinary methods, rather than funding issuance of the policies through other insurers. The act further specifies that the Director of the Department of Commerce and Insurance (the "Director") shall consult with insurance companies "having a certificate of authority to do business in the state and actively writing motor vehicle liability policies" regarding the plan, rather than insurance companies "authorized to issue automobile liability policies". (Section 303.200.1).

MOAIP shall perform its functions under a plan of operation, approved by the Director, and through a board of governors as prescribed in the plan of operation. (Section 303.200.2). The plan of operation shall prescribe the issuance of motor vehicle insurance policies, which may include the administration of the policies by a third party, as specified in the act. (Section 303.200.3).

The act requires MOAIP to obtain approval from the Director before using forms, rates, or manuals. (Section 303.200.4). MOAIP is subject to the applicable insurance laws of this state unless specifically exempted (section 303.200.5), is required to file annual financial reports and to be subject to examination by the Director, and shall have the authority to make assessments on member insurance companies in proportion to their market share. (Section 303.200.6). Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the act. (Section 303.200.7)

These provisions are identical to provisions in SB 779 (2020).

VEHICLES TOWING COTTON TRAILERS (Section 304.170)

These provisions exempt vehicles towing trailers specifically designed to carry harvested cotton, with a total length of not more than 93 feet, from certain height, width, and length limitations, provided that the vehicles shall only be used to haul cotton, or to haul hay within the state to areas determined by the National Drought Mitigation Center to be affected by drought.

These provisions are identical to provisions in HCS/HB 2128 (2020).

FIRE PROTECTION VEHICLES (Sections 304.172 and 304.180)

Currently, vehicles used in fire protection are exempted from certain restrictions on height, width, weight, length, and load. This act repeals the exemption from weight and load restrictions. (Section 304.172)

The act instead specifies that emergency vehicles designed to be used under emergency conditions to transport personnel and equipment and to "support the suppression of fires and" mitigate hazardous situations may have a maximum gross vehicle weight of 86,000 pounds as specified in the act, "except that, such emergency vehicles shall only operate on the Dwight D. Eisenhower National System of Interstate and Defense Highways." (Section 304.180)

These provisions are identical HB 2539 (2020), and to provisions in the HCS/HB 2128 (2020).

ABANDONED OR DERELICT AIRCRAFT (Sections 305.800, 305.802, 305.804, 305.806, 305.808, and 305.810)

This act specifies that if a derelict or abandoned aircraft is discovered on an airport's property, the airport superintendent shall make a record of the date it was discovered, and inquire with the Federal Aviation Administration or an aircraft title search company as to the owner and any lienholders. The superintendent shall, within 10 days of receiving this information, notify the owner and any interested parties by certified mail of the aircraft's

location, what fees and charges have accrued, that the aircraft is subject to an enforceable lien, that the airport may dispose of the aircraft if the owner or interested party does not move the aircraft and pay any accrued costs within 30 days, and that the airport may remove the aircraft in less than 30 days if it poses a danger to health or safety. If the owner of the aircraft can not be determined, the superintendent may post the required notice on the aircraft as specified in the provisions. (Section 305.802)

If the owner or other interested party does not remove the aircraft within 30 days and pay all accrued costs, or shows reasonable cause for a failure to do so, the superintendent may retain, trade, sell at auction, or dispose of the aircraft as specified in the act. If the proceeds from sale of the aircraft is less than the fees and charges against it, the owner of the aircraft shall remain liable for the balance due. All expenses for the removal, storage, and sale of the aircraft shall be recoverable against the owner of the aircraft. (Section 305.804)

This act specifies a process for airport superintendents to file liens on derelict or abandoned aircraft (Section 305.806), and for release of the liens upon sale of the aircraft (Sections 305.808 and 301.810).

These provisions are identical to provisions in HCS/HB 1333 (2020), and similar to SB 1027 (2020), HB 1855 (2020), and HB 1905 (2018).

TEMPORARY BOATING SAFETY IDENTIFICATION CARDS (Section 306.127)

This act extends, from December 31, 2022, to December 31, 2032, the sunset date for provisions regarding the issuance of temporary boating safety identification cards.

This provision is identical to SB 782 (2020).

MUD FLAP REQUIREMENTS (Section 307.015)

This act raises, from 8 inches to 12 inches, the maximum distance from the ground to which the bottom edge of dump trucks' mud flaps are required to extend.

These provisions are identical to SB 964 (2020), HB 1916 (2020), SCS/SB 394 (2019), HB 1002 (2019).

RECREATION VEHICLE DEALERS (Section 407.1329)

This act modifies provisions requiring recreation vehicle (RV) manufacturers to repurchase RVs and certain associated items from dealers upon the termination of an RV dealer agreement.

In addition to the circumstances already specified by law, the act provides that the dealer may elect for the manufacturer to repurchase vehicles, parts, and equipment if the dealer voluntarily terminates the agreement in a manner permitted under the agreement, or if the manufacturer terminates or discontinues a franchise by discontinuing a line-make or by ceasing to do business in the state, or if the manufacturer changes the distributor or method of distribution of its products in this state or alters its sales regions or marketing areas within this state in a manner that eliminates or diminishes the dealer's market area.

The act also replaces repurchase item categories for current model-year RVs, and for prior model year RVs drafted on the dealer's financing source or paid within 120 days prior to the end of the dealer agreement, with a single category consisting of all new untitled RV inventory acquired from the manufacturer in the past 18 months. The new category eliminates the specific requirement that the vehicles have not been used, and provides that the vehicles shall be repurchased at "one hundred percent of net invoice cost, including transportation, less applicable rebates and discounts to the dealer", rather than specifying that the repurchase price shall be reduced by the cost to repair any damages not required by law to be disclosed.

The manufacturer shall pay the dealer within 30 days of receipt of all items returned for repurchase as provided by law.

These provisions are similar to SB 982 (2020) and HCS/HB 1912 (2020).

Last Action
05/27/2020 G - Sent to the Governor

HB2001 - Appropriates money to the Board of Fund Commissioners

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Signed by the Governor

HB2002 - To appropriate money for the expenses, grants, refunds, and distributions of the State Board of Education and the Department of Elementary and Secondary Education

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Vetoed in part by the Governor

HB2003 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Higher Education and Workforce Development

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Vetoed in part by the Governor

HB2004 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Revenue, the Department of Transportation

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Vetoed in part by the Governor

HB2005 - To appropriate money for the Office of Administration, the Department of Transportation, the Department of Conservation, the Department of Public Safety

Sponsor
Rep. Cody Smith (R)
Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2006 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Agriculture, Department of Natural Resources, Department of Conservation

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2007 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Economic Development, Department of Commerce and Insurance, Department of Labor and Industrial Relations

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2008 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Public Safety) for perfection.

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2009 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Corrections) for perfection

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2010 - To appropriate money for the expenses, grants, refunds, and distributions of the Department of Mental Health, the Department of Health and Senior Services

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2011 - To appropriate money for the expenses, grants, and distributions of the Department of Social Services

Sponsor

Rep. Cody Smith (R)

Last Action

06/30/2020 G - Vetoed in part by the Governor

HB2012 - To appropriate money for expenses, grants, refunds, and distributions of elected officials, the Judiciary and the Office of the State Public Defender

Sponsor

Rep. Cody Smith (R)

Last Action
06/30/2020 G - Vetoed in part by the Governor

HB2013 - To appropriate money for real property leases, related services, utilities, systems furniture, structural modifications, and related expenses for the several departments of state government

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Signed by the Governor

HB2014 - Provides for supplemental appropriations.

Sponsor
Rep. Cody Smith (R)
Summary

Last Action
04/10/2020 G - Signed by the Governor

HB2015 - Appropriates supplemental appropriations

Sponsor
Rep. Cody Smith (R)
Last Action
05/12/2020 G - Signed by the Governor

HB2017 - Appropriations money for capital improvement projects

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Signed by the Governor

HB2018 - Appropriates money for maintenance and repair of government offices.

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Signed by the Governor

HB2019 - Appropriates funds for capitol improvements

Sponsor
Rep. Cody Smith (R)
Last Action
06/30/2020 G - Signed by the Governor

HB2046 - Modifies provisions relating to professional license reciprocity

Sponsor
Rep. Derek Grier (R)
Summary

PROFESSIONAL LICENSE RECIPROCITY (Section 324.009, RSMo)

This bill repeals Section 324.009 from HB 1511 that was signed into law by the Governor on 4/21/2020 and replaces it with a new Section 324.009.

The following individuals are currently excluded in statute from the provisions of this section: those with a certificate of license to teach in public schools; and those licensed by the Board of Registration for the Healing Arts, the Board of Nursing, the Board of Pharmacy, the State Committee of Psychologists, the Dental Board, the Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Architects, the Board of Optometry, and the Veterinary Medical Board.

This bill removes these exclusions and requires that licensure by reciprocity for these professions be the same as any other licensed profession in this state.

Currently, only a resident of Missouri is eligible to apply for a license by reciprocity, the bill allows any person to apply if the applicant for licensure by reciprocity has had a license for at least one year in another state, territory, or the District of Columbia. The applicant must be licensed at the same practice level in the other state. The bill removes the requirement that the other jurisdiction that issued the applicant's license must have substantially similar or more stringent requirements than the licensure requirements in Missouri. Instead, the bill requires that the other jurisdiction must have minimum education requirements and, if applicable, work experience and clinical supervision requirements. If licensure in Missouri requires an examination on the law of Missouri before licensure, then an applicant can be required to take and pass an examination on the laws of Missouri before being granted a license by reciprocity.

The licensing body must review and grant or deny a license within 6 months of receiving an application under this section, unless the applicant is a military spouse, in which case the licensing body must make its decision within 30 days.

The bill explicitly prevents licensure by reciprocity if an applicant has had his or her license revoked in another jurisdiction, is currently under investigation in another jurisdiction, or has a complaint pending in another jurisdiction, or if the applicant does not have a license in good standing in the other jurisdiction or has a criminal record that would disqualify the applicant in Missouri. If another jurisdiction has taken disciplinary action against an applicant, the oversight body must determine if the cause for the disciplinary action was corrected and the matter resolved. The oversight body may deny a license by reciprocity until the matter is resolved in the other jurisdiction. This bill removes a provision that would allow an applicant to be denied a license if granting a license by reciprocity would endanger the public health, safety, or welfare.

The provisions of licensure by reciprocity do not apply to a profession that has a licensing compact with another state. A license issued by reciprocity is valid only in Missouri and does not make a licensee eligible to be part of an interstate compact.

The provisions of the section will not apply to any of the occupations listed in subsection 6 of Section 290.257 or licensed electrical contractors.

ELECTRONIC DEATH REGISTRATION SYSTEM (Section 193.145)

Currently, the medical certification from a medical provider is entered into the electronic death registration system. This bill requires an attestation from the medical provider who completed the medical certification to be entered into the system as well.

Additionally, if the State Registrar determines that information on a document or record filed with or submitted to a local registrar is incomplete, the State Registrar shall return the records or documents with the incomplete information to the local registrar for correction by the data provider, funeral director, or person in charge of the final disposition.

CORONER STANDARDS AND TRAINING COMMISSION (Section 58.035)

This bill establishes the Coroner Standards and Training Commission which shall establish training standards relating to the operation, responsibilities and technical skills of the office of county coroner. The membership of the Commission is set forth in the bill. The Commission shall establish training standards relating to the office of county coroner and shall issue a report on such standards.

COUNTY CORONER SALARY (Section 58.095)

Currently, $1,000 of a county coroner's salary shall only be payable if he or she completes at least 20 hours of classroom instruction each year relating to the operations of the coroner's office when approved by a professional association of county coroners of Missouri. This bill provides that the Coroners Standards and Training Commission shall establish and certify such training programs and their completion shall be submitted to the Missouri Coroners' and Medical Examiners' Association. Upon the Association's validation of certified training, it shall then submit the individual's name to the county treasurer and Department of Health and Senior Services indicating his or her compliance.

MISSOURI STATE CORONERS' TRAINING FUND (Section 58.208)

This bill creates the Missouri State Coroners' Training Fund. For any death certificate issued, there shall be a fee of $1 deposited into the fund which shall be used by the Missouri Coroners' and Medical Examiners' Association for the purpose of in-state training, equipment, and necessary supplies, and to provide aid to training programs approved by the Missouri Coroners' and Medical Examiners' Association. This fee shall be imposed and collected in addition to all other fees already being imposed and collected on the issuance of death certificates, resulting in the current total fee of $13 being increased to $14. Also, during states of emergency or disasters, local registrars may request reimbursement from the fund for copies of death certificates issued to individuals who are unable to afford the associated fees.

DEATH IN HOSPICE CARE (Sections 58.451 and 58.720)

When a death occurs under the care of a hospice, no investigation shall be required, under this bill, if the death is certified by the treating physician of the deceased or the medical director of the hospice as a named death due to disease or diagnosed illness. The hospice must give written notice to the medical examiner or coroner within 24 hours of the death.

The bill specifies that, if a coroner is not current on his or her training, the department may prohibit that coroner from signing any death certificates. In the event a coroner is unable to

sign a death certificate, the county sheriff will appoint a medical professional to attest death certificates until the coroner can resume signing them or until another coroner is appointed or elected.

EXPANDED WORKFORCE ACCESS ACT (Section 324.025)

This bill creates the "Expanded Workforce Access Act of 2020". Beginning January 1, 2021, licensing authorities are required to grant a license to any applicant that has completed the 8th grade, completed a federally-approved apprenticeship program, and passed any necessary examination. The passing score for any examination cannot be higher than the passing score required for any non- apprenticeship license, and there cannot be an examination required for an apprenticeship license if there isn't one required for a non-apprenticeship license. For some types of apprenticeships, the number of working hours required cannot be more than the number of educational hours required for a non-apprenticeship license. These provisions do not apply to occupations specified in the bill.

PROHIBITED USES OF OCCUPATIONAL FEES (Section 324.035)

Under this bill, no board, commission, or committee within the Division of Professional Registration shall utilize occupational fees, or any other fees associated with licensing requirements, for the purpose of offering continuing education classes. Any board, commission, or committee within the division shall not contract or partner with any outside vendor or agency for such purpose.

Nothing in this bill shall be construed to preclude a board, commission, or committee within the Division from utilizing occupational licensure fees for the purpose of participating in conferences, seminars, or other outreach for the purposes of communicating information to licensees with respect to changes in policy, law, or regulations.

LICENSING OF PSYCHOLOGISTS (Sections 337.020 and 337.029)

Under current law, any person seeking to obtain a license as a psychologist shall make an application to the State Committee of Psychologists and shall pay the required application fee. The Committee is not permitted to charge an application fee until such time as the application has been approved, and if an application is denied, no application fee shall be charged. This bill repeals such provision.

Current law permits a psychologist licensed in another jurisdiction to receive a license in Missouri, provided the psychologist passes a written exam on Missouri law and regulations governing the practice of psychology. Such person must also meet one of several listed criteria set forth under current law. This bill removes one listed criteria allowing a psychologist who is currently licensed or certified as a psychologist in another jurisdiction that is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement to be eligible for a license in Missouri.

PSYCHOLOGIST CONTINUING EDUCATION REQUIREMENTS (Section 337.050)

Current law requires each licensed psychologist applying for a renewal of a license to submit proof of the completion of at least 40 hours of continuing education credit within the two-year period immediately preceding the date of the application for renewal.

This bill specifies that a minimum of three of the 40 hours of continuing education shall be dedicated to professional ethics.

ATHLETIC TRAINERS

This bill modifies provisions relating to athletic trainers, including a number of definitions.

The bill specifies that when billing a third party payer, an athletic trainer shall only bill such third party payer for services within the scope of practice of a licensed athletic trainer.

This bill requires an athletic trainer to refer any individual whose medical condition is beyond the scope of their education, training, and competence to a licensed physician.

If there is no improvement in an individual who has sustained an athletic injury within 21 days of initiation of treatment, or 10 visits, the athletic trainer shall refer the individual to a physician.

The practice of athletic training shall not include the reconditioning or rehabilitation of systemic neurologic or cardiovascular injuries, conditions, or diseases, except for an athlete participating in a sanctioned amateur or professional sport or recreational sport activity under the supervision of a treating physician.

No person shall hold himself or herself out as an athletic trainer, or to be practicing athletic training, by title or description, unless such person has been licensed.

Currently, the Board is required to make available a roster of the name and business addresses of all athletic trainers licensed in the state. This bill removes the requirement that such information be annually prepared, and that copies be made available to any person upon request. In addition, this bill removes the requirement that the Board set the fee for the roster, and adopt an official seal.

Currently, any person seeking licensure after August 28, 2006, must be a resident, or in the process of establishing residency in the state, and have passed the National Athletic Trainers Association Board of Certification examination. This bill specifies that any person seeking licensure is required only to have passed the Board of Certification, Inc.'s examination.

All applications for initial licensure shall, under current law, be accompanied by an initial licensure fee which shall be paid to the Director of Revenue and deposited by the State Treasurer. Under this bill, all fees charged by the Board shall be collected and deposited into the Board of Registration for the Healing Arts Fund.

Currently, all licenses issued under these provisions expire on January 30 of each year. This bill changes the expiration date on all licenses pursuant to a schedule established by rule.

This bill adds a provision allowing the Board to deny a license or seek discipline if any person has practiced in the state of Missouri while no longer certified as an athletic trainer by the Board of Certification, Inc.

The bill requires the Missouri Athletic Trainer Advisory Committee to be composed of 6 members, rather than 5, to be appointed by the Board. Each member of the Committee shall be a resident of the state of Missouri for five years immediately preceding appointment, and remain a resident of Missouri throughout the term. The additional member shall be a member of the Board.

Currently, dentists licensed by the Missouri Dental Board, and optometrists licensed by the State Board of Optometry are exempt from athletic training licensing provisions. This bill specifies that dentists and optometrists are not exempt from athletic training licensing provisions.

This bill allows any athletic trainer holding a valid credential from other nations, states, or territories performing their duties for their respective teams or organizations if they restrict their duties only to their teams or organizations and only during the course of their teams' or organizations' visit, not to exceed 30 days in one calendar year and exempts him or her from athletic training licensing provisions.

OPTOMETRISTS

This bill requires optometrists to have two hours of continuing education in Missouri jurisprudence every two years, which can count toward their current required hours.

FRESH START ACT (Section 324.012)

This bill establishes the Fresh Start Act of 2020.

Beginning January 1, 2021, no person shall be disqualified by a state licensing authority from pursuing or practicing in any occupation for which a license is required solely or in part because of a prior conviction of a crime in this state or another state, unless the crime is directly related to the duties and responsibilities for the licensed occupation.

If an individual is charged with any of the crimes set forth in the bill and is convicted, pleads guilty to, or is found guilty of a lesser included offense, and is sentenced to a period of incarceration, such conviction shall only be considered by state licensing authorities as a criminal offense that directly relates to the duties and responsibilities of a licensed profession for four years.

Beginning August 28, 2020, applicants for licensure who have pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any offenses specified in the bill may be considered by licensing authorities to have committed a criminal offense that directly relates to the duties and responsibilities of a licensed profession.

An individual with a criminal record may petition a licensing authority at any time for a determination of whether they will be disqualified from receiving a license. The licensing authority is required to inform the individual of his or her standing within 30 days of receiving the petition, and may charge a fee, no greater than $25, to recoup the costs.

If a licensing authority denies an individual a license solely or in part because of the individual's prior criminal conviction, the licensing authority shall notify the individual in writing of the reasons for the denial, that the individual has the right to a hearing to challenge

the decision, the earliest date the person may reapply for a license, and that evidence of rehabilitation may be considered upon reapplication. If the licensing authority grants a license to an individual, such decision shall be binding unless such individual commits a subsequent crime that directly relates to the occupation for which the individual is licensed, or upon discovery that such person failed to disclose information regarding a prior conviction in the license petition process.

Any written determination by the licensing authority that an applicant's criminal conviction is a specifically listed disqualifying conviction and is directly related to the duties and responsibilities for the licensed occupation shall be documented with written findings for each reason by clear and convincing evidence sufficient for a reviewing court. In any administrative hearing or civil litigation, the licensing authority shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license was sought.

This bill shall apply to any profession for which an occupational license is issued in this state, excluding peace officers or other law enforcement personnel, accountants, podiatrists, dentists, physicians and surgeons, pharmacists, nurses, veterinarians, teachers real estate brokers, real estate salespersons, or real estate broker-salespersons, or any persons under the supervision or jurisdiction of the Director of Finance, , and including any new occupational license created by a state licensing authority after August 28, 2020. Political subdivisions are prohibited from creating any new occupational licenses after August 28, 2020.

Any licensing board participating in a compact shall submit any information regarding a licensee's conviction of any criminal offense, regardless of whether or not such offense is directly related to the duties and responsibilities of the profession, to the relevant coordinated licensure information system.

Provisions of law relating to the denial of licensure, denial of license renewal, or revocation of a certificate of registration for any offense reasonably related to the qualifications, functions or duties of the occupation, an essential element of which is fraud, dishonesty, an act of violence or moral turpitude are repealed for the following occupations and professions, and a requirement that no person applying for such licensure have committed an offense directly related to the duties and responsibilities of the occupation as set forth in the bill, is added for: Acupuncturists; Anesthesiologist assistants; Architects, professional engineers, land surveyors, landscape architects; Athlete agents; Baccalaureate social workers; Barbers; Behavior analysts; Boxing and wrestling; Chiropractors; Cosmetologists; Dieticians; Electrical contractors; Endowed care cemetery operators; Geologists; Hearing aid fitters and dealers; Interior designers; Interpreters for the deaf; Marital and family therapists; Massage therapists; Nursing home administrators; Occupational therapists; Optometrists; Physical therapists; Physical therapist assistants; Private investigators; Professional counselors; Real estate agents, brokers, appraisers, and escrow agents; Real estate appraisers and appraisal management companies; Respiratory care therapists; Social workers; Speech All applications for initial licensure shall, under current law, be accompanied by an initial licensure fee which shall be paid to the Director of Revenue and deposited by the State Treasurer. Under this bill, all fees charged by the Board shall be collected and deposited into the Board of Registration for the Healing Arts Fund.

All licenses issued under current law shall expire on January 30 of each year. Under this bill, all licenses shall expire pursuant to a schedule established by rule.

This bill adds a provision allowing the Board to deny a license or seek discipline if any person has practiced in the state of Missouri while no longer certified as an athletic trainer by the Board of Certification, Inc.

Under this bill, the Missouri Athletic Trainer Advisory Committee is to be composed of 6 members, rather than 5, to be appointed by the Board. Each member of the Committee shall be a resident of the state of Missouri for five years immediately preceding appointment, and remain a resident of Missouri throughout the term. The additional member shall be a member of the Board.

Current law exempts dentists licensed by the Missouri Dental Board, and optometrists licensed by the State Board of Optometry. Under this bill, dentists and optometrists are not exempt from athletic training licensing provisions.

Under this act, athletic trainers holding a valid credential from other nations, states, or territories performing their duties for their respective teams or organizations if they restrict their duties only to their teams or organizations and only during the course of their teams' or organizations' visit, not to exceed 30 days in one calendar year, in this state are exempt from athletic training licensing provisions.

GUIDELINES FOR REGULATION OF CERTAIN OCCUPATIONS (Section 324.047)

This bill provides that nothing in current law regarding prospective regulation of professions shall be construed to change any requirement for an individual to hold current private certification as a condition of licensure or renewal of licensure, and shall not require a private certification organization to grant or deny private certification to any individual.
CHARITABLE PHARMARCIES (Section 338.220)

Current law sets forth classes of pharmacy permits or licenses. This bill adds "charitable pharmacy" as a Class Q pharmacy.

PHYSICIAN ASSISTANTS TO SERVE AS STAFF ON AMBULANCES (Sections 190.094, 190.105, 190.143, and 190.196)

Physician assistants may serve as staff on an ambulance. When attending a patient on an ambulance, the physician assistant shall be exempt from any mileage limitations in any collaborative practice arrangement prescribed under law.

LICENSES ACCOUNTANTS (Section 326.277, 326.280, and 326.289)

This bill amends requirements to become a licensed accountant after June 30, 2021, to also include a requirement that the applicant has completed at least 120 semester hours of college education with an accounting concentration and allows the board to obtain specified information regarding peer review from any approved American Institute for Certified Public Accountants peer review program.

Last Action
07/06/2020 G - Signed by the Governor

HB2120 - Establishes provisions relating to utility infrastructure

Sponsor

Rep. Bill Kidd (R)

Summary

INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE FOR GAS CORPORATIONS (Section 393.1009 to 393.1015)

This bill modifies the definition of "appropriate pretax revenues" and "gas utility plant projects" for provisions of law relating to an infrastructure system replacement surcharge (ISRS) for gas corporations. By January 1, 2022, gas corporations must develop a pre-qualification process to file with the Public Service Commission for contractors to install ISRS-eligible gas utility plant projects. Any gas corporation whose ISRS is found by a court of competent jurisdiction to include illegal and inappropriate charges shall refund every current customer of the gas corporation who paid such charges, before the gas corporation can file for a new ISRS.

Any ISRS petition thereafter shall be accompanied with a verified statement that the gas corporation is using a competitive bidding process for installing no less than 25% of ISRS-eligible gas utility plant projects. Under this bill, the lowest and best bid in the competitive bidding process shall receive the contract to perform the project. The Public Service Commission shall prepare an annual report on the competitive bidding process for the General Assembly beginning December 31, 2023. The provisions of law relating to the ISRS for gas corporations shall expire on August 28, 2029.

COMMUNITY WATER SYSTEMS (Sections 640.141, 640.142, 640.144, and 640.145)

This bill specifies that within one year, every community water system in the state that uses an Internet-connected control system must create a plan that establishes policies and procedures for identifying and mitigating cyber risk. They must also create a valve inspection and a hydrant inspection program as specified in the bill and must submit a report upon the request of the Department of Natural Resources that certifies compliance with regulations regarding water quality sampling, testing, reporting, hydrant and valve inspections, and cyber security plans.

These requirements do not apply to cities with a population of more than 30,000 inhabitants, Jackson or St. Louis counties.

LEAD TESTING IN SCHOOLS (Section 701.200)

The bill permits, subject to appropriations, each school district to test a sample of a source of potable water in a public school building in that district serving students under first grade and constructed before 1996 for lead contamination as specified in the bill. The water samples may be submitted to a Department of Health and Senior Services-approved laboratory and the results of such testing may be submitted to the department. If any of the samples tested exceed the U.S. Environmental Protection Agency standard, the school district shall notify the parents or guardians of enrolled students. If the samples tested are less than or equal to the standard, the district may notify parents individually or on the school's website.

SMALL WIRELESS FACILITIES (Sections 67.5122 and 620.2459)

This provision extends program authorization for small wireless facilities from 2021 to 2025 and for the broadband Internet program in underserved areas from 2018 to 2027.

Last Action
07/02/2020 G - Signed by the Governor

HB2456 - Modifies provisions relating to reimbursement allowance taxes

Sponsor
Rep. Cody Smith (R)
Summary

This bill extends the sunsets from September 30, 2020 to September 30, 2021, for the Ground Ambulance, Nursing Facility, Medicaid Managed Care Organization, Hospital, Pharmacy, and Intermediate Care Facility for the Intellectually Disabled Reimbursement Allowance taxes.

Last Action
04/20/2020 G - Signed by the Governor

SB551 - Modifies provisions relating to insurance

Sponsor
Sen. Paul Wieland (R)
Summary
RECIPIENTS OF DONATED ORGANS
Under this bill, no hospital, physician, procurement organization, or other person shall determine the ultimate recipient of an anatomical gift based upon a potential recipient's physical or mental disability or congenital condition, except to the extent that the disability or condition has been found by a physician, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift.
A person with a disability or congenital condition shall not be required to demonstrate post-operative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient, compensatory support and assistance.
A court shall accord priority on its calendar and handle expeditiously any action brought to seek a remedy for purposes of enforcing compliance with this bill.
This bill shall not be deemed to require referrals or recommendations for or the performance of medically inappropriate organ transplants (Section 194.320, RSMo).
MISSOURI AUTOMOBILE INSURANCE PLAN
This bill modifies existing law regarding apportionment of substandard insurance risks to create the Missouri Automobile Insurance Plan ("MOAIP"). MOAIP is authorized to issue motor vehicle insurance policies to applicants who are unable to procure motor vehicle liability policies through ordinary methods, rather than funding issuance of the policies through other insurers. The bill further specifies that the Director of the Department of Commerce and Insurance (director) shall consult with insurance companies who have a certificate of authority to do business in the state and actively write motor vehicle liability policies. MOAIP shall perform its functions under a plan of operation approved by the director through a board of governors as specified in the plan of operation. The plan of operation shall prescribe the issuance of motor vehicle insurance policies, which may include the administration of the policies by a third party, as specified in the bill. MOAIP must obtain approval from the director before using forms, rates, or manuals. MOAIP is subject to the

applicable insurance laws of this state unless specifically exempted, is required to file annual financial reports that are subject to examination by the director, and shall have the authority to make assessments on member insurance companies in proportion to their market share. Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the bill (Section 303.200). BREAST CANCER SCREENING

This bill modifies an insurance mandate relating to breast cancer screening and evaluation. In addition to existing coverage requirements, the bill adds "detectors" to the X-ray equipment specifically listed as being covered under the mandate and specifies that coverage for certain breast cancer screening and evaluation services shall be provided to any woman deemed by her physician to have an above-average risk for breast cancer in accordance with American College of Radiology (ACR) guidelines, rather than specifically to women with a personal or family history of breast cancer.

Requires coverage of any additional or supplemental imaging, such as breast MRI or ultrasound, deemed medically necessary by a treating physician for proper screening or evaluation in accordance with applicable ACR guidelines. Furthermore, the bill requires coverage of ultrasound or MRI services when determined by a treating physician to be medically necessary for the screening or evaluation of breast cancer for any woman deemed by the treating physician to have an above-average risk of breast cancer in accordance with ACR guidelines for breast cancer screening.

Lastly, provisions relating to out-of-pocket expenditures are modified to apply to the additional modalities required to be covered under the bill (Section 376.782).

LIFE INSURANCE AND ORGAN DONORS

This bill prohibits insurers from using a person's status as a living organ donor as a sole factor in the offering, issuance, cancellation, price, or conditions of an insurance policy including the amount of coverage provided under an insurance policy.

Any materials related to live organ donation from a recognized live organ donation organization received by the departments of Commerce and Insurance or Health and Senior Services may be made available to the public.

INDUCEMENTS TO INSURANCE

The bill allows insurers and insurance producers to provide products or services in conjunction with a policy of property and casualty insurance for free, at a discount or at market value, if the products or services are intended to prevent or mitigate loss, provide loss control, reduce rates or claims, educate about risk of loss, monitor or assess risk, identify sources of risk, develop strategies for the elimination or reduction of risk, or provide post-loss services.

The insurers or producers may offer gifts, goods, or merchandise containing advertising and promotional offers. These products or services shall not be considered an inducement to insurance, a rebate, nor any other impermissible consideration prohibited under law. These products or services are not required to be included in contract or policy form filings.

The Director of the Department of Commerce and Insurance may establish rules to exempt, but not restrict, additional categories of products or services with regard to the prohibitions against inducements to insurance (Section 379.402).

GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE MODEL ACT

This bill establishes the "Group Personal Lines Property and Casualty Insurance Model Act". This model act sets forth the requirements for group personal lines property and casualty insurance master policies. All eligible employees of an employer and members of a labor union or similar employee organization shall be eligible to participate unless such person rejects the coverage in writing. The master policy will be issued to the policyholder and all covered employees or members will receive a certificate of coverage setting forth a statement

as to the insurance protection to which they are entitled. No master policy or certificate of insurance shall be issued or delivered in this state unless the rating plan and amendments thereto used in the determination of the master policy premium meet the applicable filing requirements in this state and the rates shall not be unfairly discriminatory if adjusted to reflect past and prospective loss experience or group expense factors.
The bill addresses policy coverage requirements, group rating requirements, the duties and limitations of insurers, solicitation, negotiation, conversion, and regulatory jurisdiction. These provisions shall not apply to the mass marketing or any other type of marketing of individual personal lines property and casualty insurance policies, to policies of credit property or credit casualty insurance or to policies of personal automobile insurance or personal motor vehicle liability insurance.
This bill has an effective date of January 1, 2021 and any master policy that is currently in effect on that date has 12 months to comply with these provisions (Section 379.404).
MISSOURI BASIC PROPERTY INSURANCE INSPECTION AND PLACEMENT PROGRAM
This bill modifies the Missouri Basic Property Insurance Inspection and Placement Program. The bill requires 10 of the members of the program's governing committee to be elected as specified in the program's plan of operation, rather than prescribing entities from which the members shall be elected. Member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties under the bill (Section 379.860).
MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION
The bill modifies the authority to create a medical malpractice insurance joint underwriting association by specifying that the composition of the association's board of directors shall be established by its plan of operation, and provides that member insurers and members of the governing committee shall be immune from liability for omissions and actions taken in the performance of their powers and duties specified in the bill. This bill requires all policies of insurance written by the association to be written to "provide medical malpractice insurance coverage as provided in the plan of operation", rather than to "apply to injury which results from acts or omissions occurring during the policy period. The bill specifies that the association's board of directors shall be established by its plan of operation, rather than prescribing entities from which the members shall be elected (Sections 383.155, 383.160 and 383.175).

Last Action
05/27/2020 G - Sent to the Governor

SB569 - Modifies provisions relating to victims of sexual offenses

Sponsor
Sen. Andrew Koenig (R)
Summary
This bill includes several provisions relating to victims of sexual offenses.
THE "JUSTICE FOR SURVIVORS ACT"
This bill establishes the "Justice for Survivors Act" and directs the Department of Health and Senior Services (DHSS) to establish a statewide telehealth network for forensic examinations of victims of sexual offenses by July 1, 2022. The director of DHSS shall select a statewide coordinator to provide mentoring, training, and assistance for medical providers conducting forensic examinations, including training on obtaining informed consent of the victim for evidence collection. The network shall also provide consultation services, guidance, and technical assistance through telehealth services by a Sexual Assault Nurse Examiner (SANE)

or other similarly trained providers. The training may be offered in-person and online. This bill also creates a fund for any grants, gifts, bequests, or donations for the development and maintenance of the network and the training offered.

Additionally, this bill requires any licensed hospital, by January 1, 2023, to perform a forensic examination using an evidentiary collection kit upon the request and consent of a victim of a sexual offense 14 years of age or older or the victim's guardian. Victims under 14 years of age shall be referred to a SAFE CARE provider; provided, that nothing in this act shall be interpreted to prevent a hospital from performing a forensic examination for a minor under 14 years of age upon the minor or guardian's request in accordance with state law and regulations.

An appropriate medical provider shall perform the examination and the hospital shall ensure that any provider performing the examination has received training conducting such examinations. If the provider is not a SANE or similarly trained physician or nurse, the hospital shall utilize telehealth services to provide guidance and support from a SANE, or other similarly trained professional, who shall observe the live examination and communicate with and support the onsite provider. The department may issue a waiver of the telehealth requirement if the hospital demonstrates a technological hardship, but such waivers shall be granted sparingly for no more than one year at a time, subject to renewal.

The department shall waive these requirements if the statewide telehealth network ceases operation, the hospital is notified, and the hospital cannot, in good faith, comply with the requirements of this act without the assistance or resources of the network. Such waiver shall remain in effect until the network resumes operation or until the hospital can comply with the requirements of this act without the assistance or resources of the network.

Current law regarding the reimbursement of such examinations and the provision of evidentiary collection kits shall apply to the forensic examinations under this act. Finally, each hospital shall, by October 1, 2021, report specified information to the department each year and the department shall make such information publicly available in aggregate, without identifying victims or medical providers(Sections 192.2520 and 197.315).

THE "SEXUAL ASSAULT SURVIVORS' BILL OF RIGHTS"

This bill also establishes the "Sexual Assault Survivors' Bill of Rights". Victims of sexual assault have a right to consult with employees or volunteers of rape crisis centers during any examination or interview, the right to receive notice of these rights prior to an examination or interview, the right to a prompt analysis of the forensic evidence, and other specified rights (Section 595.201).

THE "MISSOURI RIGHTS OF VICTIMS OF SEXUAL ASSAULT TASK FORCE"

This bill creates the "Missouri Rights of Victims of Sexual Assault Task Force" to consist of two members from the Senate and the House of Representatives, with a member from each party, appointed by the President Pro Tem and the Speaker of the House, and other members as specified in the bill. The task force shall make certain recommendations as provided in the bill. The task force shall collect data regarding sexual assault reporting, arrest, prosecution rates, access to sexual assault victims services, and any other important data, as well as collect feedback from stakeholders, practitioners, and leadership throughout the state and local law enforcement, victim services, forensic science practitioners, and health care communities. The task force shall submit a report on its findings to the Governor and the General Assembly no later than December 31, 2021. The task force shall expire on December 31, 2021 (Section 595.202).

EVIDENTIARY COLLECTION KITS

This bill modifies current law regarding procedures for tracking evidentiary collection kits. Currently, the Attorney General shall establish an electronic tracking system for evidentiary collection kits and their components, including individual specimen containers. Additionally,

current law requires the Attorney General to permit sexual assault victims or their designees access to the system to monitor the current status of their kits. This bill requires such victims to register with the system to track and obtain reports on the status and location of their kits through a secure web-based or similar system.
Appropriate medical providers, law enforcement agencies, laboratories, court personnel, persons or entities involved in the final disposition or destruction of the kits, and all other entities and persons having custody of the kits shall participate in the tracking system. The Department of Public Safety, with the advice of the Attorney General and the assistance of the Department of Health and Senior Services, shall develop and retain within the state a central repository for unreported evidentiary collection kits that is temperature-controlled to preserve the integrity of the kits and diminish degradation. Unreported kits shall be retained for 5 years; except in the case of minor victims, the retention period shall be until 5 years after the victim reaches 18 years of age. Records entered into the electronic tracking system shall be confidential and not subject to disclosure under state law.

Last Action
05/27/2020 G - Sent to the Governor

SB591 - Modifies provisions relating to civil actions, including punitive damages and unlawful merchandising practices

Sponsor
Sen. Bill White (R)

Summary
This bill modifies provisions relating to civil actions, including unlawful merchandising practices and punitive damages. The provisions of this bill shall apply to any cause of action filed on or after the effective date.
UNLAWFUL MERCHANDISING PRACTICES FOR NEW RESIDENCES
This bill provides that an unlawful merchandising practice shall not include any advertisement, merchandise, or transaction in which the merchandise consists of a new residence in a transaction in which the buyer is offered and accepts an express warranty in the sale contract by the builder or by a third party warranty paid for by the builder and the sale contract includes a disclaimer. The bill defines "residence" as a single-family house, duplex, triplex, quadruplex, or unit in a multiunit residential structure in which the title to each individual unit is transferred to an owner under a condominium or cooperative system and includes common areas and common elements (Section 407.020, RSMo).
PROCEDURE FOR UNLAWFUL MERCHANDISING PRACTICES CLAIMS
A person seeking to recover damages for unlawful merchandising practices shall establish that the person acted as a reasonable consumer, that the alleged unlawful act would cause a reasonable person to enter into the transaction that resulted in damages, and the individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty. A court may dismiss a claim for failure to show a likelihood that the alleged unlawful act would mislead a reasonable consumer. In a class action, any class representative shall establish these requirements. All other members of the class shall establish individual damages in a manner determined by the court.
In addition to current damages available, a court may provide equitable relief as it deems necessary to protect the party from the unlawful acts. No action may be brought under these provisions to recover damages for personal injury or death in which a claim arises out of the rendering of or failure to render health care services. Furthermore, this bill provides that any award of attorney's fees shall bear a reasonable relationship to the amount of the judgment.

However, when the judgment grants equitable relief, the attorney's fees shall be based on the amount of time reasonably expended (Section 407.025).
PUNITIVE DAMAGES - GENERAL
This bill provides that punitive damages shall only be awarded if the plaintiff proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others, and the plaintiff is awarded more than nominal damages. Punitive damages may be awarded against an employer due to an employee's conduct in certain situations, as provided in the bill. When an employer admits liability for the actions of an agent in a claim for compensatory damages, the court shall grant limited discovery consisting only of employment records and documents or information related to the agent's qualifications.
A claim for punitive damages shall not be contained in the initial pleading and may only be filed as a written motion with permission of the court no later than 120 days prior to the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. The amount of punitive damages shall not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the court determines that the trier of fact could reasonably conclude that the standards for a punitive damage award, as provided in the bill, have been met. The responsive pleading shall be limited to a response of the newly amended punitive damages claim.
Currently, if the defendant has previously paid punitive damages in another state for the same conduct, following a hearing, the court may credit the jury award of punitive damages by the amount previously paid. This bill provides that the defendant may also be credited for punitive damages paid in a federal court.
These provisions shall not apply to claims for unlawful housing practices under the Missouri Human Rights Act (Sections 510.261, 510.263, and 510.265).
PUNITIVE DAMAGES - MEDICAL MALPRACTICE
This bill modifies the definition of "punitive damages" as it relates to actions for damages against a health care provider for personal injury or death caused by the rendering of health care services.
In order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct. Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute intentional conduct or malicious misconduct (Sections 538.205 and 538.210).

Last Action
07/01/2020 G - Signed by the Governor

SB599 - Modifies various provisions relating to financial instruments

Sponsor
Sen. Justin Brown (R)
Summary
This bill modifies provisions relating to financial instruments. LINKED DEPOSITS
Currently, the State Treasurer must create an investment policy that includes an asset allocation plan that limits the total amount of state moneys that may be invested in a particular investment. The asset allocation plan must also set diversification limits that include a restriction limiting the total amount of time deposits (not including linked deposits) of state money placed with any one single banking institution to no more than 10% of all time deposits of state money. This bill changes that limit to 15% of all time deposits of state money authorized under the asset allocation plan (Section 30.260, RSMo).

Currently, it is required that market rate is to be determined at least once a month by the State Treasurer using a process that gives consideration of prevailing rates offered for certificate of deposits by well-capitalized Missouri financial institutions and the advance rate established by the Federal Home Loan Bank of Des Moines. This bill requires the treasurer to also give consideration to any other calculation based on current market investment indicators determined by the State Treasurer (Section 30.260).

Currently, the State Treasurer may invest in linked deposits; however the total amount deposited at any one time may not exceed, in the aggregate, $720 million and no more than $110 million of the aggregate shall be used for link deposits to small businesses.

This bill changes those limits to $800 million and $190 million, respectively (Section 30.753).

This bill requires the State Treasurer to give priority to the funding of renewed linked deposit applications over the funding of new linked deposit applications (Section 30.758).

MISSOURI LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM

Currently, member contributions for the Missouri Local Government Employees' Retirement System are 0% or 4% of compensation. This

bill allows each political subdivision to elect an alternative member contribution amount of 2% or 6% of compensation. If a political subdivision elected a benefit program for certain members covered concurrently by Social Security and another for those members not covered concurrently by Social Security, the political subdivision may also elect one member contribution for those members who are covered and another contribution amount for those members who are not covered (Section 70.705).

MISSOURI DEVELOPMENT FINANCE BOARD

The bill modifies the definition of "project" for purposes of the Missouri Development Finance Board Act to include any transfer, expenditure or working capital of the state, any agency or department of the state or any development agency (Section 100.255).

MISSOURI FAMILY TRUST COMPANY ACT FAMILY MEMBERS

The bill expands the types of entities that may be served by a family trust company to include an irrevocable trust of which one or more family members are the only permissible distributees (Section 362.1015).

REGISTRATION OF FAMILY TRUST COMPANIES

Currently, any family trust company that is not a foreign family trust company is required to file an organizational statement. This bill repeals that requirement and instead requires a family trust company or a foreign family trust company to pay a one-time $5,000 filing fee, file an initial registration with the Secretary of State, and file an application for a certificate of authority (Section 362.1030).

AUTHORITY TO MANAGE A FAMILY TRUST COMPANY

Currently, exclusive authority to manage a family trust company may be vested in a limited liability company if the board of directors or managers consists of three directors or managers. This bill modifies that provision by allowing exclusive authority to manage a family trust company to be vested in a limited liability company if the board of directors or managers consists of at least three directors or managers (Section 362.1037).

ORGANIZATIONAL INSTRUMENT

The bill modifies various provisions affecting organizational instruments filed by family trust companies. An organizational instrument of a family trust company must state that the purpose

for which the company is formed is to engage in any and all activities permitted under the Missouri Family Trust Company Act. Additionally, the requirement that certain relatives be designated in the organizational instrument is repealed. Such relatives are instead required to be designated in the initial and annual registration reports filed by the family trust company.

Furthermore, a provision is repealed prohibiting a family trust company from having more than one designated relative (Sections 362.1015 and 362.1040).

PURCHASES MADE BY FAMILY TRUST COMPANIES WHILE ACTING AS A FIDUCIARY

The bill provides that, among other criteria, a family trust company cannot, while acting as a fiduciary, make certain purchases directly from underwriters, broker-dealers, or in the secondary market unless the company discloses its intent to do so in writing to all family members for whom the investment is to be made (Section 362.1070).

CREDIT UNIONS

The bill makes several changes to credit union regulations. TRIPLICATE AND DUPLICATE FILINGS

Currently, credit unions are required to make certain filings with the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance in triplicate or duplicate. This bill modifies these provisions to require a single filing, rather than three or two (Sections 370.010, 370.030, 370.350, 370.355, and 370.358).

CERTIFICATE OF ORGANIZATION REQUIREMENTS

Currently, a certificate of organization is required to create a credit union to state the par value of the general shares. This bill changes that requirement to regular shares (Section 370.020).

OTHER FORMS OF DELIVERY

Currently, the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance is required to mail copies of certain filings, as well as notice to all interested parties for certain meetings pertaining to credit union business. This bill permits any other form of delivery as an alternative to mail delivery (Sections 370.071, 370.151, and 370.358).

ELECTRONIC BALLOTS

Currently, a credit union is allowed to charge initial or recurring membership fees, provided such fees have been approved by a majority of the membership in attendance at any regular or special meeting or by a mail ballot. This bill allows such fees to be charged if approved by an electronic ballot as well (Section 370.071).

Currently, the bylaws of a credit union, when approved by the membership, may provide for mail ballots for the election of officers. This bill allows for the use of electronic ballots for the election of officers as well (Section 370.170 and 370.358).

REPORTS AND EXAMINATIONS OF CREDIT UNIONS

Currently, a credit union is required to make a report of its condition on or before January 31 of each year. This bill requires reports to follow the reporting requirements of federal credit union insurers. Furthermore, it is the responsibility of the president or the president's designee to verify the report (Section 370.110).

The bill establishes a provision allowing the Director of the DCU to accept an examination of a credit union made by the federal credit union insurer instead of the director conducting an annual examination of a credit union (Section 370.120).

The bill increases the length of time a credit union has to make a report before the Director of the DCU revokes its certificate of approval from 15 days to 30 days (Section 370.130).

BOARD OF DIRECTORS MEMBERSHIP

The bill modifies provisions relating to the board membership of credit unions by repealing a provision requiring the election of a president, vice president, secretary, and treasurer and requiring instead the election of a chair, vice chair, secretary, and treasurer. Moreover, the positions of secretary and treasurer may be held by the same person if the bylaws of the credit union so provide (Section 370.190, 370.355, 370.358, and 370.359).

POWERS OF CREDIT UNIONS AND BOARDS OF DIRECTORS

In addition to powers currently granted, the board of directors of a credit union is permitted to:
(1) Authorize the employment and compensation of the chief executive officer;
(2) Approve annual operating budgets for the credit union;
(3) Declare dividends on regular shares;
(4) Accept resignations and fill vacancies of the board, credit committee, and supervisory committee;
(5) Amend the bylaws; and
(6) Hear appeals of people denied membership by the credit union. The bill removes provisions that permit the board of directors of a credit union to:
(1) Fix the amount of the surety bond that is required of each officer having custody of funds; and
(2) Declare dividends (Section 370.200). AUTHORIZATION OF LOANS OR ADVANCES
Currently, the credit committee or credit manager is required to approve every loan or advance made by the credit union to its members. This bill removes that provision and instead requires the credit committee or credit manager to follow the bylaws, policies, and procedures established by the board of directors regarding loans and advances (Section 370.220).
SUPERVISORY COMMITTEE MEMBERSHIP
The bill requires the supervisory committee, if the credit union bylaws so provide, to elect a chair from their own number (Section 370.230).
The bill removes a provision that bonds approved by the board of directors must be filed with the Director of the DCU within 45 days (Section 370.235).
CHARGES ON CREDIT UNION MEMBERS
Currently, credit unions are allowed to make a charge no more than once in a 12-month period to a member's share account if the member fails to keep the credit union informed about his or her current address. The bill modifies that to allow a quarterly charge and removes a provision that the charge be for the actual cost of determining the correct address. The bill also removes a provision limiting the charge to $5 (Section 370.260).
ENTRANCE OR MEMBERSHIP FEES
The bill repeals a provision allowing credit unions to charge entrance fees or membership fees on beneficiaries, trustees, or grantors of a trust, unless a member in their own right (Sections 370.270 and 370.275).
CREDIT UNIONS MAY WITHHOLD PAYMENTS
A credit union may refuse to make a payment from an account to a depositor, shareholder, any trust or payable-on-death account beneficiary, or any other person claiming an interest in the account under certain circumstances detailed in the bill, as long as the credit union notifies persons claiming an interest in the court. The credit union is not liable for damages as a result of an action taken under this provision (Section 370.288).
LOANS TO MEMBERS
The bill repeals a provision allowing members to receive a loan in installments instead of one sum if the loan is for purchasing necessary supplies for growing crops. The bill additionally repeals a provision allowing a borrower to repay the whole or any part of a loan on any day on which the credit union is open (Section 370.310).
EXPULSION OF MEMBERS
The bill allows the president or executive officer designated by the board to expel a member pursuant to the board's written policy. A person expelled may appeal such decision pursuant to such policy (Section 370.340).
FUNDS HELD IN RESERVE FOR LIFE CARE CONTRACTS

This bill specifies that the "entire amount" of entrance fee funds held in reserve for a life care contract shall be earned by "and available for release to" the care provider as provided by law, provided that the reserve and interest thereon shall not exceed "100%", rather than "one and one-half times the percentage", of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care contracts. The requirement to hold reserve funds may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations, provided that the total amount equals or exceeds the amount otherwise required.

CREDIT INSURANCE

Currently, insurance written in connection with a loan or other credit transaction with a duration of more than 10 years is not subject to regulation. This bill increases the time period from 10 years to 15 years (Section 385.015).

TRADITIONAL INSTALLMENT LOANS - POLITICAL SUBDIVISION REGULATIONS

The bill requires any fee charged to any traditional installment loan lender, which is not charged to all lenders licensed or regulated by the Division of Finance, to be a disincentive created by a political subdivision in violation of the provisions of law governing traditional installment loan lending.

The bill additionally allows traditional installment loan lenders to charge, in addition to any other contractual fees, a convenience fee or surcharge for payments made by a debit or credit card.

Furthermore, any traditional installment loan lender who prevails against a political subdivision in an action shall receive its actually incurred costs, including attorney fees, from such political subdivision (Section 408.512).

SECURITIES

This bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act (Sections 409.605 to 409.630).

Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or commissioner may provide information on the vulnerable person to the reporting individual upon request (Section 409.610).

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days (Section 409.615).

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability (Section 409.620).

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the commissioner, or law enforcement (Section 409.625).

The commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation by September 1, 2021 (Section 409.630).

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

(1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;
(2) Consent of service of process and a payment of a fee of $100; and
(3) Payment of $50 fee for any late filing (Section 409.3-302).
This bill raises the maximum civil penalty under the Senior Savings Protection Act from $5,000 to $25,000 for each violation. The bill also raises the maximum penalty after a hearing from $1,000 to $25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from $5,000 to $15,000 for each violation (Sections 409.4-412 and 409.6-604).
MORTGAGE LOAN ORIGINATORS
Currently, mortgage loan originators have prelicensing education requirements of at least 20 hours. This bill states that a prelicensing education course completed by an applicant will not satisfy the education requirement if the course precedes an application by a certain time period, as determined by the Nationwide Mortgage Licensing System and Registry (NMLSR) (Section 443.717).
The bill requires certain persons, as outlined in the bill, related to a mortgage loan originator to furnish their fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any governmental agency for a state, national, and international criminal history background check. The bill allows the Director of the Division of Finance within the Department of Commerce and Insurance to use the NMLSR as an agent for transmitting information to and from the Federal Department of Justice or any other governmental agency (Section 443.825).
The bill removes a provision that the director can make rules requiring advertisements of mortgage loans to include the name and office address of the licensee, which must match the name and address on file with the director (Section 443.855).
Currently, the law requires that each residential mortgage loan broker maintain at least one full-service office in Missouri. The bill allows this requirement to be waived for persons exclusively engaged in the business of loan processing or underwriting (Section 443.857).
FINANCIAL INSTRUMENTS
This bill prohibits a court from dividing securities among multiple recipients in such a way that negotiable securities become nonnegotiable securities. However, a court may divide securities into increments equal to a multiple of the allowable tradeable amount or denomination accepted by the industry, as defined in the official statement or offering document of the original security.
If these provisions prevent the distribution of property as another law requires, a court may:
(1) Distribute securities and other property in a way so that the total value of property each recipient receives is as close to the proper proportion as practicable;
(2) Liquidate the securities and distribute the resulting money among recipients; or
(3) Take any other action within its power, including a combination of the options above (Section 476.419).

Last Action
07/06/2020 G - Signed by the Governor

SB600 - Modifies provisions relating to dangerous felonies

Sponsor
Sen. Tony Luetkemeyer (R)
Summary

OFFENSE OF CONSPIRACYUnder this bill, if two or more defendants are charged with being joint participants in a conspiracy, it is presumed there is no substantial prejudice in charging both defendants in the same indictment or in their being tried together.Currently, guilt for an offense may be based upon a conspiracy to commit an offense when a person, with the purpose of promoting the commission of the offense, agrees with another person that they will engage in conduct to commit the offense. A person cannot be convicted of an offense based upon a conspiracy to commit the offense unless he or she commits an overt act in furtherance of the offense.The bill modifies the offense of conspiracy. Under this bill, a person commits the offense of conspiracy if a person agrees, with one or more persons, to commit any class A, B, or C felonies, or any unclassified felonies that exceed 10 years of imprisonment, and one or more persons do any act in furtherance of the agreement.The offense of conspiracy to commit an offense is a Class C felony. Additionally, this bill repeals the provisions barring a person from being charged, convicted, or sentenced for both the conspiracy to commit the offense and the actual offense (Sections 545.140, 562.014, and 557.021).DEFINITION OF DANGEROUS FELONYThe bill adds to the definition of "dangerous felony" the offense of armed criminal action, the offense of conspiracy to commit an offense when the underlying offense is a dangerous felony, and the offense of vehicle hijacking when punished as a class A felony (Section 556.061).OFFENSES NOT ELIGIBLE FOR PROBATIONThe bill provides that any person found guilty of, or pleading guilty to: the offense of second degree murder when the person knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person; any dangerous felony involving a deadly weapon; or any dangerous felony where the person has been previously found guilty of a class A or B felony or a dangerous felony shall not be eligible for probation, suspended imposition or execution of sentence, or a conditional release term and shall be sentenced to a term of imprisonment (Section 557.045).OFFENSE OF VEHICLE HIJACKINGThe bill creates the offense of vehicle hijacking, which is committed when an individual knowingly uses or threatens the use of physical force upon another individual to seize or attempt to seize possession or control of a vehicle. This offense is punished as a class B felony unless one of the aggravating circumstances listed in the bill was present during the commission of the offense, in which case it is punished as a class A felony (Section 570.027).OFFENSE OF ARMED CRIMINAL ACTIONCurrently, a person who commits the offense of armed criminal action is subject to a term of imprisonment of not less than 3 years for the first offense, 5 years for the second offense, and 10 years for any subsequent offense, in addition to any punishment for the crime committed by, with, or through the use of a deadly weapon.This bill changes the prison term for this offense to three to 15 years for the first offense, five to 30 years for the second offense, and at least 10 years for any subsequent offense. These prison terms shall be served in addition to and consecutively with any punishment for the offense committed with the use of a deadly weapon. Additionally, this bill provides that if the person convicted of armed criminal action is unlawfully possessing a firearm, the minimum prison term for the first offense is five years, the second offense is 10 years, and the third offense is 15 years.No person convicted for the offense of armed criminal action shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for the minimum period of imprisonment (Section 571.015).UNLAWFUL POSSESSION OF A FIREARMCurrently, the offense of unlawful possession of a firearm is a class D felony. This bill increases the penalty for unlawful possession of a firearm by a person convicted of a dangerous felony to a class C felony (Section 571.070).CRIMINAL STREET GANGSThis bill establishes the "Missouri Criminal Street Gangs Prevention Act". The bill modifies the definition of a "criminal street gang" by defining such an organization to have as one of its motivating, rather than primary, activities the commission of one or more criminal acts. The

definition of "pattern of criminal street gang activity" is modified to include "dangerous felony" as one of the offenses that would constitute a pattern.Currently, any person who actively participates in any criminal street gang with knowledge that its members engage in a pattern of criminal street gang activity and who willfully promotes such criminal conduct shall be punished by one year in the county jail or one to three years of imprisonment in a state correctional facility. This bill provides that such a person who actively participates in any criminal street gang that engages in a pattern of criminal conduct shall be guilty of a class B felony.Further, this bill changes the required mental state and penalty for any person who is convicted of a felony or misdemeanor that is committed for the benefit of, at the direction of, or in association with, a criminal street gang. This bill provides that such action must be with the purpose, rather than the specific intent, to promote, further, or assist in any criminal conduct by gang members. The bill repeals the applicability of this provision to a misdemeanor.A person convicted under this bill shall serve a term in addition to and consecutively with the punishment for the felony conviction a term of two years, unless the felony is committed within 1000 feet of a school, in which case the term shall be three years. Finally, if a person is convicted of a dangerous felony under this bill, he or she shall be punished by an additional five years (Sections 578.419, 578.423, and 578.425).

Last Action

07/06/2020 G - Signed by the Governor

SB631 - Modifies provisions relating to elections

Sponsor

Sen. Dan Hegeman (R)

Summary

This bill modifies election laws. In its main provisions the bill:

(1) Allows any state employee that is not subject to the Merit System or the Uniform Classification and Pay System to run for the nomination, or as a candidate for election, to a partisan political office (Section 36.155, RSMo);

(2) Allows persons required to file financial interest statements to make a written request to redact the name and employer of their dependent children under 21 years of age (Section 105.485);

(3) Creates an additional absentee ballot voting justification that applies in instances where the voter has contracted, or is at risk to contract, severe acute respiratory syndrome Coronavirus 2. At risk individuals are defined based on CDC recommendations that are specified in the bill. Notary signature verification is not required and absentee ballot statements will have a format referencing the coronavirus justification. Any ballot envelope used for mail-in ballots shall be the same as the ballot envelope used for absentee ballots, provided the envelope has options listed to clearly indicate which ballot the voter is casting. The Coronavirus justification to vote an absentee ballot will expire on December 31, 2020 (Sections 115.277, 115.289, 115.285, and 115.291);

(4) Allows any registered voter to cast a mail-in ballot during 2020 in order to avoid the risk of contracting or transmitting severe acute respiratory Coronavirus 2. Applications for a mail-in ballot may be made in person or by mail as specified in the bill. Voters casting a mail-in ballot are required to execute and submit a notarized statement under penalty of perjury with the ballot. Knowingly making, delivering, or mailing a fraudulent mail-in ballot application is a class one election offense. Additionally, the false execution of a mail-in ballot is a class one election offense. The prosecuting attorney or the attorney general may prosecute any false execution of a mail-in ballot. Upon receipt of an application, the election authority will deliver a mail-in ballot as specified in the bill. No information which encourages a vote for or against a candidate or issue shall be provided to any voter with the ballot. Ballots must be

returned by mail no later than the closing of polls on election day. Any ballot received after such time shall not be counted. These provisions contain an emergency clause and expire on December 31, 2020 (Section 115.302);
(5) Changes the filing fee from $200 to $500 for candidates for statewide office or United States Senator; from $100 to $300 for candidates for Representative in Congress, circuit judge, or State Senator; and from $50 to $150 for candidates for State Representative. County office filing fees will increase from $50 to $100. The bill also changes the filing fee from $1000 to $5000 for candidates for President to be on the presidential primary ballot (Section 115.357, 115.761);
(6) Modifies Senatorial district political party committee meeting dates. Currently, the members of each senatorial district political party committee are required to meet on the Saturday after each general election for the purpose of electing members to the state political party committee. In lieu of that requirement, this bill permits the chair of the Congressional district committee where the Senatorial district is principally located to call for a meeting to be held concurrently with the election of Senatorial officers for the purpose of electing members to the state political party committee (Section 115.621);
(7) Authorizes the Secretary of State to issue and enforce subpoenas when it is necessary to conduct an investigation of certain election offenses. These powers may only be exercised by the secretary or an authorized representative of the secretary at the specific written direction of the secretary or his or her chief deputy. Failure to comply with a subpoena may be enforced through court order. These provisions expire August 28, 2025 (Section 115.642); and
(8) Extends the sunset date of certain filing fees charged by the Secretary of State from December 31, 2021, to December 31, 2026 (Sections 347.400, 417.018).

Last Action
06/04/2020 G - Signed by the Governor

SB644 - Modifies law regarding service animals

Sponsor
Sen. Denny Hoskins (R)

Summary
This bill modifies the definition of a "service dog" to be a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. This bill also adds "mental health service dog" to the definition of a service dog. A mental health service dog, or a psychiatric service dog, is a dog that has been individually trained for an owner who has a psychiatric disability, medical condition, or developmental disability. The dog is trained to perform tasks to mitigate or assist the owner with difficulties directly related to the disability (Section 209.200).
Under this bill, any person knowingly misrepresenting a dog as a service dog, as described in the bill, for the purposes of receiving accommodations regarding service dogs under the Americans with Disabilities Act shall be guilty of a class C misdemeanor for the first offense and a class B misdemeanor for each subsequent offense. Additionally, any person knowingly misrepresenting any animal as an assistance animal, as described in the bill, for the purposes of receiving accommodations regarding assistance animals under the Fair Housing Act or the Rehabilitation Act shall be guilty of a class C misdemeanor for the first offense and a class B misdemeanor for each subsequent offense (Section 209.204).
The Governor's Council on Disability shall prepare and make available online a placard for posting in a front window or door of a business stating that service dogs are welcome and that

misrepresenting a service dog is a violation of Missouri law. The council shall also prepare and make available a brochure detailing guidelines regarding service dogs and assistance animals (Section 209.204).

Last Action
05/27/2020 G - Sent to the Governor

SB653 - Modifies provisions relating to child protection

Sponsor
Sen. Sandy Crawford (R)

Summary
DATA SHARING
This bill allows the Children's Division within the Missouri Department of Social Services to exchange electronic reports and share data with any entity as needed to protect children and access other social services. The department is required to implement a system allowing the electronic exchange of such data by August 28, 2020 (Sections 210.116 and 210.652, RSMo).
CHILD PROTECTION AND CASE MANAGEMENT
This bill requires the division to complete a standard risk assessment within 72 hours of a report of abuse or neglect as part of its structured decision-making protocols. The division and the Office of the State Court Administrator shall develop a joint safety assessment tool before December 31, 2020 to replace the current risk assessment. The safety assessment tool must be implemented before January 1, 2022.
The bill elaborates on the principles guiding the child protection system to prioritize home and community-based services and supports successful outcomes. The department is required to create a response and evaluation team that reviews and evaluates the practice of the division and any contractors. This system will be used to support contract negotiations, placement and referrals, and enhanced payments.
Finally, the bill creates new procedures for “temporary alternative placement agreements” that allow voluntary placement of a child with a relative in cases where a parent is temporarily unable to care for a child but removal from the home, through court action, is not appropriate (Sections 210.112, 210.123, 210.145, and 210.790).
This bill modifies the "Foster Parents' Bill of Rights" to require the Children's Division and its contractors to provide written notification of these rights at the time the child is placed with a prospective foster parent, even if the parent has yet to be licensed as a foster parent. Additionally, the division and its contractors shall provide full access to the child's medical, psychological, and psychiatric records, including records prior to the child coming into care, at the time the child is placed with a foster parent. Access shall include providing information and authorization for foster parents to review or to obtain the records directly from the service provider. The bill also requires the court to allow foster parents to testify in any proceedings involving a child in their care and if not given that opportunity, they may seek remedial writ relief pursuant to Missouri Supreme Court Rules 84, 94, and 97. No docket fee shall be required to be paid by the foster parent and the division shall not remove a child from placement with the foster parent based solely upon the foster parent's filing of a petition for a remedial writ or while the writ is pending, unless removal is necessary for the health and safety of the child.
The bill also prohibits the division from requiring foster parents to conduct or be present for supervised visits with a child in their care and states that the court shall only require a child to appear in court if necessary for making a decision and after considering all of the information provided by the division and family support team, the appropriateness of the courtroom

environment, and the hardship to the child and current guardians (Sections 210.566 and 211.135 and 211.171).

Last Action
05/27/2020 G - Sent to the Governor

SB656 - Modifies provisions relating to veterans

Sponsor
Sen. Mike Cierpiot (R)

Summary
HCS/SB 656 - This act modifies provisions relating to veterans.
HONOR GUARD APPRECIATION DAY (Section 9.302)
This act designates every August 19th as "Honor Guard Appreciation Day" in Missouri.
GHOST ARMY RECOGNITION DAY (Section 9.305)
This act designates every June 6th as "Ghost Army Recognition Day" in Missouri.
This provision is identical to a provision in HCS/SS/SCS/SB 718 (2020).
BUDDY CHECK 22 DAY (Section 9.311)
This act designates the 22nd day of each month as "Buddy Check 22 Day" to encourage citizens check in on veterans and to raise awareness of the problem of suicide facing military personnel.
This provision is identical to a provision in HCS/SS/SCS/SB 718 (2020).
MISSOURI KOREAN WAR VETERANS MEMORIAL (Section 10.230)
This act designates the Missouri Korean War Veterans Memorial located in Kansas City, Missouri as the official Korean War veterans memorial for the state of Missouri.
GOLD STAR FAMILIES MEMORIAL MONUMENT (Section 10.237)
This act designates the Gold Star Families Memorial Monument at the College of the Ozarks as an official Gold Star Memorial Monument for the state of Missouri.
GOLD STAR MEMORIAL MONUMENT AND PAVILION (Section 10.238)
This act designates the Gold Star Memorial Monument and Pavilion at Jefferson Barracks Park shall be known as an official Gold Star Memorial Monument for the state of Missouri.
GOLD STAR MEMORIAL MONUMENT AT THE MISSOURI CAPITOL (Section 10.239)
This act designates the Gold Star Memorial Monument at the Missouri Capitol in Jefferson City as an official Gold Star Memorial Monument for the state of Missouri.
ATTORNEY GENERAL MILITARY PROGRAM (Section 27.115)
This act requires the Attorney General to design, implement, and oversee a program to assist members of the military and their families in finding and retaining legal counsel. The program shall be marketed to attorneys in addition to military families and shall publicize pro bono legal services available to military families. The Attorney General shall collaborate with the Missouri Bar in the administration of the program.
This provision is similar to a provision in HCS/SS/SCS/SB 718 (2020).
JOB OPPORTUNITIES FOR VETERANS (Section 42.017)
This act requires the Missouri Veterans' Commission to seek out business organizations that are interested in hiring veterans for available job opportunities. This provision is identical to HB 1454 (2020).
TEACHER LICENSING FOR MILITARY SPOUSES (Section 168.021)
This act provides that a provisional certificate issued to any qualified military spouse who is hired to teach in a Missouri public school is valid for three years. Additionally, within 30 days after receiving an application and of completion of the required background check, the State Board of Education shall issue a full certificate of license to a spouse of a member of

the Armed Forces who meets certain residence requirements if all necessary fees are paid and all other licensing requirements are met.

This provision is similar to a provision in HCS/SS/SCS/SB 718 (2020) and HB 1316 (2020).

STATE OMBUDSMAN & VETERANS' HOMES (Section 192.2305)

This act authorizes the Office of State Ombudsman for Long-Term Care Facility Residents to receive, respond to, and resolve complaints made by or on behalf of residents of Missouri veterans' homes relating to the action, inaction, or decisions of providers or agencies affecting resident health, safety, welfare, or rights. The State Ombudsman or representatives of the Office, in addition to all current authority granted by state statute, shall have the authority to enter any veterans' home and have access to residents in a reasonable time and manner and have access to resident records with the permission of the resident or the resident's guardian. Additionally, the Office shall analyze and monitor the development and implementation of federal, state, and local law and regulations regarding Missouri veterans' homes.

This provision is identical to SB 846 (2020) and a provision in HCS/SS/SCS/SB 718 (2020).

DEVELOPMENTAL DISABILITY SERVICES FOR MILITARY FAMILIES (Section 208.151)

This act provides that Missouri members of the Armed Forces and their immediate family shall have their eligibility for MO HealthNet developmental disability services temporarily suspended for any period of time during which such person temporarily resides outside of Missouri for reasons relating to military service. Upon returning to the state, the eligibility shall be immediately restored. If the military member or an immediate family member is not a legal resident of this state, but would otherwise be eligible for developmental disability services, the individual shall be eligible for such services during the time in which the individual is temporarily present in Missouri for reasons relating to military service.

This provision is identical to a provision in HCS/SS/SCS/SB 718 (2020) and substantially similar to a provision in HB 1316 (2020).

SERVICE DOGS AND ANIMALS (Sections 209.150 to 209.204)

This act modifies the definition of a "service dog" to be a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Additionally, this act adds "mental health service dog" to the definition of a service dog. A mental health service dog, or a psychiatric service dog, is a dog that has been individually trained for an owner who has a psychiatric disability, medical condition, or developmental disability. The dog is trained to perform tasks to mitigate or assist the owner with difficulties directly related to the disability.

These provisions are identical to SS/SB 644 (2020) and provisions in HCS/HB 1319 (2020), substantially similar to provisions in HB 750 (2020), and similar to provisions in HCS/HB 107 (2019), HB 1369 (2019), HB 262 (2017), HCS/HB 1907 (2018), HCS/SS/SCS/SB 918 (2018), and SB 335 (2017), HCS/HB 1428 (2016), HB 787 (2015), and HB 142 (2015).

Under this act, any person knowingly misrepresenting a dog as a service dog, as described in the act, for the purposes of receiving accommodations regarding service dogs under the Americans with Disabilities Act shall be guilty of a Class C misdemeanor for the first offense and a Class B misdemeanor for each subsequent offense. Additionally, any person knowingly misrepresenting any animal as an assistance animal, as described in the act, for the purposes of receiving accommodations regarding assistance animals under the Fair Housing Act or the Rehabilitation Act shall be guilty of a Class C misdemeanor for the first offense and a Class B misdemeanor for each subsequent offense. Any person violating these provisions shall also be civilly liable for any actual damages resulting from such misrepresentation.

The Governor's Council on Disability shall prepare and make available online a placard for posting in a front window or door of a business stating that service dogs are welcome and that

misrepresenting a service dog is a violation of Missouri law. The Council shall also prepare and make available a brochure detailing guidelines regarding service dogs and assistance animals.

These provisions are identical to SS/SB 644 (2020) and substantially similar to provisions in HCS/HB 1319 (2020) and SB 750 (2020) and similar to provisions in HCS/HB 107 (2019), SCS/SB 107 (2019), HCS/HB 2031 (2018), and HCS/SS/SCS/SB 918 (2018).

CHILD PROTECTION FOR MILITARY FAMILIES (Sections 210.109 and 210.150)

This act requires the Children's Division to attempt to ascertain whether the suspected perpetrator or any person responsible for the care, custody, and control of a child is a member of the Armed Forces after receiving a report on alleged abuse or neglect of a child.

This act allows appropriate staff of the United States Department of Defense to receive access to investigation records contained in the central registry of the Children's Division and records maintained by the Children's Division following a report of child abuse and neglect in cases where the suspected perpetrator or any person responsible for the care, custody, and control of the subject child is a member of the Armed Forces.

Additionally, this act requires the Division to report findings in cases where the person responsible for the care, custody, and control of a child is a member of the Armed Forces to the most relevant family advocacy program or other relevant person authorized by the United States Department of Defense to receive reports.

These provisions are identical to a provision in HCS/SS/SCS/SB 718 (2020) and substantially similar to provisions in HB 1316 (2020).

PURPLE HEART SPECIAL LICENSE PLATES (Section 301.451)

Currently, a recipient of the Purple Heart medal shall be charged only regular registration fees to be issued Purple Heart special license plates from the Department of Revenue.

This act exempts Purple Heart special license plates from vehicle registration fees for the first set of the plates issued to an eligible person.

Under the act, any registered co-owner of the vehicle shall be entitled to use and renew the plates until he or she remarries, or for the rest of his or her life if he or she does not remarry.

These provisions are identical to provisions in HCS/SB 686 (2020) and HCS/HB 1800 (2020).

CENTRAL MISSOURI HONOR FLIGHT SPECIAL LICENSE PLATES (Section 301.3069)

This act establishes a "Central Missouri Honor Flight" special license plate. The plate requires an annual emblem-use fee of $25, paid to Central Missouri Honor Flight and to be used for financial assistance to transport veterans to Washington D.C. to view veteran memorials, in addition to the $15 special personalized license plate fee and other requirements and fees as provided by law.

These provisions are identical to provisions in HCS/SB 686 (2020), SCS/HB 1963 (2020) and to provisions in HCS/HB 1473 (2020).

MERITORIOUS SERVICE MEDAL SPECIAL LICENSE PLATES (Section 301.3159)

This act establishes a "Meritorious Service Medal" special license plate. Applicants shall provide proof of having been awarded the medal as required by the Director of the Department of Revenue. There shall be an additional fee for issuance of the plates equal to the $15 special personalized license plate fee. Meritorious Service Medal license plates shall not be transferable to any other person, except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person.

These provisions are identical to HCS/SB 686 (2020), HB 2249 (2020), to provisions in SCS/HB 1963 (2020), and to provisions in HCS/HB 1473 (2020).

CONCEALED CARRY PERMITS FOR MILITARY MEMBERS (Section 571.104)

This act authorizes an active military member of the armed forces to renew his or her permit to carry a concealed weapon by mail. A permit may be picked up in person or sent by certified mail.
This provision is identical to HB 2259 (2020) and HB 1160 (2019).

Last Action
05/27/2020 G - Sent to the Governor

SB676 - Modifies several provisions relating to taxation

Sponsor
Sen. Tony Luetkemeyer (R)

Summary
This bill modifies several provision relating to taxation PROPERTY TAX ASSESSMENTS
Currently, the St. Louis County Assessor is required to conduct a physical inspection of residential real property prior to increasing the assessed valuation of a property by more than 15% since the last assessment, and requires written notification of such inspection. This bill applies such provision to all counties (Section 137.115).
For property tax assessments and appeals of such assessments, currently, in first class counties, taxpayers shall appeal to the County Board of Equalization by the third Monday in June and the County Board of Equalization shall meet on the first Monday in July. This bill modifies such deadlines to provided that taxpayers shall appeal to the board by the second Monday in July, and the board shall meet on the third Monday in July (Sections 137.385 and 138.090).
For property assessment appeals to the boards of equalization in the City of St. Louis, St. Charles County, and St. Louis County, currently provides that the assessor shall have the burden to prove that the valuation does not exceed the true market value of the property. Additionally, if a physical inspection of a property is required for assessment, the assessor shall have the burden to prove that such inspection was performed. If the assessor fails to provide sufficient evidence that the inspection was performed, the property owner shall prevail on the appeal as a matter of law.
This bill applies such provisions to appeals in all counties for which the increase in assessed valuation for the subject property exceeds 15% (Section 138.060).
INCOME TAXES
Currently, a taxpayer is allowed to deduct from his or her Missouri adjusted gross income a portion of his or her federal income taxes paid. This bill provides that federal income tax credits received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act shall not be considered when determining the amount of federal income tax liability allowable as a deduction under current law (Section 143.171).
Currently, taxpayers are required to itemize deductions to include any federal income tax refund amounts in his or her Missouri adjusted gross income if such taxpayer previously claimed a deduction for federal income tax liability on his or her Missouri income tax return. This bill provides that any amount of a federal income tax refund attributable to a tax credit received under the CARES Act shall not be included in the taxpayer's Missouri adjusted gross income (Section 143.121).
TAXATION OF PARTNERSHIPS
This bill requires taxpayers in a partnership to report and pay any tax due as a result of federal adjustments from an audit or other action taken by the IRS or reported by the taxpayer on an amended federal income tax return. Such report shall be made to the Department of Revenue on forms prescribed by the department, and payments of additional tax due shall be

made no later than 180 days after the final determination date of the IRS action, as defined in the bill.
Partners and partnerships shall also report final federal adjustments as a result of partnership level audits or administrative adjustment requests, as defined in the bill. Such payments shall be calculated and made as described in the bill. Partnerships shall be represented in such actions by the partnership's state partnership representative, which shall be the partnership's federal partnership representative unless otherwise designated in writing.
Partners shall be prohibited from applying any deduction or credit on any amount determined to be owed under this bill.
The department shall assess additional tax, interest, and penalties due as a result of federal adjustments under this bill no later than three years after the return was filed, as provided in current law, or one year following the filing of the federal adjustments report under this bill. For taxpayers who fail to timely file the federal adjustments report as provided under this bill, the department shall assess additional tax, interest, and penalties either by three years after the return was filed, one year following the filing of the federal adjustments report, or six years after the final determination date, whichever is later.
Taxpayers may make estimated payments of the tax expected to result from a pending IRS audit. Such payments shall be credited against any tax liability ultimately found to be due. If the estimated payments made exceed the final tax liability, the taxpayer shall be entitled to a refund or credit for the excess amount, as described in the bill.
The provisions of this bill shall apply to any adjustments to a taxpayer's federal taxable income or federal adjusted gross income with a final determination date occurring on or after January 1, 2021 (Section 143.425).
TERRORIST ATTACK VICTIMS TAX RELIEF
This bill provides an income tax exemption for victims who die as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September 11, 2001, or as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002. Such income tax exemption shall apply for the period beginning in the tax year such injuries occurred and ending in the tax year of such victim's death.
The tax exemption provided by this bill shall not apply to the amount of any tax imposed which would be computed by only taking into account the items of income, gain, or other amounts determined to be taxable under federal law, as described in the bill.
This bill shall not apply to any individual as a participant or conspirator in any such attack or a representative of such an individual.
Provisions in current law requiring a claim for refund to be filed within three years from the time the return is filed shall not apply to refunds claimed pursuant to this bill (Section 143.991).

Last Action
05/27/2020 G - Sent to the Governor

SB718 - Modifies provisions relating to military affairs

Sponsor
Sen. Bill White (R)
Summary
This bill has numerous provisions related to military affairs. MILITARY FAMILY MONTH
The bill designates November as "Military Family Month" in Missouri to recognize the daily sacrifices of military families. (Section 9.297, RSMo)
BUDDY CHECK 22 DAY

This bill designates the 22nd day of each month as "Buddy Check 22 Day" to encourage citizens check in on veterans and to raise awareness of the problem of suicide facing military personnel (Section 9.300).

ATTORNEY GENERAL MILITARY PROGRAM

The bill requires the Attorney General to design, implement, and oversee a program to assist members of the military and their families in finding and retaining legal counsel. The program shall be marketed to attorneys in addition to military families and shall publicize pro bono legal services available to military families. The Attorney General shall collaborate with the Missouri Bar in the administration of the program and shall utilize existing staffs, volunteers, and programs. The Department of Defense and military facilities in Missouri are encouraged to promote this program. Additionally, any additional funds needed to implement this program shall be subject to appropriations(Section 27.115).

SURVIVING SPOUSES IN THE MERIT SYSTEM

This bill modifies the definition of "surviving spouse" in provisions of law relating to the merit system (Section 36.020).

DEPARTMENT OF MILITARY FORCES

This bill creates the Department of Military Forces which shall be headed by the Adjutant General and shall administer the militia and programs of the state relating to military forces. The office of Adjutant General and the militia are transferred from the Department of Public Safety to the Department of Military Forces.

These provisions are contingent upon the passage of a constitutional amendment that provides for the establishment of the Department of Military Forces (Sections 41.035 and 650.005).

TEACHER LICENSING FOR SPOUSES OF MILITARY MEMBERS

This bill provides that a provisional certificate issued to any qualified spouse of a member of the military who is hired to teach in a Missouri public school is valid for three years. Additionally, within 30 days after receiving an application and of completion of the required background check, the State Board of Education shall issue a full certificate of license to a spouse of an active duty member of the Armed Forces who meets certain residence requirements if all necessary fees are paid and all other licensing requirements are met (Section 168.021).

STATE OMBUDSMAN AND VETERANS' HOMES

This bill authorizes the Office of State Ombudsman for Long-Term Care Facility Residents to receive, respond to, and resolve complaints made by or on behalf of residents of Missouri veterans' homes relating to the action, inaction, or decisions of providers or agencies affecting resident health, safety, welfare, or rights. The State Ombudsman or representatives of the Office, in addition to all current authority granted by state statute, shall have the authority to enter any veterans' home and have access to residents in a reasonable time and manner and have access to resident records with the permission of the resident or the resident's guardian. Additionally, the office shall analyze and monitor the development and implementation of federal, state, and local law and regulations regarding Missouri veterans' homes (Section 192.2305).

DEVELOPMENTAL DISABILITY SERVICES FOR MILITARY FAMILIES

This bill provides that Missouri members of the Armed Forces and their immediate family shall have their eligibility for MO HealthNet developmental disability services temporarily suspended for any period of time during which such person temporarily resides outside of Missouri for reasons relating to military service. Upon returning to the state, the eligibility shall be immediately restored. If the military member or an immediate family member is not a legal resident of this state, but would otherwise be eligible for developmental disability services, the individual shall be eligible for such services during the time in which the

individual is temporarily present in Missouri for reasons relating to military service (Section 208.151).
CHILD PROTECTION FOR MILITARY FAMILIES
This bill requires the Children's Division to attempt to ascertain whether the suspected perpetrator or any person responsible for the care, custody, and control of a child is a member of the Armed Forces after receiving a report on alleged abuse or neglect of a child.
This bill allows appropriate staff of the United States Department of Defense to receive access to investigation records contained in the central registry of the Children's Division and records maintained by the Children's Division following a report of child abuse and neglect in cases where the suspected perpetrator or any person responsible for the care, custody, and control of the subject child is a member of the Armed Forces.
Additionally, this bill requires the division to report findings in cases where the person responsible for the care, custody, and control of a child is a member of the Armed Forces to the most relevant family advocacy program or other relevant person authorized by the United States Department of Defense to receive reports (Sections 210.109 and 210.150).
MOTOR VEHICLE INSURANCE
This bill requires the Adjutant General to ensure that members of
the state military forces receive notice of certain protections relating to motor vehicle insurance, and encourages the secretaries of the branches of the United States Armed Forces to likewise notify members under their jurisdictions.
The bill specifically notes that the term "adverse underwriting decision" shall include a decision to charge an increased premium (Sections 379.122).
MISSOURI WORKS PROGRAM
This bill modifies the Missouri Works program to provide that, for qualified military projects, the benefit shall be based on part- time and full-time jobs created by the project (Sections 620.2005 and 620.2010).

Last Action
05/27/2020 G - Sent to the Governor

SB739 - Prohibits public bodies from entering into certain contracts

Sponsor
Sen. Bob Onder (R)
Summary

This bill creates the "Anti-Discrimination Against Israel Act". This act prohibits public entities from entering into certain contracts with a company unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of goods or services from the State of Israel or any company, or person or entity, doing business with or in the State of Israel. Any contract failing to comply with the provisions of this bill shall be void against public policy.

This bill does not apply to contracts with a total potential value of less than $100,000 or to contractors with fewer than 10 employees.

Last Action
05/27/2020 G - Sent to the Governor

SB913 - Removes the expiration of the peer review process for architects, landscape architects, land surveyors, and engineers

Sponsor
Sen. Ed Emery (R)
Summary
This bill relates to provisions of the peer review process for architects, landscape architects, professional land surveyors, and professional engineers that are set to expire on January 1, 2023. This bill repeals the expiration of those provisions.
Last Action
05/27/2020 G - Sent to the Governor

SCR38 - Disapproves the Missouri Hazardous Waste Management Commission's recommendations regarding the fees and taxes of the Hazardous Waste Management Commission

Sponsor
Sen. Cindy O'Laughlin (R)
Summary
SCR 38 - This resolution disapproves the regulation filed by the Missouri Hazardous Waste Management Commission on August 30, 2019, that increases fees for generators of hazardous waste.Sections 260.380 and 260.475 authorize the General Assembly to disapprove any regulation containing new fees by a concurrent resolution adopted within the first 60 days of the regular session following promulgation of such regulation.
Last Action
05/27/2020 G - Sent to the Governor

SJR38 - Modifies provisions regulating the legislature to limit the influence of partisan or other special interests

Sponsor
Sen. Dan Hegeman (R)
Summary
GIFT BAN
(Article III, Section 2(b))
Current law allows a member of the General Assembly, a staff member of a member of the General Assembly, or a person employed by the General Assembly to receive a gift of no more than $5 per occurrence from a lobbyist or lobbyist principal. This amendment prohibits all such gifts from lobbyists or lobbyist principals.
CAMPAIGN CONTRIBUTION LIMITATIONS
(Article III, Section 2(c))
The amendment provides that in any election to the office of State Senator, the amount of contributions made to or accepted by any candidate or candidate committee from any person other than the candidate shall not exceed $2,400, rather than $2,500. The amendment additionally repeals a provision subjecting campaign contribution limitations for state senate and state house races to inflation.
REDISTRICTING
(Article III, Sections 3 & 7)
Independent Bipartisan Citizens Commissions
Under current law, the nonpartisan state demographer is responsible for preparing new redistricting plans for the House of Representatives and the Senate, which plans may be disapproved by bipartisan commissions nominated by the major political parties and appointed by the Governor. This amendment repeals the post of nonpartisan state demographer and gives all redistricting responsibility to the currently-existing commissions, renamed as the House Independent Bipartisan Citizens Commission and the Senate

Independent Bipartisan Citizens Commission, respectively. The membership of each commission is modified such that each commission consists of members (20 each, under the current Congressional apportionment) to be appointed by the Governor from lists provided by the state committee and Congressional district committees of each of the two political parties casting the highest vote for Governor at the last preceding gubernatorial election. For each commission, each state committee shall submit a list of 5 nominees to the Governor and each Congressional district committee shall submit a list of 2 nominees to the Governor. The Governor shall select 2 nominees from each list submitted by each state committee and 1 nominee from each list submitted by each Congressional district committee. No member of either commission may be a member of the other commission.

REDISTRICTING CRITERIA

The order of priority for the criteria that is to be used in preparing redistricting plans is as follows:

1. No district shall be drawn in a manner which would result in the denial or abridgment of the right of any person to vote on account of race or color. Furthermore, no district shall be drawn such that members of a community of protected citizens have less of an opportunity than other members of the electorate to participate in the political process and elect representatives of their choice.
2. Districts shall be as nearly equal as practicable in population and shall be drawn on the basis of one person, one vote. Districts shall not deviate from the ideal population by more than one percent, provided that deviation may be up to three percent if necessary to follow political subdivision lines.
3. Districts must be established in a manner that complies with all requirements of federal law, specifically including the Voting Rights Act of 1965.
4. Districts must consist of contiguous territory as compact as may be, to the extent permitted in conjunction with the above criteria.
5. To the extent permitted in conjunction with the above criteria, communities must be preserved, as described in the amendment.
6. Districts must be drawn to achieve partisan fairness and competitiveness, provided that all preceding criteria shall take precedence. Furthermore, current law provides that, in any redistricting plan, the difference between the total "wasted votes" of the two major political parties divided by the total votes cast for such parties shall be as close to zero as practicable. This amendment modifies that requirement by prohibiting such difference from exceeding 15%.

REDISTRICTING TIMELINE

Each commission must file a tentative redistricting plan and proposed maps with the Secretary of State within 5 months of appointment. A final statement of such plan and maps must be filed within 6 months with the approval of at least seven-tenths of the respective commission (14 out of 20 members under the current Congressional apportionment). If either commission fails to file its plan with the Secretary of State within such time period, then the commission failing to do so shall stand discharged and the respective chamber of the General Assembly shall be redistricted using the same criteria listed above by a commission of six members appointed by the Supreme Court from among the judges of the appellate courts of the state of Missouri.

ACTIONS CHALLENGING REDISTRICTING PLANS

Any action expressly or implicitly alleging that a redistricting plan violates the Missouri Constitution, federal law, or the United States Constitution must be filed in the Circuit Court of Cole County and shall name the respective commission that approved the challenged plan as a defendant. In order to bring such an action, a plaintiff must be a Missouri voter who resides in a district that exhibits an alleged violation and who would be remedied by a

differently drawn district. If the court renders a judgment in which it finds that a completed redistricting plan exhibits the alleged violation, the court may only adjust those districts necessary to bring the map into compliance. The Supreme Court shall have exclusive appellate jurisdiction upon the filing of a notice of appeal within ten days after the judgment has become final.
This constitutional amendment is substantially similar to SJR 49 (2020), SJR 57 (2020), and HCS/HJRs 101 & 76 (2020) and similar to SJR 29 (2019) and HCS/HJRs 48, 46, & 47 (2019).

Last Action
05/27/2020 G - Delivered to the Secretary of State

MMACJA 2020 SUMMER CONFERENCE

LEGISLATIVE UDPATE

PREPARED BY: RICH AUBUCHON, GOVERNMENTAL CONSULTANT FOR MMACJA

1. GENERAL HISTORY OF RECENT LEGISLATIVE SESSIONS

2. LEGISLATIVE UPDATE FOR 2020
    a. Bills of Interest to MMACJA

3. 2020 SPECIAL LEGISALTIVE SESSION(S) (IF CALLED)

4. ISSUES FOR FUTURE

5. BALLOT INITIATIVES

6. GENERAL OVERVIEW OF 2020 MISSOURI POLITICAL LANDSCAPE

Wednesday, August 12, 2020
3:50 – 4:40 – Virtual – Zoom Webinar

Raising the Age of Juvenile Court Jurisdiction – What will be the Impact?

(1.0 CLE)

Marcia Hazelhorst

Speaker Bio
Marcia Hazelhorst is the Executive Director of the Missouri Juvenile Justice Association (MJJA). She is also the Juvenile Detention Alternatives Initiative (JDAI) Coordinator for Missouri and a 2013 graduate of the Annie E. Casey Foundation's Applied Leadership Network.

Marcia previously worked for the 13th Judicial Circuit, Juvenile Division for 17 years holding several positions within the Court including Deputy Juvenile Officer, Supervisor and Detention Superintendent.

Marcia was born and raised in Jefferson City, Missouri and currently resides in New Bloomfield, Mo. She graduated from Lincoln University with a degree in Criminal Justice and then later obtained her Master's Degree in Sociology with an Emphasis in Criminal Justice.

MISSOURI JUVENILE JUSTICE ASSOCIATION

Promoting justice for children, youth and families

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Administrative Assistant
Vonda Davis

June 18, 2020

Joint Statement from Missouri Juvenile Justice Association (MJJA) and Missouri Association of Prosecuting Attorneys (MAPA)

On June 1, 2018, Governor Parson signed into law Senate Bill 793 which raised the age of juvenile court jurisdiction from 17 to 18 years of age for delinquent acts. In addition, SB 793 repealed a provision of current law which gave the juvenile court jurisdiction over 17-year old status offenders subject to appropriations. The expansion of juvenile court jurisdiction over 17-year olds for both status and delinquent offenses was to become effective on January 1, 2021, however SB 793 also made this expanded service of the juvenile court system contingent upon "an appropriation sufficient to fund the expanded service" (211.438, RSMo). The FY '21 budget does not include appropriations for raising the age of juvenile court jurisdiction, which consequently delays SB 793's effective date of implementation.

The **Missouri Association of Prosecuting Attorneys**, following a unanimous vote of their Board of Directors, has taken the position that the juvenile court WILL NOT have jurisdiction over 17-year olds for delinquency matters effective January 1, 2021, and 17-year olds will still be subject to prosecution in a court of general jurisdiction.

The **Missouri Juvenile Justice Association**, following a unanimous vote of their Board of Directors, has taken the position that the juvenile court WILL NOT have jurisdiction over 17-year olds for delinquency or status offenses effective January 1, 2021.

MJJA and MAPA remain committed to working with the legislature through the RTA Blue Ribbon Panel and other legislative advocacy efforts to address the barriers to effectively and efficiently raising the age of juvenile court jurisdiction.

Contact: Marcia Hazelhorst, MJJA Executive Director, 573-616-1058
Darrell Moore, MAPA Executive Director, 573-751-0619

Missouri Juvenile Justice Association
P. O. Box 1332
Jefferson City, Missouri 65102-1332
573.636.6101 Fax: 573.635.5159
www.mjja.org

Raising the Age of Juvenile Court Jurisdiction-

WHAT WILL BE THE IMPACT?

SB 793-Raise the Age-Definition Changes

Chapter 211.021-Definition changes

Adult-a person eighteen years of age or older

Child-any person under eighteen years of age

SB 793-Raise the Age-Delinquency

211.031.1(3) changes:

Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of eighteen years…..

SB 793 Raise the Age-Status Offenses

211.031.1(2)-Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

- The child while subject to compulsory school attendance is repeatedly and without justification absent from school(will not have jurisdiction over 17 year old truant youth)
- The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control
- The child is habitually absent from his or her home without sufficient cause, permission, or justification
- The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others
  - (*repealed provision of current law that gave juvenile court jurisdiction over status offenders subject to appropriations(2008)*

SB 793-Raise the Age-Funding

211.435.1(new)-There is hereby created in the state treasury the "Juvenile Justice Preservation Fund", which shall consist of moneys collected under subsection 2 of this section and sections 488.315 and 558.003, any gifts, bequests, and donations, and any other moneys appropriated by the general assembly. ….The fund shall be a dedicated fund and, upon appropriation, moneys in the fund shall be distributed to the judicial circuits of the state based upon the increased workload created by sections 211.021 to 211.425 solely for the administration of the juvenile justice system…..provisions of this section expire on August 28, 2024.

SB 793-Raise the Age-Funding

211.435.2-$2.00 surcharge collected for all traffic violations of any county ordinance or any violation of traffic laws of this state, including an infraction when person has pled guilty

488.315.1- $3.50 surcharge assessed in all civil actions filed in the state

588.003-The prosecuting attorney shall have discretion to charge an offender convicted of an offense in which the victim was a child a fine of up to $500 for each offense

SB 793-Raise the Age-Contingency

211.438 RSMo (new section)

Expanding services from seventeen years of age to eighteen years of age is a new service and shall not be effective until an appropriation sufficient to fund the expanded service is provided therefor.

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SB 793-Raise the Age-Effective Date

211.439. Effective date. — The repeal and reenactment of sections 211.021, 211.031, 211.032, 211.033, 211.041,211.061, 211.071, 211.073, 211.081, 211.091, 211.101, 211.161, 211.181 211.321, 211.421, 211.425, 211.431, and 221.044 shall become effective on January 1, 2021.

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Missouri Revisor of Statutes-211.031

211.031 RSMo:

Effective 1-01-21, see § 211.439; subject to contingency in § 211.438

Is Raise the Age effective January 1, 2021 or not?

Good question!

Let's take a look at was has transpired since the bill was passed and you be the Judge…

What's happened since passage of SB 793?

No funding for RTA included in FY 2021 budget

No mechanism in place to distribute funds collected and deposited in the Juvenile Justice Preservation Fund

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What's happened since passage of SB 793?

2019-Rep Jeff Knight filed HB 953-Establishes the Interim Joint Committee on Juvenile Court Jurisdiction and Implementation-didn't pass

2020-Rep Jeff Knight filed HB 2149-Establishes Joint Task Force on Juvenile Court Jurisdiction and Implementation-didn't pass

2020-Rep David Evans filed HB 2578-Modifies provisions relating to Juvenile Court-didn't pass

2020-Speaker of the House Elijah Haahr appointed the Blue Ribbon Panel to study plan for RTA implementation

What's happened since passage of SB 793?

Blue Ribbon Panel on Raise the Age has convened twice

Two workgroups have been established:

- Implementation
- Special Session-Legislation

What are some challenges in implementing RTA?

Defining 17 year-olds

Youth who turn 17 prior to January 1, 2021 would be handled as adults, however if they commit an offense after January 1, 2021, they would be considered a juvenile until they turn age 18

RTA- Implementation Challenges

17-year old in the county jail on pending adult charges, assaults someone after January 1, 2021-would have to be charged as a juvenile for the assault?

What happens if a 17 year old is already on an SIS or SES and violates their conditions or picks up a new charge? Who has jurisdiction?

RTA-Implementation Challenges

219.021-Age of commitment to DYS(didn't change)

- The division shall not keep any youth beyond his eighteenth birth date, except upon petition and a showing of just cause in which the division may maintain custody until the youth's twenty-first birth date
- Do we need to increase the age of commitment to nineteen? Or risk having more youth certified as adults?

RTA-Implementation Challenges

167.031-compulsory school attendance age(didn't change)

- Youth are currently subject to compulsory school attendance until age 17 or successful completion of 16 credit hours
- Should we consider raising this to age 18 to be in line with juvenile court jurisdiction?

RTA-Implementation Challenges and Effective Date

Different statutory interpretations on juvenile court jurisdiction and effective date

- One position is the juvenile court has jurisdiction per 211.439 RSMo, however no services provided to 17 year olds as per 211.438 RSMo

RTA-Implementation Challenges and Effective Date

Another statutory interpretation:

- June 18, 2021, Missouri Juvenile Justice Association and Missouri Association of Prosecuting Attorneys issued a joint statement that the juvenile court WILL NOT have jurisdiction over 17-year olds for delinquency or status offenses effective January 1, 2021.

RTA-Implementation Challenges and Effective Date

Different opinions:

- 17 year olds should be handled as juveniles and therefore the juvenile court has jurisdiction effective January 1, 2021(right thing for kids)

RTA-Implementation Challenges and Effective Date

Not all Prosecutors and Juvenile Officers agree with MJJA and MAPA's statutory interpretation

Addressing the Implementation Challenges

Work with the legislature through the Blue Ribbon Panel and other legislative advocacy efforts to address the barriers to effectively and efficiently raising the age of juvenile court jurisdiction.

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Raise the Age

Questions?

Use of Detention

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Places of Detention

211.151.1 RSMo:

- Pending disposition of a case, the juvenile court may order in writing the detention of a child in one of the following places:
  - (1) A juvenile detention facility provided by the county;
  - (2) A shelter care facility, subject to the supervision of the court;
  - (3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;
  - (4) Such other suitable custody as the court may direct.

Places of Detention

211.151.2 RSMo:

A child shall not be detained in a jail or other adult detention facility pending disposition of a case.

211.151.4 RSMo:

…the term "jail or other adult detention facility" means any locked facility administered by state, county or local law enforcement and correctional agencies, a primary purpose of which is to detain adults charged with violating a criminal law pending trial…

Juvenile Court Jurisdiction and Traffic Offenses

211.031.1(3)-…"the juvenile court shall not have jurisdiction over any child fifteen years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony…"

What about a DWI?

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What do you do with a juvenile who fails to appear for Court on a traffic offense?

Issue a warrant?

Where does the youth go when picked up on the warrant? Jail? Juvenile Detention?

Traffic Offenses and Detention

211.033.1 RSMo;

- No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071 RSMo shall be detained in a jail or other adult detention facility
- A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility

Traffic Offenses and Detention

- Juvenile Court Judge must agree to detain the juvenile and must then issue a written order for detention.
- When a youth is presented to detention, a Juvenile Detention Assessment (JDTA) must be completed by the Juvenile Officer. (COR 28).

Juvenile Rights in Detention

Juvenile should be afforded all rights pertaining to detention-detention hearing within 3 days excluding weekends and legal holidays; phone calls, visitation from parents/guardians, counsel; and detention reviews.

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SCR 127.07, 127.08, 127.10

Purpose of Detention:

- When juvenile presents a risk to public safety
- May fail to appear in court for their hearing

- Does detaining a youth for a traffic offense meet the purpose of detention?

Core Requirements of Juvenile Justice Delinquency Prevention Act (JJDPA)

- Racial and Ethnic Disparities(RED-formerly known as DMC)
- Sight and Sound Separation from Adult Inmates
- Jail Removal
- De-incarceration of Status Offenses

Compliance Monitoring

- As a State we are required to be in compliance with the 4 Core Requirements or lose federal grant funding;
- Compliance Monitor for the State who conducts audits of jails, law enforcement agencies and juvenile detention centers to ensure compliance

Juvenile Justice Reform Act of 2018

Federal bill that reauthorized and strengthened the JJDPA

Signed into law December 21, 2018

Strengthened the 4 Core Requirements

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Can a juvenile ever be placed in jail?

211.033.1-No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071 shall be detained in a jail or other adult detention facility as that term is defined in section 211.151.

Juvenile Justice Reform Act of 2018

By December 21, 2021, Missouri must be in compliance with the part of the act that says that "juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court"… "may not be held in any jail" …"unless a court finds, after a hearing and in writing that it is in the interest of justice" to permit a juvenile to be held in jail

Juvenile Justice Reform Act of 2018-Jail Removal

Youth certified as an adult who are under age 17/18 (whatever age of criminal majority is) will be held in juvenile detention centers until they reach the age of 17/18 or convicted/found not guilty

Juvenile Justice Reform Act of 2018-Jail Removal

In determining whether it is in the interest of justice to permit a juvenile to be held in jail the court SHALL consider the following factors:

- Age of juvenile;
- Physical and mental maturity of the juvenile;
- Present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to themselves;
- Nature and circumstances of the alleged offense;
- Juvenile's history of prior delinquent acts;
- Relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth;
- Any other relevant factor

Juvenile Justice Reform Act of 2018-Jail Removal Considerations

Juvenile Court does not have jurisdiction once the Court dismisses the petition to permit the child to be prosecuted under the general law

Does our state law conflict with this federal law?

Contact Information

Marcia Hazelhorst
Missouri Juvenile Justice Association
marcia@mjja.org
573-616-1058

Thursday, August 13, 2020
8:30 – 9:50 – Virtual – Zoom Webinar

Municipal Monitors & ShowMe Courts Implementation

(1.6 CLE)

Rick Morrisey and Sherri Paschal

Session Summary
A general overview of the ShowMe Courts implementation schedule.

Show-Me Courts Implementation Update

2019 Presentation to MMACJA

Missouri Municipal and Associate Circuit Judges Association

Sherri Paschal, SMC Contract Project Manager

MISSOURI COURTS
Judicial Branch of Government

MISSOURI COURTS
Judicial Branch of Government

Municipal Implementation Schedule

There is committed effort to follow the Show-Me Courts (SMC) municipal division implementation schedule. However, there could be unforeseen circumstances that may impact the process. If this should occur, an updated scheduled will be made available as quickly as possible so courts can make necessary adjustments.

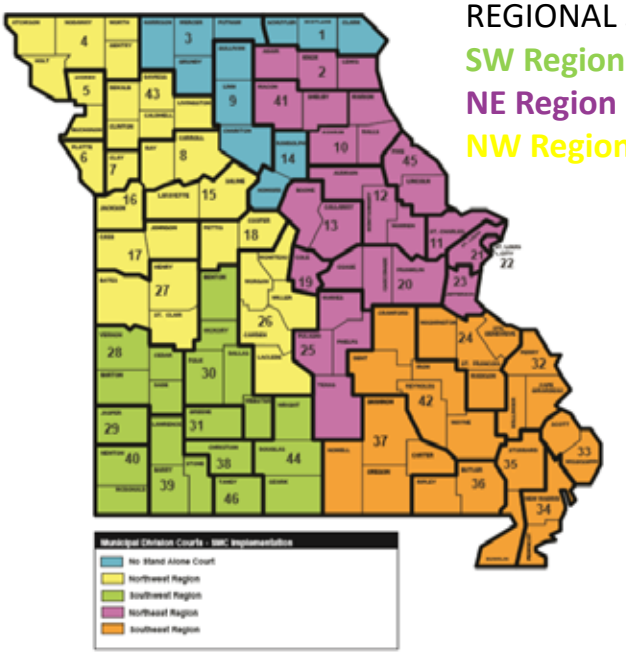
Region - # of Courts	Send PJ Letters	Implementation	Training	Live (on or before)
SW Region – 61	Dec 2, 2020	Dec 2-Oct 1, 2020	Mar-Aug, 2020	Oct 1, 2020
NE Region – 60	Aug 1, 2020	Aug 1, 2020-Feb 1, 2021	Oct-Dec 2020	Feb 1, 2021
SE Region – 56	Nov 1, 2020	Nov 1, 2020-May 1, 2021	Jan-Mar, 2021	May 1, 2021
NW Region – 71	Feb 1, 2021	Feb 1-Sept 1, 2021*	Apr-July, 2021*	Sept 1, 2021

*Extra month added for volume of NW Region and Kansas City Municipal Division implementation

MISSOURI COURTS
Judicial Branch of Government

Missouri's 46 Judicial Circuits

SMC Implementation - Municipal Divisions of the Circuit Court



REGIONAL SUPPORT STAFF:
SW Region – Susan Potter
NE Region & SE Region – Julie Wade
NW Region – Vacant

MISSOURI COURTS
Judicial Branch of Government

SMC Implementation Process

- Presiding Judge Letters
- Kick-off Meetings – PJ, Municipal Judges, Municipal Court Administrators
- Clerk Training
- Municipal Judge/PA Training
- PA eFiling Requirements
- Implementation Requirements

SMC Implementation Process – Cont'd

Kick-off Meeting:

- PJ, Municipal Judges, Court Administrators

Clerk Training:

- Regional training – Live, On-line, Hands-on:
  - Remote Access (RAS Token)
  - Two monitors
- eLearning courses
- Peer-to-peer assistance

Municipal Judge/PA Training:

- eBench
- PA Portal

PA eFiling Requirements:

- COR 27.01(a) – Mandates eFiling system in all court
- SCRule 103.05(a) – Requires eFiling by any attorney, including municipal prosecuting attorneys

SMC Implementation Process – Cont'd

Implementation Requirements:

- SMC Agreement
- $7 Court Automation Fee Ordinance
- Copy of all Court Cost Ordinances
- NEW Bank Account
- Order Checks
- Security Spreadsheet
- PA ORI

SMC Implementation Process – Cont'd

Compliance:

- SMC ensures compliance with Supreme Court Rules & Statutes

Migration:

- Point forward
- Manual entry of pending cases
- Limited case import
- Dismissal docket

SMC Support Staff

- Municipal Division SMC Implementation Project Manager
- Regional Support
  - **SW Region** – Susan Potter
  - **NE Region** & **SE Region** – Julie Wade
  - **NW Region** – Vacant
- OSCA
  - MU/TR Support team
  - Accounting Assistance team
  - Reports team
  - OSCA Help Desk

Questions

Show-Me Courts Implementation Update

2020 MMACJA

Presented by Sherri Paschal, SMC Contract Project Manager

MISSOURI COURTS
Judicial Branch of Government

Municipal Assistance Review

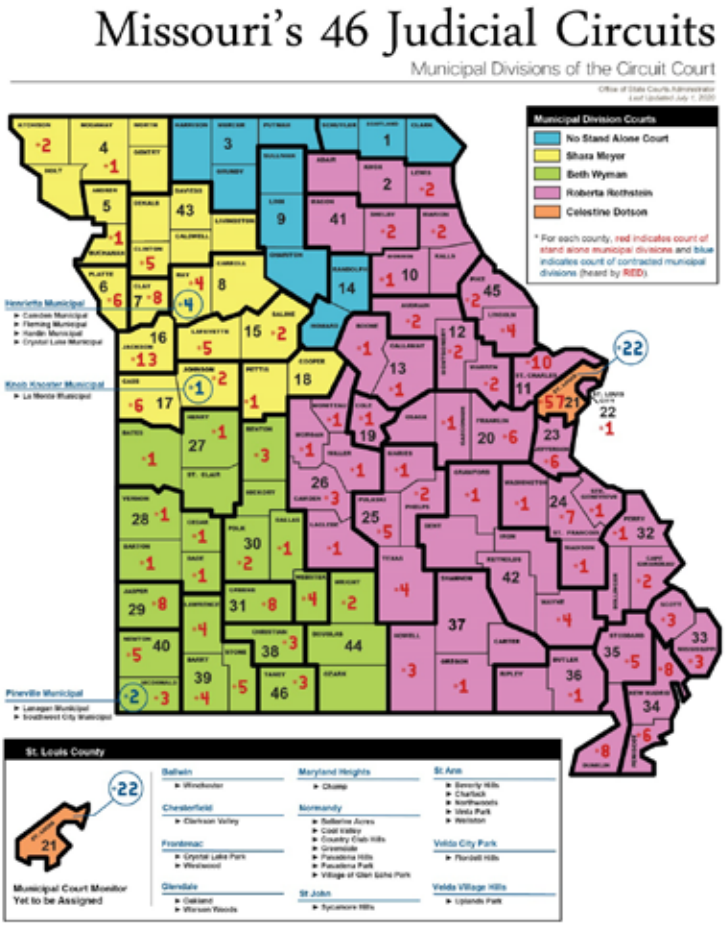
Office of State Court Administrator

MMACJA Conference

August 13, 2020

How can we help?

- ✓Assist presiding judges and municipal divisions with minimum operating standards (MOS) compliance and reporting.
- ✓Conduct on-site visits/reviews for municipal divisions
- ✓Provide detailed final report with suggested best practice and legal reference
- ✓Provide judges and staff with judicial resources
- ✓Provide general assistance to judges and court personnel
- ✓Maintain Municipal Division Management Portal
- ✓Monitor and assist with Monthly Summary Reporting
- ✓Assist in transfers, contracts or dissolving municipal divisions.
- ✓Provide judges and clerks with training presentations
- ✓Assist SMC Implementation team



MISSOURI COURTS
Judicial Branch of Government

Senior Judges

The senior judges provide technical and procedural assistance to municipal and circuit judges to support compliance with Supreme Court Rule 37.04 minimum operating standards.

Judge James Journey

Senior Judge, NW & SW

Judge Journey became a member of the Missouri bar and began his career as a Law Clerk for Division 10 of Jackson County Circuit Court in 1976. In 1979 Judge Journey opened an office in Clinton, MO and began practicing general law with an emphasis in criminal and civil trial work. In 2007, and until his retirement in September, 2019, he served as Circuit Judge for the 27th Judicial Circuit.

In addition to other Senior Judge duties performed throughout the state, Judge Journey accepted the position of Senior Judge for Supreme Court Monitors in January, 2020 and continues to serve in this capacity.

Judge Gael Wood

Senior Judge, East

Judge Wood entered the practice of law in 1975, and was engaged in the private practice of law for 25 years with the law firm of Eckelkamp, Eckelkamp, Wood & Kuenzel in Washington, Missouri. During this time, he served as judge of several municipal courts and served as special prosecutor for a number of municipal courts. He also served on the Franklin County Child Protection Team.

In 2000, he ran for Circuit Judge in the 20th Judicial Circuit (Franklin, Gasconade and Osage Counties) and took office on January 1, 2001. He was immediately elected as Presiding Judge by the Court en banc and has held that position during his tenure as a circuit judge. Mandatory retirement caused him to resign his position in October 2017.

In addition to other Senior Judge duties performed throughout the state, Judge Wood accepted the position of Senior Judge for Supreme Court Monitors in January, 2020 and continues to serve in this capacity.

MISSOURI COURTS
Judicial Branch of Government

Supreme Court Monitors

Over 90 years combined experience serving our Missouri Courts!

Robin Ausmus

Supervisor, Municipal Assistance Review
573-526-8854

Robin was hired July 1, 2019, with the specific task of developing and supervising the OSCA Municipal Assistance Review unit.

Robin began her career in Missouri Courts in 1989 as the Court Administrator for the 41st Judicial Circuit, Macon Municipal Division. In July 2016, after serving in this capacity for 27 years, she retired. Since starting her career with OSCA in May 2017, Robin has worked in the Criminal Unit and the Court Review Unit.

Robin is a past president of the Missouri Association of Court Administration and served on the board of directors for many years.

Beth Wyman

Supreme Court Monitor – Southwest
573-291-7090

Beth joined the Municipal Assistance Review Unit July 2019 as the Supreme Court Monitor for the southwest area of the state.

Prior to this position, Beth served our Missouri Courts for 24 years, retiring in December 2018 as the Circuit Clerk of Taney County. Beth has worked in all areas of the courts starting as the traffic/ misdemeanor clerk and serving as the supervisor of the associate criminal division. She was the probate division clerk before being elected as the clerk of the circuit court. Beth's first project as circuit clerk was to prepare Taney County to become the 46th judicial circuit of the state.

Shara Meyer

Supreme Court Monitor, Northwest
573-508-4758

Shara joined the Municipal Assistance Review Unit July 2020 as the Supreme Court Monitor for the northwest area of the state.

Prior to her current position, Shara was employed by the City of Columbia for twenty-eight years, serving twenty-five years of that time as the Columbia Municipal Court Administrator, retiring in 2013. In 2014, Shara accepted a position in the Probate Division of the Boone County Circuit Court and retired in 2019.

Shara is a past president of the Missouri Association of Court Administration and served on the board of directors for seventeen years.

Roberta Rothstein

Supreme Court Monitor – East
573-522-6842

Roberta was recently promoted to the Municipal Assistance Review Unit as a Supreme Court Monitor (East). Prior to her current position with OSCA, she worked in Judicial Education from November, 2017 until July, as an instructor for Show-Me Courts, Accounting, Criminal, Probate, Juvenile, Detention, and Child Support. When Roberta started at OSCA in May, 2016 she worked in Judicial Resources writing and updating Court Clerk handbooks and creating and maintaining court forms.

Roberta started her career with the Office of State Courts as the Deputy Circuit Clerk and Recorder of Moniteau County in January, 2011.

Let us know if we can be of assistance.

THANK YOU!

MISSOURI COURTS
Judicial Branch of Government

Presentation template by SlidesCarnival

Thursday, August 13, 2020
10:00 – 10:50 – Virtual – Zoom Webinar

Privilege Walk-Ethics, Cultural Competency, Diversity, Inclusion & Implicit Bias

(1.0 CLE – Implicit Bias/Ethics)

Judge Heather Cunningham

Scoring Sheet Provided

Video to be played during Privilege Walk Presentation
https://youtu.be/4K5fbQ1-zps

Privilege Walk

DIVERSITY EDUCATION PROGRAM

Purpose

The Privilege Walk is designed to:

- Create an opportunity to understand the intricacies of privilege.
- Explore the ways we enjoy privileges based on being members of social identity groups.

The Privilege Walk is NOT intended to make anyone feel guilty or ashamed of her or his privilege or lack of privilege related to any social identity categories.

Purpose Continued

This exercise seeks to highlight the fact that everyone has SOME privilege, even as some people have more privilege than others.

By illuminating our various privileges as individuals, we can recognize ways that we can use our privileges individually and collectively to work for social justice.

The purpose is NOT to blame anyone for having more power or privilege or for receiving more help in achieving goals, but to have an opportunity to identify both obstacles and benefits experienced in our life.

Disclaimer

This activity requires a high level of trust and all participants are encouraged to be open to the process and any discussion that may follow.

Directions *1 of 3*

- Participants will form a straight line across the room about an arm's length apart, leaving space in front and behind to allow for steps forward and backward.

Directions *2 of 3*

- Listen to the following statements, and follow the instructions given.
  - For example, when I read "If you have blue eyes, take one step forward", only people with blue eyes will move and everyone else will stand still.
  - This activity should be done in silence and if anyone feels uncomfortable stepping forward or backward on any statement, please stay where you are.

Directions *3 of 3*

- This is an introspective exercise and it's important to understand how privilege affects your life, but it is not designed to make you share things which you do not wish to share.
- At the conclusion of this exercise, while still standing in place, we will ask a few questions to help process thoughts from participants and observers.

Begin Privilege Walk

Privilege Walk

Listen to the following statements and follow the instructions given.

Finish Privilege Walk

Processing Questions

Please share one word that captures how you are feeling right now.

If you do not want to share, please respond with “pass”.

Processing Questions

Would anyone like to share more about their feelings or experience?

Processing Questions

How did it feel to be toward the back?

Processing Questions

How did it feel to be toward the front?

Processing Questions

Did anyone think they had experienced an average amount of privilege, but it turned out to be more or less than they thought?

Processing Questions

Were there certain questions that were more impactful than others?

Thank you for your participation.

Sources:

N.A. Module 5: Privilege Walk Activity. http://www.albany.edu/ssw/efc/pdf/Module%205_1_Privilege%20Walk%20Activity.pdf

Young, Tira J. *The Privilege Walk Workshop: Learning More about Privilege in Today's Society*. www.collegesuccess1.com

Scoring Sheet

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STARTING LINE

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Thursday, August 13, 2020
10:50 – 11:40 – Virtual – Zoom Webinar

Automation Update

(1.0 CLE)

Judge Gary Lynch, Judge Rick Zerr, Pat Brooks

Court Automation Update

2020 Presentation to MMACJA

Missouri Municipal and Associate Circuit Judges Association

Judge Gary Lynch, Chairman Missouri Court Automation Committee,
Senior Judge Rick Zerr
Patrick Brooks, Information Technology Services Director, OSCA

MISSOURI COURTS
Judicial Branch of Government

MISSOURI COURTS
Judicial Branch of Government

Agenda

- Opening comments
- Remote Court Appearances
- Livestreaming Court Proceeding Pilot
- SMC Automation Portfolio
- eBench Demonstration
- Access My Ticket Demonstration
- Questions

Remote Court Appearances

- Webex approved by MCA for all court proceedings
- Webex licenses statewide (including Municipal Judges & Clerks) are available
  - To get started contact the OSCA Helpdesk
- MCA has temporarily approved ZOOM for public court proceedings

Remote Video Proceedings Workgroup

The purpose of this workgroup is to develop standard statewide processes and procedures for the use of remote court appearances and remote public access in court proceedings in appellate courts and all divisions of the circuit courts for recommendation to the Missouri Court Automation Committee (MCA) and the State Judicial Records Committee (SJRC) for review and approval, and, if necessary, for their recommendation to the Supreme Court of Missouri of any required and appropriate proposed changes to court rules or court operating rules.

Remote Video Proceedings Workgroup Representation

- Court staff
  - Circuit Judge
  - Appellate Judge
  - Municipal Judge
  - Circuit Clerk
  - Court IT
- Municipal Prosecutor
- Practicing Attorney
- MOBAR
- Missouri Office of Prosecution Services (MOPS)
- Public Defender
- Court Reporter
- Legal Aid Services

Livestreaming Webex to YouTube

- MCA's Video Conferencing Task Team has begun conducting a beta pilot
- Procedures have been developed on how to use Webex to livestream public court proceedings on YouTube
- Statewide court automation system a uniform, consistent, public-user friendly interface to easily find and livestream any particular court proceeding
- Neither the State Judicial Records Committee nor the Supreme Court, however, have approved the recording or storage of recordings of court proceedings on Webex or Zoom

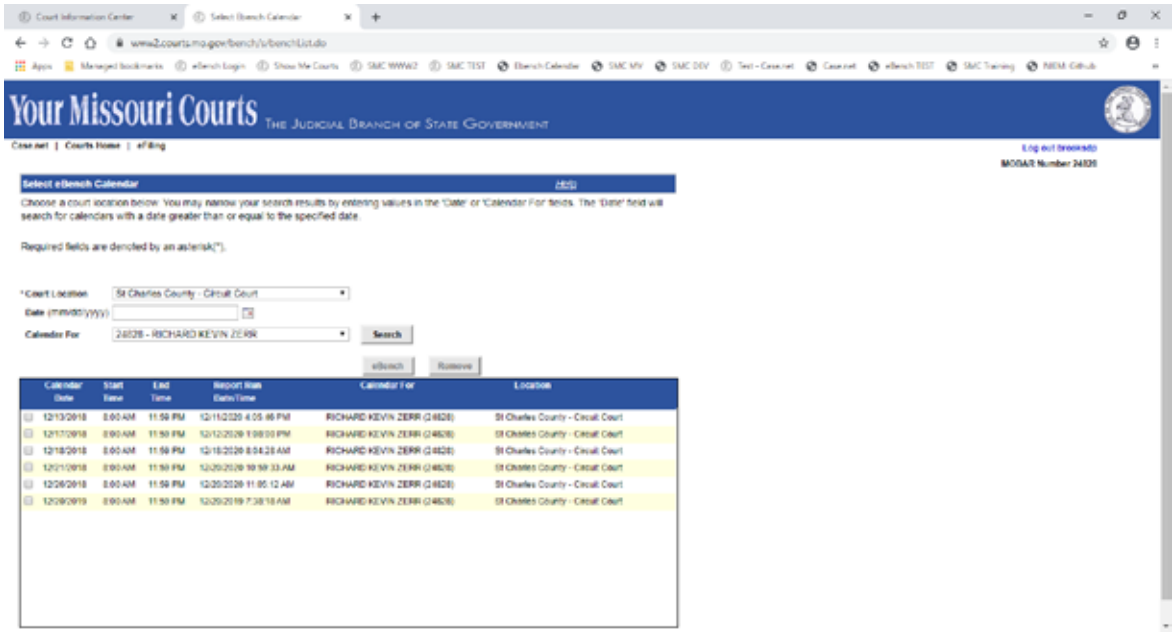
SMC Application Portfolio

- Show-Me Courts (SMC)
- Case.net
- Pay-By-Web
- Plead & Pay
- Electronic Filing
- Quick File
- eNotice & eService
- PA Portal
- eBench
- eWarrants
- Court Calendar
- Access My Ticket (AMT)

eWarrants

- In conjunction with Missouri State Highway Patrol and OSCA, warrants issued/recalled in Show-Me Courts will be made available for MSHP to retrieve on a scheduled basis
- Law enforcement will “pack” the record and place the warrant data and image into MULES
- Pilot of the system started March 2019
- Available Statewide as of July 30, 2020
- Individual court implementation is determined by the court and local law enforcement

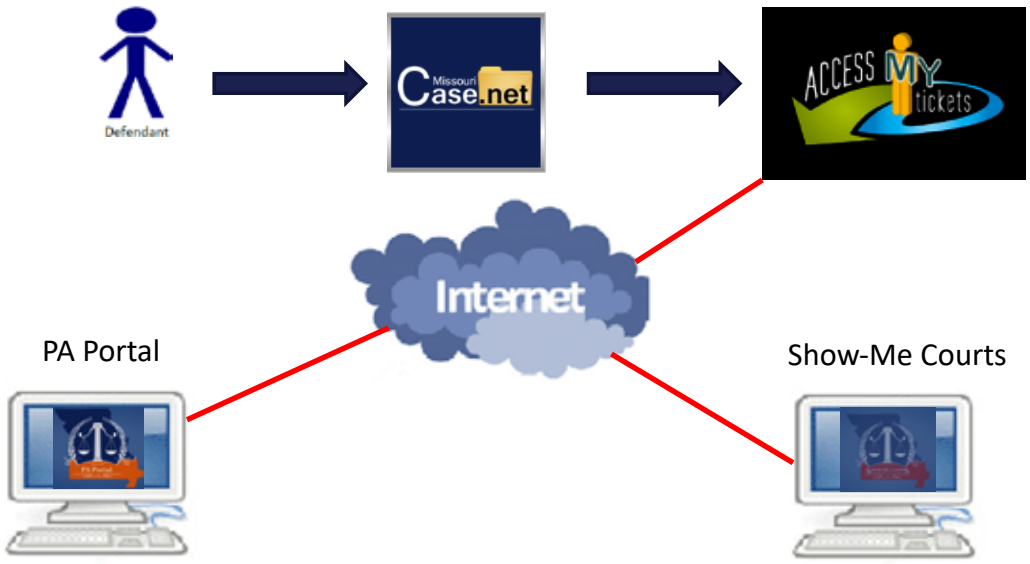
eBench Calendar Demonstration



Access My Ticket

Self represented litigants communication with the PA and the court for cases that do not require a court appearance.

Access My Ticket Demonstration



Questions

Missouri Court Automation Technology Update

2020 MMACJA

Presented by Judge Gary Lynch, Chairman Missouri Court Automation Committee

Senior Judge Rick Zerr

Patrick Brooks, Information Technology Services Director, OSCA

Thursday, August 13, 2020
12:40 – 2:40 – Virtual – Zoom Webinar

TruNarc-Use in the Field, Reliability & Probable Cause

(2.4 CLE)

W. Scott Rose, Esq.

Electronically Filed - Franklin County - January 17, 2019 - 06:32 PM

IN THE 20th CIRCUIT COURT OF THE STATE OF MISSOURI
FRANKLIN COUNTY
AT UNION

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. Redacted
	)	
Redacted	)	
	)	
Defendant.	)	

DEFENDANT'S SUGGESTIONS IN OPPOSITION TO ADMISSION OF TruNarc TEST RESULT AND TruNarc SCAN REPORT

The TruNarc analyzer appears to be a handheld device used by law enforcement officers to test for suspected controlled substances "in the field" or at a police station, rather than a laboratory. The TruNarc analyzer is manufactured by a company called Thermo Scientific, which is affiliated with Thermo Fisher, and has facilities in Boston, Munich, Mumbai, and Hong Kong. Thermo Scientific defines the TruNarc analyzer as follows:

> The TruNarc analyzer is a handheld narcotics identification system that can rapidly identify numerous narcotics in seconds, in a single presumptive test. Leveraging Raman spectroscopy, it brings together high chemical specificity with non-destructive and non-contact analysis, helping to minimize exposure and maintain evidence. Most drug samples can be quickly identified by simply pressing the sample – contained in a plastic bag, for example – against the nosecone and then pressing the scan button. Typically, samples are identified in less than 30 seconds.

Additional information can be located at www.thermofisher.com/trunarc, where Thermo Scientific asserts that "The TruNarc analyzer easily and quickly tests for over 400 substances, including narcotics, stimulants, depressants, hallucinogens and analgesics."

Electronically Filed - Franklin County - January 17, 2019 - 06:32 PM

Thermo Scientific appears to enjoy a special relationship with the Franklin County Sheriff's Department and Franklin County Prosecuting Attorney's Office. The company has posted a "case study" to its website in which it touts the "overwhelming success" of its product in Franklin County. The "case study" twice boasts that "the circuit court system" in Franklin County has accepted TruNarc test results in grand jury proceedings and preliminary hearings. The "case study" contains several quotations from Lt. Jason Grellner of the Franklin County Sheriff's Department and former Prosecuting Attorney Robert Parks. The "Acknowledgments" section at the end states:

> We thank Lt. Jason Grellner and his colleagues from the Multi-County Narcotics and Violent Crimes Enforcement Unit, based in Franklin County, MO, for their contribution to this case study. We also thank Robert Parks, the elected prosecuting attorney in Franklin County, for his comments.

The "case study" does not mention any possible downsides to use of the TruNarc analyzer in legal proceedings. A copy of the entire "case study" is attached hereto as Exhibit A.

I. THE TruNarc TEST RESULT AND TruNarc SCAN REPORT ARE HEARSAY

Hearsay is an "out-of-court statement that is used to prove the truth of the matter asserted and that depends on the veracity of the statement for its value." *State v. Winfrey*, 337 S.W.3d 1, 6 (Mo. 2011). In this case, the TruNarc Scan Report indicates that the substance in question is "Methamphetamine." It further indicates a wave pattern for the tested substance and a wave pattern from its library for methamphetamine, the similarity of the two evidently being the basis for the machine's conclusion that the tested substance is methamphetamine. But the machine's statements are the product of its programming, which was created by an unknown person in Boston, Munich, Mumbai, or Hong Kong. Furthermore, David Johnson's testimony at the Preliminary Hearing was not based on his

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own independent knowledge – he was just reading the TruNarc Scan Report. All of this is hearsay and therefore inadmissible, unless it meets the requirements for a hearsay exception, such as underlying facts or data for expert opinion testimony.

II. DAVID JOHNSON'S TESTIMONY DOES NOT MEET THE DAUBERT STANDARD

Missouri adopted the *Daubert* standard for expert testimony in 2017, and the standard is codified at Section 490.065.2 (copy attached hereto as Exhibit B). The standard is intended to be more difficult to meet than the out-of-date *Frye* standard. The State did not even attempt to meet the *Daubert* requirements at the Preliminary Hearing – not a single question was directed to the *Daubert* elements. No evidence was presented at the Preliminary Hearing that David Johnson is even a scientist. His only relevant training was by Thermo Scientific. At most he can testify as to *how to operate* the machine, but he cannot and did not offer any testimony as to how the machine works or whether its results are reliable.

The TruNarc device appears to be relatively new technology, so extensive legal research has not revealed a case in which a court determined its reliability. But the burden is on the State to prove its reliability, and the State did not even attempt to meet the requirements of the *Daubert* standard.

III. RAMAN SPECTROSCOPY IS NOT SUFFICIENTLY SCIENTIFICALLY RELIABLE TO BE ADMITTED INTO EVIDENCE

The TruNarc analyzer uses Raman spectroscopy to test for suspected controlled substances, and Raman spectroscopy, standing alone, is not sufficiently scientifically reliable to be admitted into evidence. The lodestar for drug identification evidence is the 2016 Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG)

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Recommendations. The report was commissioned by the United States Department of Justice, the Drug Enforcement Administration, the Executive Office of the President, and the Office of National Drug Control Policy.

In the interest of completeness and to demonstrate its authenticity, the entire report is attached hereto as Exhibit C. However, the key provisions for this case are Pages 14-16, the purpose of which is "to recommend minimum standards for the forensic identification of commonly seized drugs." That section of the report indicates that Raman Spectroscopy is a "Category A" testing method. "When a validated Category A technique is incorporated into an analytical scheme, at least one other technique (from either Category A, B or C) shall be used." The State presented no evidence at the Preliminary Hearing that another technique was used in this case. Furthermore, "All Category A and botanical identifications shall have data that are reviewable," which was not presented in this case.

And any analytical scheme "shall preclude a false positive identification." The State presented no evidence in this case about whether the TruNarc device can produce false positive readings, and if it does, at what rate. This point is crucial because if the TruNarc analyzer produces any percentage of false positives, then the State is charging some people with drug crimes (some of whom will plead guilty "to get the case over with") when a proper lab analysis would be exculpatory.

IV. CONCLUSION

This issue is too complicated to be sufficiently addressed in a short brief and short timeframe. The undersigned's research revealed one case from California in which a trial court considered the reliability of a "Narcotics Identification Kit" for purposes of grand

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juries and preliminary hearings. The opinion was 36 pages long and followed seven days of hearings, at which three expert witnesses testified, seven lay witnesses testified, and 112 exhibits were admitted.

But it must be remembered that the burden to prove admissibility is on the party attempting to introduce the evidence, which is the State. Defendant Redacted submits that the State has not met its burden to show that the results of the TruNarc analyzer are sufficiently reliable to be admitted into evidence. Accordingly, Redacted respectfully requests that the Court sustain his objection to the admission of the TruNarc Scan Report and David Johnson's identification of the tested substance.

Respectfully submitted,

/s/ W. Scott Rose
W. Scott Rose, #61587
ROSE LEGAL SERVICES, LLC
10820 Sunset Office Drive, Suite 123
Saint Louis, MO 63127
(314) 462-0200
wsrose@roselegalservices.com
Attorney for Redacted

Noted.
DLH
1/20/2019

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CERTIFICATE OF SERVICE

I hereby certify that on this the 17th day of January, 2019, a true and correct copy of the foregoing was served through the Missouri e-Filing System or via first-class mail to each of the following:

Prosecuting Attorney's Office of Franklin County
15 South Church Street
Room 204
Union, MO 63084
Attorney for the State of Missouri

/s/ W. Scott Rose
W. Scott Rose

Case Study

Deployment of TruNarc "like night and day" in prosecuting narcotics cases

In recent years, Franklin County, MO, has made national news headlines for being "ground zero" in the war on drugs. In 2013, for example, the Franklin County Sheriff's Office investigated 165 methamphetamine laboratories – quite a high number for a rural county with 100,000 people.

Demands on police services related to narcotics investigations have risen substantially, prompting the formation of the Multi-County Narcotics and Violent Crimes Enforcement Unit, led by Lt. Jason Grellner. The task force covers four counties – Franklin, Lincoln, Reynolds and Washington – with a combined population of 180,000 people. As a result of effective police collaboration across the counties, the number of meth labs uncovered in Franklin had decreased to five by 2015.

But beyond the headlines, the multi-county task force has made great strides in the deployment of innovative drug identification technology. Grellner, a 20-year veteran of narcotics investigations, says rapid field-based analysis of suspected illegal substances has dramatically shortened the time between the arrest of drug offenders and the resolution of their cases, providing for a safer community and swifter treatment of addicts.

In addition, reliable analysis with a handheld testing instrument has given local law enforcement the ability to identify new and dangerous substances circulating in the area. This "early warning sign" enables the Sheriff's Office to alert officers in the region, as well as the general public, to the presence of new illicit materials.

Case Profile and Problem

In past years, according to Grellner, the Sheriff's Office utilized common wet-chemistry test kits to identify narcotics in the field. Relatively easy to use, these kits call for a series of dilutions, where officers must interpret color changes, in order to correctly identify a substance.

More important is the fact that test results from the colorimetric kits were not accepted by the county court system, meaning that results from these tests could not support probable cause in charging a drug suspect. Instead, all narcotics samples collected from alleged offenders had to be transported 75 miles to the Missouri State Highway Patrol Laboratory at Jefferson City, where court-admissible analysis could be performed.

Turnaround time at the state lab was between eight and 12 months. During that waiting period, Grellner explains, the case of a suspected offender cannot be heard by the County Drug Court, delaying potential medical assistance, counseling and rehabilitation services.

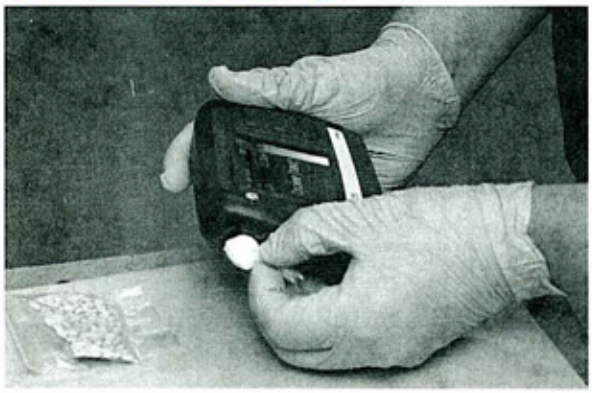
Similarly, for violent offenders or individuals refusing treatment and rehabilitation, a long delay in confirming court-accepted test results meant that these individuals were returned to society – at potential risk to themselves and the community. With untreated offenders still at large, "We saw an increase in property crimes to get cash to feed their disease state," Grellner says. Worse still, would-be defendants with additional offenses became ineligible for the Drug Court, and any potential leniency in an attempt to break the cycle of addiction and crime.

Lt. Jason Grellner has deployed innovative, field-based drug ID to help speed case resolution.

Thermo SCIENTIFIC

Enter TruNarc

In 2014, following a data review, supporting information from other states, and training, the multi-county task force deployed two Thermo Scientific™ TruNarc™ analyzers. The circuit court system across the four counties had determined TruNarc test results would be allowed at grand jury and preliminary hearings, giving law enforcement probable cause and the ability to charge suspects.



The TruNarc analyzer can scan suspected narcotics through a sealed plastic bag in seconds.

The TruNarc analyzer is a handheld narcotics identification system that can rapidly identify numerous narcotics in seconds, in a single presumptive test. Leveraging Raman spectroscopy, it brings together high chemical specificity with non-destructive and non-contact analysis, helping to minimize exposure and maintain evidence. Most drug samples can be quickly identified by simply pressing the sample—contained in a plastic bag, for example—against the nosecone and then pressing the scan button. Typically, samples are identified in less than 30 seconds.

The outcome of the TruNarc deployment in Missouri has been an overwhelming success, according to Grellner. In addition to identifying suspect narcotics at the scene, his task force is able to deliver a complete police report – with admissible TruNarc test results -- to a prosecuting attorney's office within days. The rapid turnaround translates into getting the charged individual into the Drug Court (if appropriate) within a few weeks, where rapid decisions can be made.

"We had trouble with moving a case to the point where the Drug Court system could take an appropriate course of action," Grellner says. "Now we don't have to wait for results from the State Patrol Lab. The Drug Court can move right to rehabilitation.

"For those individuals that don't want to be treated, we can move them faster through the system and get them out of society and into incarceration."

Robert Parks, the elected prosecuting attorney in Franklin County, describes the implementation of TruNarc as "like night and day." With TruNarc test results accepted as essentially a laboratory report in circuit court proceedings, his office could run 35-40 cases per day through the grand jury. "It's tremendous. It's sped up the process of getting people charged," he says.

Although the presiding judge in Franklin County Circuit Court has recently ruled that drug cases cannot be taken to the grand jury – a procedural decision independent of TruNarc – using the analyzer's results to establish probable cause and charge offenders in preliminary hearings has "sped up the whole process 100 percent," Parks explains. Test results can arrive at his office within 24 hours, and even though the timeline for a preliminary hearing might be three or four months, this is still substantially faster than waiting the eight to 12 months for traditional lab results – plus court time.

"The lab loves it," Parks says, "because it eliminates unnecessary samples sent for testing. They can do other things, and they're not bogged down with samples. We can do 25 cases without having to send anything up to the lab."

While sampling and testing statistics are not available, Grellner says the 150 mile round trip to the State Patrol Lab for narcotics identification occurs infrequently now. Moreover, storage of test records in TruNarc's tamper-proof system has reduced the administrative burden associated with maintaining the chain of custody of samples and evidence. The overwhelming majority of controlled substance testing is now performed with TruNarc, with only unconfirmed samples going to the lab.

Test records in TruNarc's tamper-proof system can be transferred to a PC, reducing the administrative burden of maintaining the chain of custody of samples and evidence.

Early Warning System

TruNarc identifies narcotics, synthetic drugs, cutting agents and precursors. The Raman spectrometer collects a unique spectral fingerprint of each substance tested. The on-board algorithms compare the data collected with items in the TruNarc library and, if the spectrum matches a specific library item, the TruNarc device will show a red alarm screen for the substance.

As drug threats continue to emerge – fentanyl, for example – Thermo Scientific adds the new substances to the TruNarc library in free periodic updates.

The breadth of the TruNarc library has been important in helping identify drug trends in the Missouri counties. "TruNarc helps us track areas where a controlled substance is coming from," Grellner says. "Sometimes we can track it to the exact dealer."

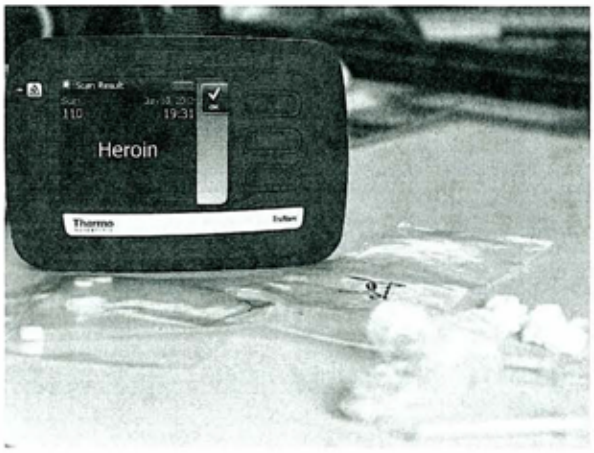
This was the situation in early 2015, when Grellner discovered "Super Ball," or methamphetamine mixed with heroin. TruNarc also was instrumental in identifying the emerging threat of cutting heroin with fentanyl. "Identifying these new trends helps us take immediate action – criminally, socially and in the news media," Grellner says.

Before the deployment of TruNarc, samples of these emerging substances would have been sent to the State Patrol Lab for analysis. Given the time required for lab results, new and dangerous substances, like Super Ball, could have been circulating in the community without officers knowing what they're dealing with, and how to best protect residents.

It is possible that a very new substance hitting the streets might not yet be added to the TruNarc library. In these cases where a substance is unknown to TruNarc, law enforcement can call on

Thermo Scientific Reachback support. Reachback will interpret the new spectra and provide an analytical result – still highly valuable in prioritizing substances and leveraging state lab resources effectively.

"We've had situations where new synthetics have been mixed with common illicit drugs," Grellner says. "By using the Reachback, we are able to immediately communicate with scientists and get confirmation on what is happening on the streets."



TruNarc displays a red alarm screen if the spectrum of a sample matches an item in the instrument library.

Conclusion

Shortening the time between drug arrests and case resolution, the Multi-County Narcotics and Violent Crimes Enforcement Unit has deployed innovative drug identification technology. The handheld TruNarc analyzer rapidly identifies suspected narcotics in the field. Test results are accepted at preliminary hearings within the circuit court system (and previously at grand jury), giving law enforcement officers probable cause to charge drug offenders.

With TruNarc test results, law enforcement can deliver a narcotics case to county prosecutors within days – substantially less than the eight- to 12 month turnaround from the backlogged state lab. Rapid turnaround means quicker resolution of cases, where offenders can receive timely rehabilitation or are duly incarcerated.

Acknowledgements

We thank Lt. Jason Grellner and his colleagues from the Multi-County Narcotics and Violent Crimes Enforcement Unit, based in Franklin County, MO, for their contribution to this case study. We also thank Robert Parks, the elected prosecuting attorney in Franklin County, for his comments.

thermofisher.com/trunarc

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Americas
Boston, USA
+1 978 642 1132

Europe, Middle East, Africa
Munich, Germany
+49 89 3681 380

India
Mumbai, India
+91 22 6680 3000

Asia Pacific
New Territories, Hong Kong
+852 2885 4613

sales.chemid@thermofisher.com

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Effective 28 Aug 2017

Title XXXIII EVIDENCE AND LEGAL ADVERTISEMENTS

Chapter 490

490.065. Expert witness, opinion testimony admissible, requirements for certain actions. — 1. In actions brought under chapter 451, 452, 453, 454, or 455 or in actions adjudicated in juvenile courts under chapter 211 or in family courts under chapter 487, or in all proceedings before the probate division of the circuit court, or in all actions or proceedings in which there is no right to a jury trial:

(1) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise;

(2) Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact;

(3) The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable;

(4) If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.

2. In all actions except those to which subsection 1 of this section applies:

(1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case;

(2) An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect;

(3) (a) An opinion is not objectionable just because it embraces an ultimate issue.

(b) In a criminal case, an expert witness shall not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone;

(4) Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

3. The provisions of this section shall not prevent a person, partnership, association, or corporation, as owner, from testifying as to the reasonable market value of the owner's land.

(L. 1989 S.B. 127, et al., A.L. 2017 H.B. 153)

(2003) Section sets forth standard of admissibility of expert testimony in civil cases, including contested case administrative proceedings. State Board of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo.banc).

< end of effective 28 Aug 2017 >

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- All entries

	Effective	End
490.065	8/28/2017	
490.065	8/28/1989	8/28/2017

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website **on the effective date** of such enacted statutory section.

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SCIENTIFIC WORKING GROUP FOR THE ANALYSIS OF SEIZED DRUGS (SWGDRUG) RECOMMENDATIONS

RECOMMENDATIONS INCLUDE:

CODE OF PROFESSIONAL PRACTICE

EDUCATION and TRAINING

METHODS OF ANALYSIS

QUALITY ASSURANCE

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
COUNTERDRUG TECHNOLOGY ASSESMENT CENTER

Version 7.1, 2016-June-9

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E-mail swgdrug@hotmail.com
Web www.swgdrug.org

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Foreword

This publication contains recommendations from the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG). These recommendations are intended to assist forensic analysts and managers in the development of analytical techniques, protocols and policies. They are recognized to be minimum standards that may be modified to address unique jurisdictional requirements. SWGDRUG seeks to have these recommendations internationally accepted as the foundation for good laboratory practice. These recommendations encompass Code of Professional Practice, Education and Training, Methods of Analysis and Quality Assurance. The SWGDRUG Core Committee strongly urges the adoption of these recommendations by any laboratory involved in the analysis of seized drugs.

Since 1997, SWGDRUG has been working to provide useful and practical recommendations for the analysis of seized drugs. SWGDRUG recognizes that over time these recommendations may need to be updated as a result of advances in technology, changes in accreditation requirements and/or the emergence of new requirements. To this end, SWGDRUG relies heavily on the input of the forensic community to ensure that all recommendations remain useful and current. This synergetic approach is a key component of the SWGDRUG process. I encourage everyone to continue supporting the mission of SWGDRUG.

Finally, as the Chair of SWGDRUG, I would be remiss if I did not single out several individuals without whom SWGDRUG would not exist. Benjamin A. Perillo conceived this working group and made it a reality. As former Chairs of SWGDRUG, Thomas J. Janovsky and Nelson A. Santos promoted and enhanced SWGDRUG's prominence in the forensic community. Lastly, I recognize Sandra E. Rodriguez-Cruz, Secretariat, for her untiring efforts in coordinating and facilitating the SWGDRUG meetings.

I would also like to make special mention to the Drug Enforcement Administration, the Office of National Drug Control Policy and the National Institute of Standards and Technology, which over the years have provided the financial resources for SWGDRUG to operate.

Scott R. Oulton

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Introduction

SWGDRUG is comprised of a core committee of approximately 20 members from around the world.

Mission Statement:

SWGDRUG works to improve the quality of the forensic examination of seized drugs and to respond to the needs of the forensic community by supporting the development of internationally accepted minimum standards, identifying best practices within the international community, and providing resources to help laboratories meet these standards.

SWGDRUG seeks to achieve this mission through the following objectives:

- specifying requirements for practitioners' knowledge, skills and abilities,
- promoting professional development,
- providing a means of information exchange within the forensic science community,
- promoting ethical standards of practitioners,
- recommending minimum standards for examinations and reporting,
- providing resources and tools,
- establishing quality assurance requirements,
- considering relevant international standards, and
- seeking international acceptance of SWGDRUG recommendations.

Drug abuse and trafficking in controlled substances are global problems, and law enforcement has looked to international solutions for these problems. In 1997 the U.S. Drug Enforcement Administration (DEA) and the Office of National Drug Control Policy (ONDCP) co-sponsored the formation of the Technical Working Group for the Analysis of Seized Drugs (TWGDRUG). Forensic scientists from the United States, England, Canada, Australia, Japan, Germany and the Netherlands, as well as representatives of the United Nations, several international forensic organizations and academia were invited to meet in Washington, DC. This group, with input from around the world, developed educational and professional development recommendations for forensic practitioners. They also developed quality assurance and identification recommendations for seized drugs. The name Scientific Working Group for the Analysis of Seized Drugs was adopted in 1999.

SWGDRUG has received input from many members of the forensic community in its recommendations development process. It has used various methods of communication including its Internet site (www.swgdrug.org), presentations at numerous local, national and international meetings, and personal contacts. Following each meeting of the Core Committee, updates are published and distributed.

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SWGDRUG sought and considered comments from the forensic science community on all its proposals. In order for a recommendation to be adopted, there are specific procedures that must be met. Please refer to the SWGDRUG's bylaws, which can be found on the internet at www.swgdrug.org/bylaws.htm for additional details. In addition, SWGDRUG has submitted its recommendations to ASTM International, a standards developing organization, resulting in seven published standards:

E2326	Standard Practice for Education and Training for Seized-Drug Analysts
E2327	Standard Practice for Quality Assurance of Laboratories Performing Seized-Drug Analysis
E2329	Standard Practice for Identification of Seized Drugs
E2548	Standard Guide for Sampling Seized Drugs for Qualitative and Quantitative Analysis
E2549	Standard Practice for Validation of Seized-Drug Analytical Methods
E2764	Standard Practice for Uncertainty Assessment in the Context of Seized-Drug Analysis
E2882	Standard Guide for Analysis of Clandestine Drug Laboratory Evidence

In July 2010 the leadership of SWGDRUG was transferred to Scott R. Oulton, Chair and Sandra E. Rodriguez-Cruz, Secretariat. The various sub-committees continue to research and develop proposals for additional recommendations with several members completing their service to the group and others replacing them by invitation.
The following chart details those persons who have rendered service as members of the core committee over the years. Current core committee members are indicated in bold text. A list of current members is also available on the SWGDRUG website.

Contributing members:

Ms. Susan Ballou Office of Law Enforcement Standards National Institute of Standards and Technology Gaithersburg, Maryland	**Mr. Christian Matchett (Vice Chair)** **Defense Forensic Science Center** **Forest Park, Georgia**
Dr. Suzanne Bell West Virginia University Morgantown, West Virginia	Dr. Iphigenia Naidis United Nations Office on Drugs and Crime Laboratory and Scientific Section Vienna, Austria
Mr. Robert Bianchi Drug Enforcement Administration McLean, Virginia	Dr. Helmut Neuman Bundeskriminalamt Forensic Science Institute Wiesbaden, Germany
Mr. Joseph Bono (Secretariat) Drug Enforcement Administration Washington, DC	Mr. Osamu Ohtsuru National Research Institute of Police Science Chiba, Japan
Dr. Michael Bovens **Forensic Science Institute** **Zurich, Switzerland**	Mr. Robert Ollis Georgia Bureau of Investigation Decatur, Georgia
Dr. Bob Bramley Forensic Science Service Birmingham, England	**Mr. Scott R. Oulton (Secretariat and Chair)** **Drug Enforcement Administration** **Washington, DC**

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Dr. Sylvia Burns **Key Forensic Services Ld.** **Coventry, England**	Mr. Richard A. Paulas Illinois State Police Forensic Sciences Command Chicago, Illinois
Mr. Gary Chasteen Los Angeles County Sheriff's Laboratory Scientific Services Downey, California	Mr. Benjamin Perillo Drug Enforcement Administration Washington, DC
Mr. Alan B. Clark Drug Enforcement Administration Washington, DC	**Dr. Eric Person** **California State University, Fresno** **Fresno, California**
Mr. Jeffrey H. Comparin (Secretariat) Drug Enforcement Administration Dulles, VA	**Dr. Karen Phinney** **National Institute of Standards and Technology** **Gaithersburg, Maryland**
Dr. Conor Crean **United Nations Office on Drugs and Crime** **Laboratory and Scientific Section** **Vienna, Austria**	Dr. Robert Powers Connecticut Department of Public Safety Hartford, Connecticut
Dr. Alim A. Fatah Office of Law Enforcement Standards National Institute of Standards and Technology Gaithersburg, Maryland	**Ms. Cate Quinn** **Victoria Police Forensic Services Department** **Melbourne, Australia**
Dr. Maria Eugenia Forero Ruiz National Institute Legal Medicine and Forensic Science Bogota, Colombia	Ms. Pamela Reynolds Federal Bureau of Investigation Laboratory Quantico, Virginia
Mr. Richard Gervasoni Montgomery County Police Department Lab Rockville, Maryland	**Ms. Tiffany Ribadeneyra** **Nassau County Office of the Medical Examiner** **East Meadow, New York**
Ms. Jo Ann Given Naval Criminal Investigative Service Norfolk, Virginia	Dr. Conrad Roberson Georgia Bureau of Investigation Decatur, Georgia
Mr. Garth Glassburg **Northeastern Illinois Regional Crime Laboratory** **Vernon Hills, Illinois**	**Dr. Sandra Rodriguez-Cruz (Secretariat)** **Drug Enforcement Administration** **Vista, California**
Ms. Dorothy Gordimer Union County Prosecutor's Office Laboratory Westfield, New Jersey	**Dr. Sandra Sachs** **Oakland Police Department** **Criminalistics Laboratory** **Oakland, California**
Ms. Kathleen Higgins Office of Law Enforcement Standards National Institute of Standards and Technology Gaithersburg, Maryland	Mr. Nelson A. Santos (Chair) Drug Enforcement Administration Washington, DC
Dr. Henk Huizer Ministry of Justice Forensic Science Laboratory Rijswijk, The Netherlands	**Mr. Roger Schneider** **Phoenix Police Department** **Laboratory Services Bureau** **Phoenix, Arizona**
Dr. Takako Inoue National Research Institute of Police Science Tokyo, Japan	Mr. Tshepo Shole National Forensic Science Laboratory Pretoria, South Africa

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Ms. Linda C. Jackson (Vice Chair) Virginia Department of Forensic Science Richmond, Virginia	Dr. Jay Siegel Michigan State University School of Criminal Justice East Lansing, Michigan
Mr. Thomas J. Janovsky (Chair) Drug Enforcement Administration Washington, DC	Dr. Erkki Sippola National Bureau of Investigation Crime Laboratory Vantaa, Finland
Dr. Tohru Kishi National Research Institute of Police Science Chiba, Japan	Mr. Zoran Skopec Australian Forensic Drug Laboratory Pymble, NSW, Australia
Dr. Yoshiteru Marumo National Research Institute of Police Science Chiba, Japan	Dr. Howard Stead United Nations Office on Drugs and Crime Laboratory and Scientific Section Vienna, Austria
Mr. Jerry Massetti California Department of Justice California Criminalistics Institute Sacramento, California	Dr. Charles "Chris" Tindall Metropolitan State College of Denver Department of Chemistry Denver, Colorado
Dr. Cherif Kouidri United Nations International Drug Control Programme Vienna, Austria	Ms. Erin Trujillo Los Angeles County Sheriff's Lab Los Angeles, California
Mr. Richard Laing **Health Canada** **Drug Analysis Service Laboratory** **Vancouver, Canada**	Mr. Scott Vajdos Harris County Institute of Forensic Sciences Houston, Texas
Dr. Marc LeBeau Federal Bureau of Investigation Washington, DC	Mr. Etienne van Zyl National Forensic Science Laboratory Pretoria, South Africa
Mr. John Lentini Applied Technical Services, Inc. Marietta, Georgia	Ms. Eileen Waninger Federal Bureau of Investigation Laboratory Quantico, Virginia
Dr. Bruce Lodge Health Canada Ottawa, Ontario Canada	Mr. Jaco Westraat National Forensic Science Laboratory Pretoria, South Africa
Dr. Adriano Maldaner **Brazilian Federal Police** **Brasilia, Federal District, Brazil**	**Dr. Angeline Yap Tiong Whei** **Health Sciences Authority** **Singapore**
Mr. Jack Mario Suffolk County Crime Laboratory Hauppauge, New York	Dr. Udo Zerell Bundeskriminalamt Forensic Science Institute Wiesbaden, Germany
Ms. Agnes D. Winokur **Drug Enforcement Administration** Miami, Florida	

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PART I

A CODE OF PROFESSIONAL PRACTICE FOR DRUG ANALYSTS

PREFACE

This Code of Professional Practice has been written specifically for analysts. However, it is important that their managers and the technicians and others who assist them in their work are equally aware of its provisions, and they support the analyst in adhering to these. Where appropriate, the provisions are also equally applicable to the technicians in the approach to their own work.

I.1 Introduction

I.1.1 A Code of Professional Practice is intended to provide the framework of ethical values and scientific and legal obligations within which the analyst should operate. Details are also usually provided on how alleged breaches of the Code will be investigated, what sanctions are available and how appeals should be pursued.

I.1.2 A Code of Professional Practice is essential to analysts and their managers in helping them carry out their duties in a proper manner and in making appropriate decisions when questions of ethics arise.

I.1.3 A Code of Professional Practice that is enforced and publicly available is also a powerful means of demonstrating the professional expectations of analysts and the reliability of their findings to others in the criminal justice system and the public at large.

I.1.4 SWGDRUG recommends that all employers of analysts develop a Code of Professional Practice and the means of dealing with breaches of the Code.

I.1.5 SWGDRUG further recommends that all Codes of Professional Practice for analysts should include, as a minimum, provisions relating to their professional conduct, their casework and the reporting of their results, as provided in Section 2. For further information, see Supplemental Document SD-1 (Examples for Part I - A Code of Professional Practice for Drug Analysts).

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I.2 Code of professional practice

I.2.1 Professional conduct

Analysts shall:

a) act with honesty, integrity and objectivity;

b) work only within the bounds of their professional competence;

c) take reasonable steps to maintain their competence;

d) recognize that their overriding duty is to criminal justice;

e) declare to their employer any prior contact or personal involvement, which may give rise to conflict of interest, real or perceived;

f) declare to their employer or other appropriate authority any pressure intended to influence the result of an examination.

I.2.2 Casework

Analysts shall:

a) strive to demonstrate that the integrity and security of evidential materials and the information derived from their analysis have been maintained while in their possession;

b) strive to have a clear understanding of what the customer needs and all the necessary information, relevant evidential materials and facilities available to reach a meaningful conclusion in an appropriate timeframe;

c) employ an appropriate analytical approach, using the facilities available;

d) make and retain full, contemporaneous, clear and accurate records of all examinations and tests conducted, and conclusions drawn, in sufficient detail to allow meaningful review and assessment of the conclusions by an independent person competent in the field;

e) accept responsibility for all casework done by themselves and under their direction;

f) conduct all professional activities in a way that protects the health and safety of themselves, co-workers, the public and the environment.

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I.2.3 Reporting

Analysts shall:

a) present advice and testimony, whether written or oral, in an objective manner;

b) be prepared to reconsider and, if necessary, change their conclusions, advice or testimony in light of new information or developments, and take the initiative in informing their employer and customers promptly of any such changes that need to be made;

c) take appropriate action if there is potential for, or there has been, a miscarriage of justice due to new circumstances that have come to light, incompetent practice or malpractice;

d) preserve customer confidentiality unless officially authorized to do otherwise.

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PART II

EDUCATION AND TRAINING

II.1 Introduction

Part II recommends minimum education, training and experience for analysts practicing in laboratories that conduct seized drug analyses. It describes the types of activities necessary to continue professional development and reference literature required in laboratories where they practice.

II.1.1 Recommendations listed in Part II are intended to apply to any analyst who:

a) independently has access to unsealed evidential material in order to remove samples for examination;

b) examines and analyzes seized drugs or related materials, or directs such examinations to be done; and

c) as a consequence of such examinations, signs reports for court or investigative purposes.

II.2 Education and experience for analysts

All new analysts shall have at least a bachelor's degree or equivalent (generally, a three to four year post-secondary degree) in a natural/physical science. The individual shall have successfully completed lecture and associated laboratory classes in general, organic and analytical chemistry.

II.3 Continuing professional development

All forensic scientists have an ongoing responsibility to remain current in their field. In addition, laboratories shall provide support and opportunities for continuing professional development. Minimum continuing professional development requirements for a laboratory analyst are:

II.3.1 Twenty hours of training every year.

II.3.2 Training shall be relevant to the laboratory's mission. Professional development may include training related to ancillary duty assignments and supervision/management responsibilities.

II.3.3 Training shall be documented.

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II.3.4 Training can be face-to-face interaction with an instructor, distance learning, self-directed or computer based. Training can be provided from a variety of sources, including, but not limited to the following:

- chemistry or instrumental courses taught at the post-secondary educational level
- instrument operation or maintenance courses taught by vendors
- in-service classes conducted by the employer
- current literature review
- in-service training taught by external providers
- participation in relevant scientific meetings or conferences (e.g., delivering an oral or poster presentation, attending a workshop, providing reports on conferences).

II.4 Initial training requirements

These minimum requirements allow individual laboratories to structure their training program to meet their needs as it relates to type of casework encountered, analytical techniques, available instrumentation and level of preparedness of trainees.

II.4.1 There shall be a documented training program, approved by laboratory management that focuses on the development of theoretical and practical knowledge, skills and abilities necessary to examine seized drug samples and related materials. The training program shall include the following:

a) documented standards of performance and a plan for assessing theoretical and practical competency against these standards (e.g., written and oral examinations, critical reviews, analysis of unknown samples and mock casework per topic area);

b) a training syllabus providing descriptions of the required knowledge and skills in specific topic areas in which the analyst is to be trained, milestones of achievement, and methods of testing or evaluating competency;

c) a period of supervised casework representative of the type the analyst will be required to perform;

d) a verification document demonstrating that the analyst has achieved the required competence.

II.4.2 Topic areas in the training program shall include, as a minimum, the following:

- relevant background information on drugs of abuse (e.g., status of control and chemical and physical characteristics)

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- techniques, methodologies and instrumentation utilized in the examination of seized drug samples and related materials
- quality assurance
- ethics
- expert/court testimony and legal requirements
- laboratory policy and procedures (e.g., sampling, uncertainty, evidence handling, safety and security) as they relate to the examination of seized drug samples and related materials.

II.4.3 SWGDRUG endorses the ENFSI Drug Working Group document "Education and Training Outline for Forensic Drug Practitioners" and recommends its use in the development of training programs.

II.4.4 An individual qualified to provide instruction shall have demonstrated competence in the subject area and in the delivery of training.

II.5 References and documents

The following references and documents shall be available and accessible to analysts.

a) college/university level textbooks for reference to theory and practice in key subject areas, e.g., general chemistry, organic chemistry and analytical chemistry

b) reference literature containing physical, chemical and analytical data. Such references include the *Merck Index*, *Clarke's Analysis of Drugs and Poisons*, laboratory manuals of the United Nations Drug Control Program, in-house produced spectra and published standard spectra, (e.g., Mills and Roberson's *Instrumental Data For Drug Analysis*, or compendia from Pfleger or Wiley)

c) operation and maintenance manuals for each analytical instrument

d) relevant periodicals (e.g., *Journal of Forensic Sciences, Forensic Science International, Microgram, Journal of Canadian Society of Forensic Science, Japanese Journal of Forensic Science and Technology, Science & Justice, Drug Testing and Analysis*)

e) laboratory quality manual, standard operating procedures, and method validation and verification documents

f) relevant jurisdictional legislation (e.g., statutes and case law relating to controlled substances, and health and safety legislation)

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PART III A

METHODS OF ANALYSIS/SAMPLING SEIZED DRUGS FOR QUALITATIVE ANALYSIS

IIIA.1 Introduction

This document addresses minimum recommendations for sampling of seized drugs for qualitative analysis.

NOTE For the purpose of this document the use of the term “statistical” refers to “probability-based.”

IIIA.1.1 The principal purpose of sampling in the context of this recommendation is to answer relevant questions about a population by examination of a portion of the population (e.g., What is the net weight of the population? What portion of the units of a population can be said to contain a given drug at a given level of confidence?)

IIIA.1.2 By developing a sampling strategy and implementing appropriate sampling schemes, as illustrated in Figure 1, a laboratory will minimize the total number of required analytical determinations, while assuring that all relevant legal and scientific requirements are met.

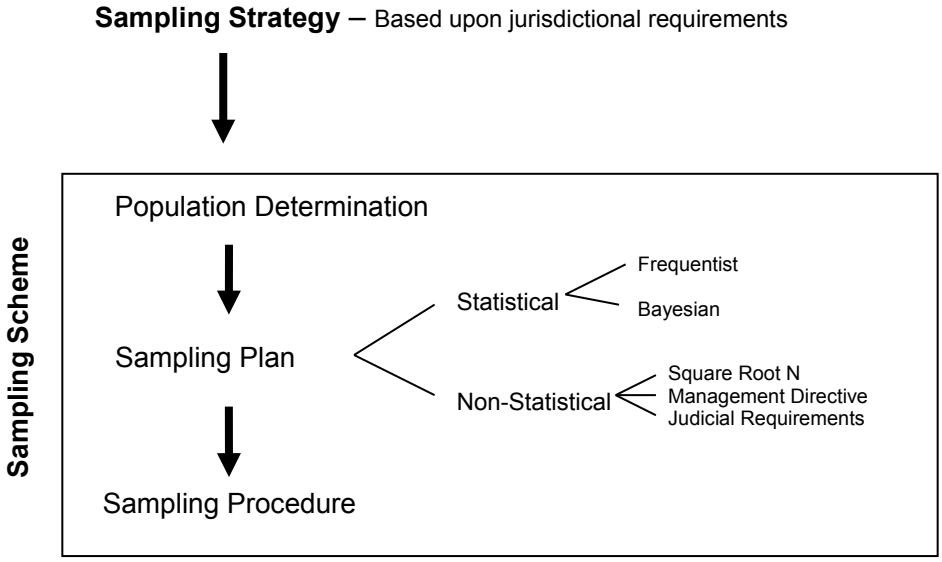

Figure 1: Relationship of the Various Levels Required in Sampling

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IIIA.2 Sampling strategy

An appropriate sampling strategy is highly dependent on the purpose of the investigation, the customer's request, and the anticipated use of the results. Laws and legal practices form the foundation of most strategies and shall be taken into account when designing a sampling scheme. Therefore, specific sampling strategies are not defined in this document.

IIIA.2.1 The laboratory has the responsibility to develop its own strategies consistent with these recommendations. SWGDRUG recommends attention to the following key points:

IIIA.2.1.1 Sampling may be statistical or non-statistical.

IIIA.2.1.1.1 In many cases, a non-statistical approach may suffice. The sampling plan shall provide an adequate basis for answering questions of applicable law (e.g., Is there a drug present in the population? Are statutory enhancement levels satisfied by the analysis of a specified number of units?)

IIIA.2.1.1.2 If an inference about the whole population is to be drawn from a sample, then the plan shall be either statistically based or have an appropriate statistical analysis completed and limits of the inference shall be documented.

IIIA.2.1.2 Each selected sample shall be analyzed to meet the SWGDRUG minimum recommendations for forensic drug identification (see Part III B – Drug Identification) if statistical inferences are to be made about the chemical identity of a population.

IIIA.3 Sampling scheme

The sampling scheme is an overall approach which includes population determination, selection of the sampling plan and procedure and, when appropriate, sample reduction prior to analysis (Figure 2).

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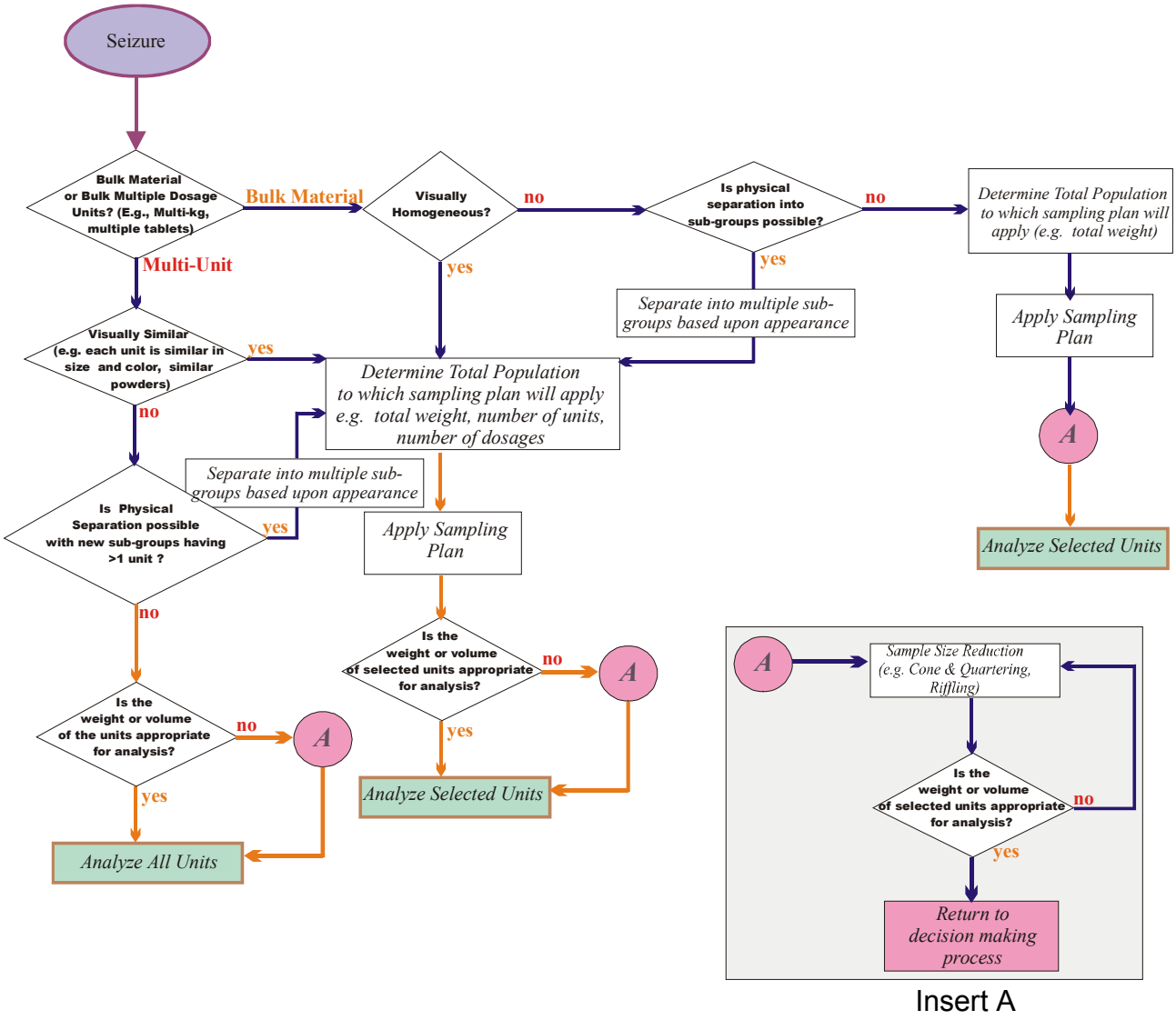

Figure 2: Example of a Sampling Scheme - A Decision Flowchart

IIIA.3.1 Population determination

IIIA.3.1.1 The population determination shall take into account all typical forms and quantities in which exhibits may appear.

IIIA.3.1.2 A population can consist of a single unit or multiple units.

IIIA.3.1.3 A multiple unit population shall consist of items, which are similar in relevant visual characteristics (size, color, shape, etc.).

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IIIA.3.2 Sampling plan

There are numerous sampling plans used in the forensic analysis of drugs that are applicable to single and multiple unit populations.

IIIA.3.2.1 When a single unit or bulk population is to be analyzed, the issue of homogeneity shall be addressed within the sampling plan.

IIIA.3.2.1.1 One sample is sufficient if the bulk material is homogeneous, or if it is made so by the analyst.

IIIA.3.2.1.2 If the bulk material is not homogeneous, several samples from different locations may be necessary to ensure that the test results are representative of the bulk material and to avoid false negative results.

IIIA.3.2.2 For a multiple unit population, the sampling plan may be statistical or non-statistical.

IIIA.3.2.2.1 Statistical approaches are applicable when inferences are made about the whole population. For example:

a) The probability that a given percentage of the population contains the drug of interest or is positive for a given characteristic.

b) The total net weight of the population is to be extrapolated from the average weight of individual sample units.

Published examples are provided below:

- Frequentist
    - Hypergeometric
        - Frank *et al*., *Journal of Forensic Sciences*, 1991, 36(2) 350-357
        - *Guidelines on Representative Drug Sampling*, European Network of Forensic

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Science Institutes (ENFSI), 2009, www.enfsi.eu
- American Society for Testing and Materials (ASTM) E-2334

- Other probability based approaches

  - ASTM E105 "Standard Practice for Probability Sampling of Materials"
  - ASTM E122 "Standard Practice for Calculating Sample Size to Estimate, With a Specified Tolerable Error, the Average for a Characteristic of a Lot or Process"
  - *Guidelines on Representative Drug Sampling*, ENFSI, 2009, www.enfsi.eu

- Bayesian

  - Coulson *et al., Journal of Forensic Sciences*, 2001, 46(6) 1456-1461
  - *Guidelines on Representative Drug Sampling*, ENFSI, 2009, www.enfsi.eu

IIIA.3.2.2.2 Non-statistical approaches are appropriate if no inference is to be made about the whole population.

IIIA.3.2.2.3 A non-statistical sampling approach may allow an inference on the population. If the population has been randomly sampled, the data may allow an inference to be drawn by:
- determining and reporting a confidence interval for an inferred population parameter (e.g. weight or tablet count).
- Retrospectively using the results in a statistical model and determining the resulting probabilities and level of confidence.

IIIA.3.2.2.4 If a non-random sampling plan has been used, then no inference shall be made.

Examples of non-statistical approaches are:

- The "square root" method
  - *Recommended Methods for Testing Opium, Morphine and Heroin: Manual for Use by*

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National Drug Testing Laboratories, United Nations Office on Drugs and Crime, 1998

- *Guidelines on Representative Drug Sampling*, ENFSI, 2009, www.enfsi.eu
- Selection of a single unit from a multiple unit population. This may be appropriate under certain circumstances (e.g., management directives, legislative and/or judicial requirements).

IIIA.3.3 Sampling procedure

IIIA.3.3.1 Establish the procedure for selecting the number of units that will comprise the sample.

IIIA.3.3.1.1 For non-statistical approaches select a sample appropriate for the analytical objectives.

IIIA.3.3.1.2 For statistical approaches, a random sampling shall be conducted.

IIIA.3.3.2 Select a random sample.

IIIA.3.3.2.1 A random sample is one selected without bias. Computer generated random numbers or random number tables are commonly employed for such tasks and these should be included in the sampling plan.

IIIA.3.3.2.2 Random sampling of items using random number tables may not be practical in all cases. In these instances, an alternate sampling plan shall be designed and documented to approach random selection. A practical solution involves a "black box" method, which refers to one that will prevent the sampler from consciously selecting a specific item from the population (e.g., all units are placed in a box and the samples for testing are selected without bias). Random sampling is discussed in the following references:

- ASTM E105 "Standard Practice for Probability Sampling of Materials"

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- *Guidelines on Representative Drug Sampling*, ENFSI, 2009, "Chapter 4: Arbitrary Sampling ", pages 9-10; www.enfsi.eu

IIIA.3.4 Sample reduction

Sample reduction may be applied in cases where the weight or volume of the selected units is too large for laboratory analysis (Figure 2, insert A).

IIIA.4 Analysis

IIIA.4.1 Statistically selected sample(s)

If statistical inferences are to be made about the chemical identity of a population, each selected sample shall be analyzed to meet the SWGDRUG minimum recommendations for forensic drug identification (see Part III B – Drug Identification).

IIIA.4.2 Non-statistically selected sample(s)

SWGDRUG minimum recommendations for forensic drug identification (see Part III B – Drug Identification) shall be applied to at least one unit of the sample.

IIIA.5 Documentation

Inferences drawn from the application of the sampling plan and subsequent analyses shall be documented.

IIIA.6 Reporting

Sampling information shall be included in reports (see Part IVA – Report Writing).

IIIA.6.1 Statistically selected sample(s)

Reporting statistical inferences for a population is acceptable when testing is performed on the statistically selected units as stated in Section 4.1 above. The language in the report must make it clear to the reader that the results are based on a sampling plan.

IIIA.6.2 Non-statistically selected sample(s)

The language in the report must make it clear to the reader that the results apply to only the tested units. For example, 2 of 100 bags were analyzed and found to contain Cocaine.

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PART III B

METHODS OF ANALYSIS/DRUG IDENTIFICATION

IIIB.1 Introduction

The purpose of PART III B is to recommend minimum standards for the forensic identification of commonly seized drugs. It is recognized that the correct identification of a drug or chemical depends on the use of an analytical scheme based on validated methods (see PART IV B – Validation) and the competence of the analyst. It is expected that, in the absence of unforeseen circumstances, an appropriate analytical scheme effectively results in no uncertainty in reported identifications (see PART IV C – Uncertainty). SWGDRUG requires the use of multiple uncorrelated techniques. It does not discourage the use of any particular method within an analytical scheme and it is accepted that unique requirements in different jurisdictions may dictate the practices followed by a particular laboratory.

IIIB.2 Categorizing Analytical Techniques

Techniques for the analysis of drug samples are classified into three categories (see Table 1) based on their maximum potential discriminating power. However, the classification of a technique may be lower, if the sample, analyte or mode of operation diminishes its discriminating power.

Examples of diminished discriminating power may include:

- an infrared spectroscopy technique applied to a mixture which produces a combined spectrum
- a mass spectrometry technique which only produces molecular weight information

Table 1: Categories of Analytical Techniques

Category A	**Category B**	**Category C**
Infrared Spectroscopy	Capillary Electrophoresis	Color Tests
Mass Spectrometry	Gas Chromatography	Fluorescence Spectroscopy
Nuclear Magnetic Resonance Spectroscopy	Ion Mobility Spectrometry	Immunoassay
Raman Spectroscopy	Liquid Chromatography	Melting Point
X-ray Diffractometry	Microcrystalline Tests	Ultraviolet Spectroscopy
	Pharmaceutical Identifiers	
	Thin Layer Chromatography	
	Cannabis only: Macroscopic Examination Microscopic Examination	

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IIIB.3 Identification criteria

SWGDRUG recommends that laboratories adhere to the following minimum standards:

IIIB.3.1 When a validated Category A technique is incorporated into an analytical scheme, at least one other technique (from either Category A, B or C) shall be used.

IIIB.3.2 When a Category A technique is not used, at least three different validated techniques shall be employed. Two of the three techniques shall be based on uncorrelated techniques from Category B.

IIIB.3.2.1 For cannabis, macroscopic and microscopic examinations will be considered as uncorrelated techniques from Category B when observations include documented details of botanical features. Laboratories shall define the acceptance criteria for these features for each examination.

IIIB.3.2.2 For exhibits of cannabis that lack sufficient observable macroscopic and microscopic botanical detail (e.g. extracts or residues), Δ^9-tetrahydrocannabinol (THC) or other cannabinoids shall be identified utilizing the principles set forth in sections 3.1 and 3.2.

IIIB.3.3 **Botanists** may identify cannabis and other botanical material utilizing morphological characteristics (category B) **alone** provided sufficient botanical features appropriate for identification are observed. Such examinations shall be made only by analysts competent in botanical identifications. In this context botanical competence applies to those examiners recognized as professional botanists or those assessed to be competent by such. Identifications of chemical components contained in botanicals (mescaline, opiates, psilocin, etc.) should rely on principles set forth in sections 3.1 and 3.2.

IIIB.3.4 All Category A and botanical identifications shall have data that are reviewable. Where a Category A technique is not used, the requirement for reviewable data applies to category B techniques. Examples of reviewable data are

- printed spectra, chromatograms, digital images, photographs or photocopies (color, where appropriate) of TLC plates
- contemporaneous documented peer review for microcrystalline tests
- reference to published data for pharmaceutical identifiers
- For cannabis and botanical materials only: recording of detailed descriptions of morphological characteristics.

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IIIB.3.5 For the use of any method to be considered of value, test results shall be considered "positive" (i.e., it must meet the acceptance criteria defined in the method validation and operating protocol). When possible, data from a test result should be compared to data generated from a reference material which has been analyzed under the same analytical conditions (see PART IV A - Assessment of Drug Reference Materials). While "negative" test results provide useful information for ruling out the presence of a particular drug or drug class, these results have no value toward establishing the forensic identification of a drug.

IIIB.3.6 The laboratory shall employ quality assurance measures to ensure the results correspond to the exhibit. Example measures are:

- the use of two separate samplings
- sample identification procedures such as bar-coding and witness checks
- good laboratory practices (e.g., positive and negative controls, one sample opened at a time, procedural blanks)

IIIB.3.7 In cases where hyphenated techniques are used (e.g. gas chromatography-mass spectrometry, liquid chromatography-diode array ultraviolet spectroscopy), they will be considered as separate techniques provided that the results from each are used.

IIIB.3.8 The chosen analytical scheme shall demonstrate the identity of the specific drug present and shall preclude a false positive identification and minimize false negatives. Where a scheme has limitations, this shall be reflected in the final interpretation (see Part IVC.2 – Qualitative Analysis).

IIIB.4 Comment

These recommendations are minimum standards for the forensic identification of commonly seized drugs. However, it should be recognized that they may not be sufficient for the identification of all drugs in all circumstances. Within these recommendations, it is up to the individual laboratory's management to determine which combination of analytical techniques best satisfies the requirements of its jurisdiction.

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PART III C

METHODS OF ANALYSIS/CLANDESTINE DRUG LABORATORY EVIDENCE

These recommendations are intended to be used in conjunction with the general requirements for the analysis of seized drugs. This document provides guidance on the chemical analysis of items and samples related to suspected clandestine drug laboratories. It does not address scene attendance or scene processing. This document provides general recommendations for the analysis of clandestine laboratory evidence and is not a substitute for detailed and validated laboratory policies and technical procedures.

IIIC.1 Introduction

IIIC.1.1 SWGDRUG considers an understanding of clandestine laboratory synthetic routes and the techniques used in the analysis of related samples to be fundamental to the interpretation and reporting of results. This understanding assures that results and conclusions from methods are reliable and analytical schemes are fit for purpose.

IIIC.1.2 The qualitative and quantitative analyses of clandestine laboratory evidence can require different approaches relative to routine seized drug analyses. Analysts shall understand the limitations of the procedures used in their qualitative and quantitative analyses.

IIIC.1.3 Laboratory management shall ensure that clandestine laboratory synthesis and analysis training be provided through relevant procedures, literature, and practical experience. Practical experience typically includes production, sampling and analysis of clandestine laboratory training samples.

IIIC.1.4 Laboratory management shall ensure that chemical safety and hygiene plans address and mitigate hazards associated with clandestine laboratory evidence.

IIIC.1.5 Laboratory management shall consider customer / local requirements which influence the application of these recommendations.

IIIC.2 Safety

IIIC.2.1 Many items seized at clandestine laboratories may be intrinsically dangerous. These may include items of unknown composition and chemicals that have not been fully characterized and whose specific hazards are not known. Therefore, caution must be exercised and routine safety protocols may not be sufficient.

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IIIC.2.2 The following are required in addition to the routine laboratory safety program in place for the analysis of seized drugs (see Part IVA – Health and Safety):

- safety procedures and ~~in~~ the use of safety and protective equipment for all staff responsible for handling items
- protective breathing equipment
- listings of the relevant hazards (e.g. MSDS) associated with components commonly found at clandestine laboratory sites and knowing what they mean
- accident prevention, emergency response procedures, and incident reporting protocols

IIIC.2.3 The handling, analysis, and storage of items seized from clandestine laboratories require additional procedures, facilities and equipment. (see Part IVA – Physical Plant): Examples are:

- specialized ventilation equipment (e.g. fume hoods) to prevent exposure to harmful fumes and vapors
- provision of personal protective equipment such as safety glasses, chemical resistant gloves, laboratory coats, respirators, face masks, and air monitors
- maintenance of a clean, uncluttered workspace
- specialized emergency equipment stations
- chemical disposal and destruction facilities and procedures
- specialized evidence receipt, storage and disposal requirements designed to mitigate expected dangers (e.g. limited sample size, proper packaging of reactive materials, use of absorbents, properly ventilated storage)

IIIC.2.4 Analysts shall be aware of the hazards associated with clandestine laboratories samples. Examples are:

- extracting from strong acids and bases (e.g. hydriodic acid, sodium hydroxide)
- handling fuming acids and bases (e.g. hydrochloric acid, ammonia)
- poisonous gases (e.g. phosphine, chlorine, hydrogen sulfide) and their potential release from evidence during analysis
- poisonous, carcinogenic, and mutagenic materials (e.g. mercuric chloride, chloroform, potassium cyanide)
- reactive and air sensitive materials (e.g. white phosphorus, lithium)
- potential testing incompatibilities (e.g. phosphorus with Raman, color test reagents with cyanide salts, exothermic reactions)
- radioactive materials (e.g. thorium)

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- volatile and flammable solvents (e.g. acetone, diethyl ether, methylated spirits)

IIIC.3 Sample selection for analysis

IIIC.3.1 The primary purpose of analysis is to prove or disprove allegations of clandestine drug syntheses. Accordingly, analysts must select items which relate to the manufacturing process.

IIIC.3.2 Not all items seized at a clandestine laboratory site may need to be analyzed. It is recommended that information be shared between the analyst and on-scene personnel to aid in sample selection.

IIIC.3.3 Items should be selected for analysis, based on jurisdictional requirements, and which are likely to contain:

- finished product
- intermediates
- precursors
- key reagents
- reaction mixtures

IIIC.3.4 Some of the following types of items may be analyzed as they can assist in determining the chemical reaction(s) undertaken and the scope of the clandestine laboratory:

- materials that appear to be waste
- unlabeled materials that appear to be contaminated solvents, acids, or bases
- samples from contaminated equipment

IIIC.3.5 Items that are readily obtained from local retail stores and are sold from reputable manufacturers/distributors may not need to be analyzed, particularly if collected from sealed and labeled containers. These include:

- solvents (e.g. toluene, mineral spirits)
- acids (e.g. hydrochloric acid, sulfuric acid)
- bases (e.g. sodium hydroxide, ammonia water)

IIIC.4 Analysis

IIIC.4.1 Substances whose presence are reported or contribute to formulating reported conclusions shall be identified with an adequate analytical scheme.

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IIIC.4.2 Where possible, the identification of organic compounds shall follow the guidelines for the analysis of seized drugs (see Part III B – Drug Identification).

IIIC.4.3 The discriminating power of analytical techniques for the identification of inorganic materials depends on the particular analyte. In each case the analytical scheme shall:

- have sufficient discriminating power to identify the material to the exclusion of others (e.g. identification of both the cation and anion in salts)
- utilize two or more techniques, preferably from different analytical groups described below

IIIC.4.4 The following list of analytical groups and techniques are in no particular order and are not exhaustive. Analytical techniques must be selected which provide sufficient discriminating power for each analyte. Some techniques may not be useful for particular analytes and each must be evaluated to determine suitability.

IIIC.4.4.1 Analytical Group 1: Elemental Analysis Techniques – these techniques may provide positive results for elements present in a sample but typically require additional tests to distinguish forms (e.g. oxidation state).

- Atomic Absorption Spectroscopy
- Atomic Emission Spectroscopy and Flame Tests (an attached spectrometer significantly increases the discriminating power relative to flame tests)
- Energy Dispersive X-Ray Detectors for Scanning Electron Microscopes (SEM-EDX)
- Mass Spectrometry (utilizing Inductively Coupled Plasma sources or for elements with unique isotopic abundance patterns)
- X-Ray Fluorescence (XRF)

IIIC.4.4.2 Analytical Group 2: Structural Elucidation Techniques – these techniques may have high discriminating power for polyatomic analytes.

- Infrared Spectroscopy (IR and FTIR)
- Mass Spectrometry
- Nuclear Magnetic Resonance (NMR)
- Raman Spectroscopy
- UV-Vis & Fluorescence Spectroscopy

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IIIC.4.4.3 Analytical Group 3: Separation Techniques – these techniques can be valuable for mixtures and for distinguishing different forms of an element (e.g. phosphate and phosphite).

- Capillary Electrophoresis
- Gas Chromatography
- Ion Chromatography
- Liquid Chromatography
- Thin Layer Chromatography

IIIC.4.4.4 Analytical Group 4: Chemical Properties – These techniques involve observations of chemical changes. Utilizing several of these techniques, in series or combination, can often increase discriminating power.

- Flammability
- Microcrystalline tests
- pH (of liquids or vapors)
- Radioactive decay
- Reactivity with water, air, or other materials
- Solubility and miscibility tests
- Spot and precipitation tests

IIIC.4.4.5 Analytical Group 5: Physical Properties – These techniques involve observations of physical properties. The discriminating power of these techniques depends on the measuring device.

- Color
- Crystal forms measured with polarized light microscopy or x-ray diffraction techniques
- Density (relative density and density of mixtures have reduced discriminating power)
- Phase transitions including melting points, boiling points, sublimation temperature and vapor pressure
- Physical state or states
- Refractive index
- Viscosity and surface tension

IIIC.4.5 If limited or qualified conclusions are sufficient (e.g. basic aqueous layer, non-polar organic solvent, a material containing the element phosphorus), tests of limited discriminating power may be utilized within an analytical scheme.

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IIIC.4.6 Analytical reference materials may not be available for the analysis of intermediates and byproducts. In these cases, samples taken from a test reaction in conjunction with suitable reference literature may be used for comparison purposes.

IIIC.4.7 Quantitative measurements of clandestine laboratory samples have an accuracy which is dependent on sampling and, if a liquid, on volume calculations. Accordingly, these measurements and calculations may be based on estimates. Under these conditions, a rigorous calculation of measurement uncertainty is often not possible or necessary and the uncertainty may best be conveyed by using a qualifier statement on the report (e.g. approximately, not to exceed, no less than).

IIIC.5 Yield and capacity calculations

IIIC.5.1 Yield and capacity calculations can be achieved from a number of approaches and shall be based on relevant case information, suitable literature, laboratory and jurisdictional requirements.

IIIC.5.2 Reported yields and capacities shall be based upon information documented in the laboratory case file.

IIIC.5.3 Calculated yields can be expressed as theoretical or expected.

IIIC.5.3.1 SWGDRUG recommends that reported yields be accompanied with an explanation clarifying the limitations or considerations.

IIIC.5.3.1.1 Theoretical yields are calculated based on the amount of known chemical, the stoichiometry of the reaction used in the clandestine laboratory and the product. Theoretical yields are not achievable in practice and their reporting can be misinterpreted.

IIIC.5.3.1.2 Expected yields are calculated based upon published data, experience, or practical experimentation. Expected yields can be highly variable based upon the factors listed below.

IIIC.5.4 In calculating expected yields and capacities in clandestine laboratories, many different sources of information can be used. Each case is different and will have a different set of evidence from which to draw information, including, but not limited to:

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- amounts of finished products, precursors, or essential chemicals present
- amount of waste present
- size of reaction vessels and equipment
- volume and quantity of containers
- type / quantity of equipment and chemicals used
- state of equipment and premises (e.g. cleanliness of site and equipment)
- the apparent skill and laboratory practice of the operator
- the procedures (i.e. recipe) followed by the operator

IIIC.5.5 In addition to observations about the clandestine laboratory site itself, other pieces of evidence can lead to an understanding of yields and capacities, including, but not limited to:

- length of time the laboratory has been in operation
- intercepted conversations
- statements made by the clandestine laboratory operator during an interview/interrogation
- documents describing purchases of equipment, precursors, or reagents
- photographs of the clandestine laboratory site and other related areas.
- records kept by the clandestine laboratory operator (e.g. seized recipes or records of previously manufactured quantities)

IIIC.5.6 When calculating capacity, ensure that the values were not obtained from the same source (e.g. empty blister packs and tablet waste).

IIIC.6 Reports and conclusions

IIIC.6.1 Communications and reports, either written or verbal, shall be based upon all of the available and relevant information and with clearly stated assumptions and conditions.

IIIC.6.2 There are many facets to a clandestine laboratory investigation, such as:

- the illicit drug being made
- the synthetic route being utilized
- the type of equipment found at the site
- the past/potential production at the site
- the final form of the illicit drug
- the batch size at the site
- whether a tableting / encapsulating operation was present

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IIIC.6.3 Factors to consider in determining what to report include, but are not limited to:

- jurisdictional requirements
- governing body (agency) requirements
- customer requests
- potential exculpatory information
- samples / analytes which represent the multiple stages in a reaction process

IIIC.6.4 Laboratories should have documented policies establishing protocols for reviewing verbal information and conclusions should be subject to technical review whenever possible. It is acknowledged that responding to queries in court or investigative needs may present an exception.

IIIC.6.5 When technical reviews are conducted, the individual reviewing the conclusions must be knowledgeable in the processing, analysis, and reporting of clandestine laboratory seizures.

IIIC.7 Training

IIIC.7.1 Analysis and interpretation of a clandestine laboratory case requires specialized skills. The main objective of clandestine laboratory training programs should be to provide new analysts with a sound education in the fundamental areas of clandestine laboratory evidence analysis. These guidelines assume the student is qualified as a seized drug analyst.

IIIC.7.2 Analysts shall receive training which will enable them to safely perform the analysis of clandestine drug laboratory samples.

IIIC.7.3 Analysts shall receive training which will enable them to assist in investigation of clandestine drug syntheses. Aspects of this training may include:

- chemical separation techniques (e.g. acid/base extractions, ion pair extractions, precipitation)
- production estimates
- study of pertinent drug syntheses by various routes
- training on intermediates and route specific by-products
- knowledge of common and alternative sources of chemicals
- training in inorganic chemistry, analysis techniques, and interpretation
- common terminology used in organic chemistry and synthesis

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- application of critical thinking and problem solving skills to the evaluation of all case information (e.g. officer and scene reports, recipes, chemical data)
- the ability to recognize when additional information is required, identify sources for that information (journals, monographs, underground references), critically evaluate the reference and apply that knowledge to case information
- legal issues and courtroom testimony

IIIC.7.4 Analysts should stay current in the field of clandestine drug manufacturing and clandestine laboratory investigations. Examples of this element include:

- joining regional, national, and international scientific organizations
- attending conferences specializing in clandestine drug manufacture
- receiving training by qualified instructors covering current trends and reviews
- reading pertinent scientific literature
- monitoring relevant illicit literature and sites

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PART IIID

METHODS OF ANALYSIS/ANALOGUES AND STRUCTURAL CLASS DETERMINATIONS

IIID.1 Introduction

IIID.1.1 This section provides general recommendations regarding analogues and structural class determinations.

IIID.1.2 Jurisdictional requirements for such determinations may include structural or pharmacological (real or purported) similarity to known controlled substances or structural class definitions.

IIID.1.3 SWGDRUG considers it fundamental for analysts to fully understand how analogues and structural classes are legally defined in a particular jurisdiction and the applicable elements of their local legislative requirements prior to developing or reporting opinions.

IIID.1.4 Such opinions should only be rendered by those with proper training and experience, as defined by laboratory procedures.

IIID.2 Analogues

IIID.2.1 The requirements for legal consideration as a controlled substance analogue are defined in jurisdictional legislation.

IIID.2.2 Classification as a controlled substance analogue generally involves the evaluation of the similarity of structure or pharmacological properties of a chemical compound to a known controlled substance.

IIID.2.3 The scientific evaluation of similarity may be made using a variety of techniques and approaches depending on the specific question being addressed. These specific comparisons can be broadly classified by structure, chemical properties, biochemical or pharmacological activity.

IIID.2.4 The laboratory shall have a written procedure regarding structural similarity determinations, which shall include a description of the factors to be considered during the comparison and how each shall be documented in the case file.

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IIID.2.5 The documentation of the evaluation of similarities between chemical compounds shall include a discussion of how the compounds are similar and how they are different.

IIID.2.5.1 Evaluation of similarity is a subjective matter and opinions may differ.

IIID.2.5.2 Structural comparisons in a forensic laboratory may be limited to the structural class and functional group, ring or chain substitutions. As examples, isomers, homologues, salt forms, atomic substitutions, esters, and ethers may be considered. The scope of comparison conducted should be made clear in the report.

IIID.2.6 Structural similarity between two chemical compounds is not an adequate basis to infer similar pharmacological activity, e.g. naloxone and hydromorphone.

IIID.2.7 Likewise a lack of structural similarity is not an adequate basis to infer a lack of analogous pharmacological activity, e.g. fentanyl and morphine.

IIID.2.8 If pharmacological activity is a requirement of particular legislation and drug analysts are asked for such information by the judge or presiding authority, they should not provide such testimony in the absence of specific training and experience in pharmacology (or related fields). Should the drug analyst cite peer-reviewed literature, they shall qualify the limitations of their expertise.

IIID.3 Structural Class Determinations

IIID.3.1 In many jurisdictions, chemical compounds are controlled based upon structural class definitions (e.g., 3-(1-naphthoyl)indole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl ring to any extent).

IIID.3.2 A structural class determination may be made by identifying a specific compound and assigning the compound as a member of a legally defined structural class.

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IIID.3.3 The laboratory shall have a written procedure for structural class determinations, which should include the documentation requirements for the assignment of the unknown to a structural class.

IIID.3.4 The analytical scheme employed must satisfy all structural requirements of the structural class definition, e.g. where substitutions are, types of substitutions.

IIID.3.5 A structural class determination may also be made using an analytical scheme designed to identify sufficient features of a compound to assign it as a member of a legally defined structural class without making a conclusive identification of that compound (e.g., ortho, meta, or para position of a halogen on an aromatic ring).

IIID.3.6 Relevant limitations of the analytical scheme and resulting classification shall be clear in reporting, e.g. The powder was analyzed and found to contain a chemical in the legally defined chemical class Amphetamine, specifically (2, 3, or 4)-fluoroamphetamine.

IIID.4 Reporting

IIID.4.1 All conclusions and opinions expressed in written or oral form shall be based on sufficient supporting evidence, data, or information, as defined by laboratory procedures.

IIID.4.2 The basis of any conclusion should be completely documented in the case notes and summarized in the written report and subject to the laboratory's review policy. It is acknowledged that responding to queries in court or investigative needs may present an exception.

IIID.4.3 Conclusions and opinions reported shall be accurate, clear, and meet the jurisdictional requirements. The report must also include any relevant assumptions or limitations (e.g. potentially exculpatory information), to allow the court to make the final decision.

IIID.4.4 The report should clearly indicate what elements of the legal requirements were evaluated and what elements were not evaluated.

IIID.4.5 The scope of opinions and conclusions reported, in either written or oral form, shall not go beyond the knowledge, training and experience of the analyst.

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PART IV A

QUALITY ASSURANCE/GENERAL PRACTICES

IVA.1 Introduction

It is the goal of a laboratory's drug analysis program to provide the customers of the laboratory's services access to quality drug analysis. It is the goal of these recommendations in PART IV A to provide a quality framework for management of the processing of drug casework, including handling of evidentiary material, management practices, qualitative and quantitative analysis and reporting. These are minimum recommendations for practice.

The term “evidence” has many meanings throughout the international community. In this document it is used to describe drug exhibits that enter a laboratory system.

IVA.2 Quality management system

A documented quality management system shall be established and maintained.

IVA.2.1 Personnel responsible for this shall be clearly designated and shall have direct access to the highest level of management concerning laboratory policy.

IVA.2.2 The quality management system shall cover all procedures and reports associated with drug analysis.

IVA.3 Personnel

IVA.3.1 Job description

The Job descriptions for all personnel should include responsibilities, duties and required skills.

IVA.3.2 Designated personnel and responsibilities

An individual (however titled) may be responsible for one or more of the following duties:

IVA.3.2.1 Quality Assurance Manager: A designated person who is responsible for maintaining the quality management system (including an annual review of the program) and who monitors compliance with the program.

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IVA.3.2.2 Health & Safety Manager: A designated person who is responsible for maintaining the Laboratory Health and Safety program (including an annual review of the program) and monitors compliance with the program.

IVA.3.2.3 Technical Support Personnel: Individuals who perform basic laboratory duties, but do not analyze evidence.

IVA.3.2.4 Technician/Assistant Analyst: A person who analyzes evidence, but does not issue reports for court purposes.

IVA.3.2.5 Analyst: A designated person who:

a) examines and analyzes seized drugs or related materials, or directs such examinations to be done

b) independently has access to unsealed evidence in order to remove samples from the evidentiary material for examination AND

c) as a consequence of such examinations, signs reports for court or other purposes.

IVA.3.2.6 Supervisor: A designated person who has the overall responsibility and authority for the technical operations of the drug analysis section. Technical operations include, but are not limited to protocols, analytical methodology, and technical review of reports.

IVA.3.3 Qualifications/Education

IVA.3.3.1 Technical Support Personnel shall

a) have education, skills and abilities commensurate with their responsibilities AND

b) have on-the-job training specific to their position.

IVA.3.3.2 Technicians/Assistant Analysts shall

a) have education, skills and abilities commensurate with their responsibilities AND

b) have on-the-job training specific to their position.

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IVA.3.3.3 Analysts shall meet educational requirements stated in PART II – Education and Training (Section 2).

IVA.3.3.4 Supervisors shall

a) meet all the requirements of an analyst (3.3.3),

b) have a minimum of two (2) years of experience as an analyst in the forensic analysis of drugs and

c) demonstrate knowledge necessary to evaluate analytical results and conclusions.

IVA.3.4 Initial training requirements

Initial training requirements for analysts are defined in PART II – Education and Training (Section 4).

IVA.3.5 Maintaining competence

Continuing professional development for analysts is defined in PART II – Education and Training (Section 3).

IVA.4 Physical plant

IVA.4.1 Laboratories shall provide a healthy, safe and secure environment for its personnel and operations.

IVA.4.2 Laboratories shall contain adequate space to perform required analytical functions and prevent contamination.

IVA.4.3 Chemical fume hoods shall be provided. They shall be properly maintained and monitored according to an established schedule.

IVA.4.4 A laboratory cleaning schedule should be established and implemented.

IVA.4.5 Adequate facilities shall be provided to ensure the proper safekeeping of evidence, standards and records.

IVA.4.6 Appropriately secured storage shall be provided to prevent contamination of chemicals and reagents.

IVA.5 Evidence control

Laboratories shall have and follow a documented evidence control system to ensure the integrity of physical evidence.

IVA.5.1 Receiving and identifying evidence

Laboratories shall maintain records of requests for analysis and of the respective items of evidence. For chain-of-custody purposes, the evidence shall be compared to the submission documentation, any significant observations of irregularity shall be documented in the case file or record, and the submitter informed promptly. This file or record shall include, at least, the following:

- submission documents or copies
- identity of party requesting analysis and the date of request
- description of items of evidence submitted for analysis
- identity of the person who delivers the evidence, along with date of submission
- for evidence not delivered in person, descriptive information regarding mode of delivery and tracking information
- chain of custody record
- unique case identifier.

IVA.5.2 Integrity of evidence

Evidence shall be properly secured (e.g., sealed). Appropriate storage conditions shall ensure that, insofar as possible, the composition of the seized material is not altered. All items shall be safeguarded against loss or contamination. Any alteration of the evidence (e.g. repackaging) shall be documented. Procedures shall be implemented to assure that samples are and remain properly labeled throughout the analytical process.

IVA.5.3 Storage of evidence

Access to the evidence storage area shall be granted only to persons with authorization and access shall be controlled. A system shall be established to document a chain of custody for evidence in the laboratory.

IVA.5.4 Disposition of evidence

Records shall be kept regarding the disposition (e.g., return, destruction, conversion to another use) of all items of evidence.

IVA.5.5 Documentation retention procedures

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All laboratory records such as analytical results, measurements, notes, calibrations, chromatograms, spectra and reports shall be retained in a secure fashion in accordance with jurisdictional requirements.

IVA.6 Analytical procedures

IVA.6.1 Analytical procedures for drug analysis

IVA.6.1.1 Laboratories shall have and follow documented analytical procedures.

IVA.6.1.2 Laboratories shall have in place protocols for the sampling of evidence (see PART III A – Sampling).

IVA.6.1.3 Work practices shall be established to prevent contamination of evidence during analysis.

IVA.6.1.4 Laboratories shall have and follow documented guidelines for the acceptance and interpretation of data.

IVA.6.1.5 Laboratories shall monitor the analytical processes using appropriate blanks, controls and reference materials.

IVA.6.1.6 Reference materials and reference data are critical to demonstrating the validity of quantitative and qualitative test results. A positive test result shall meet the acceptance criteria defined in the method validation and operating protocol. In descending order of preference SWGDRUG recommends that the acceptance criteria should be based on:

IVA.6.1.6.1 Comparison to data obtained from a suitable drug reference material analyzed under the same analytical conditions as the test/case sample.

The reference material may be analyzed:

- contemporaneously with test/case sample
- as part of routine quality control e.g. daily check solutions
- at a previous date (e.g. method validation, in-house library)

IVA.6.1.6.2 Comparisons to external reference data may be used where a reference material is

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unavailable. External reference data shall be shown to be fit for purpose. The veracity of the data shall be considered and assessed. Factors to consider include

- Origin of the data
- Validation of the data
- Peer review of the data
- Comparability of analytical conditions

The use of external reference data rather than a reference material should be documented and where applicable the limitation expressed within the report.

IVA.6.1.6.3 When neither reference materials nor external reference data are available, structural elucidation techniques may be employed providing the analyst has the appropriate skills for their interpretation. Such interpretations shall be made only by analysts competent in structural elucidation interpretation. The absence of a reference material and external data shall be documented and the impact on the interpretation of reported results assessed.

IVA.6.1.7 Analytical procedures shall be validated in compliance with PART IV B - Validation.

IVA.6.1.8 When analysts determine the identity of a drug in a sample, they shall employ quality assurance measures to ensure the results correspond to the exhibit. (see Part III B – Drug Identification)

IVA.6.2 Assessment of drug reference materials

ISO/IEC 17025 specifies that reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials (CRM). For seized drugs this requirement is difficult to fulfil because the concept of traceability for drug standards is not internationally established and CRM's for drug analysis are not readily available or affordable.

Note: A certificate does not necessarily define a material as a CRM.

IVA.6.2.1 SWGDRUG recommends laboratories have a process for assessing that reference materials are fit for purpose.

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IVA.6.2.1.1 The assessment and purpose of a reference material shall be documented. The documentation shall include the name of the individual who performed the assessment, the date of assessment, verification test data, and details of all reference materials and reference data used.

IVA.6.2.2 To be fit for purpose, the reference material must meet the minimum specification defined in the validation (see Part IV B - Reference Materials).

IVA.6.2.2.1 The assessment shall be done on each lot of reference material.

IVA.6.2.2.2 This assessment shall be completed prior to or alongside casework analysis as appropriate.

IVA.6.2.2.3 Reference materials shall only be used for the purpose defined by the laboratory. For example a reference material may be deemed suitable for qualitative but not quantitative determinations.

IVA.6.2.3 Fit for purpose for qualitative work requires an assessment of chemical identity.

IVA.6.2.4 Fit for purpose for quantitative work requires an assessment of purity and/or concentration, as appropriate to the application and its associated uncertainty of measurement in addition to the parameters in 6.2.3.

IVA.6.2.4.1 For quantitative determinations, different sources of reference material should be used for calibration and quality control. Where this is not feasible, two different lots of the same source may be used or lastly a single source of reference material can be sub-divided and each part assigned a specific purpose.

IVA.6.2.5 These parameters in Sections 6.2.3 and 6.2.4 may be described in a certificate, statement of analysis, data sheet or label supplied with the material or may be determined by in-house analysis or reference to published literature.

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IVA.6.2.6 The laboratory shall assess the reliability of the information supplied with a reference material even if the material meets the definition of a CRM.

IVA.6.2.6.1 For reference materials obtained from a provider accredited under ISO Guide 34, the information contained in the accompanying certificate is considered reliable and can be accepted as correct if the material is stored and used in accordance with the manufacturer's instructions. In these circumstances the assessment need not include analysis.

IVA.6.2.6.1.1 For reference materials obtained from a provider not accredited under ISO Guide 34 the identity and purity information supplied by the provider shall be verified by analysis. When verification by analysis is not possible, this shall be documented and where applicable the limitation expressed within the report. Other information may be evaluated as needed.

IVA.6.2.6.1.2 Examples of verification of chemical identity by analysis:

- Analysis and comparison of the results to peer-reviewed published data, data produced by a laboratory accredited under ISO/IEC 17025, or to data produced from a previously verified reference material.

- Evaluation of data from in-house structural elucidation analysis of the material.

IVA.6.2.6.1.3 Examples of verification of purity by analysis utilizing validated methods:

- Quantitative NMR Spectroscopy
- Quantitative UV- Visible Spectroscopy
- Comparison to previously verified material

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IVA.6.2.6.2 Where a reference material has no or limited supporting documentation or is produced in-house (by synthesis or from a case sample), then the chemical identity shall be determined in sufficient detail to demonstrate that it is fit for purpose. In addition, for quantitative work the purity and associated uncertainty of measurement shall also be determined.

IVA.6.2.7 Reference materials should have an expiration date.

IVA.6.2.7.1 If the material is not supplied with an expiration date, one should be assigned at the first assessment (section 6.2.3, 6.2.4). If the expiration date passes before the material is fully used, then the material can be re-assessed and the expiration date extended. The laboratory protocol for extending expiration dates shall be documented and should include analysis of the material.

IVA.6.2.7.2 If expiration dates are not assigned to reference materials, the laboratory must have a documented protocol for assessing the validity of the reference material each time it is used.

IVA.7 Instrument/Equipment performance

IVA.7.1 Instrument performance

Instruments shall be routinely monitored to ensure that proper performance is maintained.

IVA.7.1.1 Monitoring shall include, at least, the use of blanks and reference materials, test mixtures, or calibration standards.

IVA.7.1.2 Instrument performance monitoring shall be documented.

IVA.7.1.3 The manufacturer's operation manual and other relevant documentation for instrumentation should be readily available.

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IVA.7.2 Equipment

IVA.7.2.1 Only suitable and properly operating equipment shall be employed.

IVA.7.2.2 Equipment performance parameters should be routinely monitored and documented.

IVA.7.2.3 The manufacturer's operation manual and other relevant documentation for each piece of equipment should be readily available.

IVA.8 Chemicals and reagents

IVA.8.1 Chemicals and reagents used in drug testing shall be of appropriate grade for the tests performed.

IVA.8.2 There shall be documented formulations for all chemical reagents produced within the laboratory.

IVA.8.3 Documentation for reagents prepared within the laboratory shall include identity, concentration (when appropriate), date of preparation, identity of the individual preparing the reagents, storage conditions (if appropriate) and the expiration date (if appropriate).

IVA.8.4 The efficacy of all test reagents shall be checked prior to their use in casework. Results of these tests shall be documented.

IVA.8.5 Chemical and reagent containers shall be dated and initialed when received and also when first opened.

IVA.8.6 Chemical and reagent containers shall be labeled as to their contents.

IVA.9 Casework documentation, report writing and review

IVA.9.1 Casework documentation

IVA.9.1.1 Documentation shall contain sufficient information to allow a peer to evaluate case notes and interpret the data.

IVA.9.1.2 Evidence handling documentation shall include chain of custody, information regarding packaging of the evidence upon receipt, the initial weight/count of evidence to be

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examined (upon opening), a description of the evidence and communications regarding the case.

IVA.9.1.3 Analytical documentation should include procedures, standards, blanks, observations, test results and supporting documentation including charts, graphs and spectra generated during an analysis.

IVA.9.1.4 Casework documentation shall be preserved according to documented laboratory policy.

IVA.9.2 Report writing

Reports issued by laboratories shall be accurate, clear, objective, and meet the requirements of the jurisdictions served.

These reports shall include the following information:

- title of report
- identity and location of the testing laboratory
- unique case identifier (on each page)
- clear identification of the end of the report (e.g., Page 3 of 3)
- submitting agency
- date of receipt of evidence
- date of report
- descriptive list of submitted evidence
- identity and signature (or electronic equivalent) of analyst
- results / conclusions
- a list of analytical techniques employed
- sampling (see Part III A - Reporting)
- uncertainty (see Part IV C - Uncertainty).

If elements listed above are not included on the report, the laboratory shall have documented reasons (i.e. specific accreditation, customer or jurisdictional considerations), for not doing so.

IVA.9.3 Case review

9.1.1 Laboratories shall have documented policies establishing protocols for technical and administrative case review.

9.1.2 Laboratories shall have a documented policy for resolving case review disagreements between analysts and reviewers.

IVA.10 Proficiency and competency testing

Each laboratory shall establish a documented competency testing and proficiency testing program. Each laboratory shall have documented protocols for monitoring the competency and proficiency of its analysts.

NOTE It is recognized that different jurisdictions may define competency and proficiency testing in a manner other than how they are used here. In this context, competency tests measure the ability of the analyst to produce accurate results. Proficiency tests are an ongoing process in which a series of proficiency samples, the characteristics of which are not known to the participants, are sent to laboratories on a regular basis. Each laboratory is tested for its accuracy in identifying the presence (or concentration) of the drug using its usual procedures.

IVA.10.1 Proficiency testing

IVA.10.1.1 Laboratories shall perform proficiency testing in order to verify the laboratory's performance. The frequency of the proficiency testing shall be, at least, annually. Where possible, at least one of these proficiency tests should be from a recognized external proficiency test provider.

IVA.10.1.2 Proficiency test samples should be representative of the laboratory's normal casework.

IVA.10.1.3 The analytical scheme applied to the proficiency test should be in concert with normal laboratory analysis procedures.

IVA.10.2 Competency testing

IVA.10.2.1 Laboratories shall monitor the competency of their analysts annually.

IVA.10.2.2 If competency test samples are utilized, they should be representative of the laboratory's normal casework.

IVA.10.2.3 The analytical scheme applied to the competency test should be in concert with normal laboratory analysis procedures.

IVA.11 Analytical method validation and verification

IVA.11.1 Method validation is required to demonstrate that methods are suitable for their intended purpose (see PART IV B – Validation).

IVA.12 Laboratory audits

IVA.12.1 Internal audits of laboratory operations shall be conducted at least once a year.

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IVA.12.2 Records of each audit shall be maintained and include the scope, date of the audit, name of auditor(s), findings and any necessary corrective actions.

IVA.13 Deficiency of analysis

In the course of examining seized drug samples and related materials, laboratories may encounter some operations or results that are deficient in some manner. Each laboratory shall have a documented policy to address such deficiencies.

IVA.13.1 This policy shall include the following:

a) a definition of a deficiency as any erroneous analytical result or interpretation, or any unapproved deviation from an established policy or procedure in an analysis;

NOTE Deviations from established policy shall have documented management approval.

b) a requirement for immediate cessation of the activity or work of the individual involved, if warranted by the seriousness of the deficiency, as defined in the documented policy;

c) a requirement for administrative review of the activity or work of the individual involved;

d) a requirement for evaluation of the impact the deficiency might have had on other operations, equipment, materials, or laboratory personnel;

e) a requirement for documentation of the follow-up action taken as a result of the review;

f) a requirement for communication to appropriate employees of any confirmed deficiency which may have implications for their work.

NOTE It should be recognized that to be effective, the definition for "deficiency of analysis" shall be relatively broad. As such, deficiencies may have markedly different degrees of seriousness. For example, a misidentification of a controlled substance would be very serious and perhaps require that either the methodology or the analyst be suspended pending appropriate remedial action, as determined by management. However, other deficiencies might be more clerical in nature, requiring a simple correction at the first line supervisory level, without any suspension of methodology or personnel. Thus, it may well be advantageous to identify the differing levels of seriousness for deficiencies and make the action required be commensurate with the seriousness.

IVA.14 Health and safety

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Laboratories shall have a documented health and safety program in place.

IVA.14.1 Health and safety requirements

IVA.14.1.1 All personnel should receive appropriate health and safety training.

IVA.14.1.2 Laboratories shall operate in accordance with laboratory policy and comply with any relevant regulations.

IVA.14.1.3 Laboratory health and safety manual(s) shall be readily available to all laboratory personnel.

IVA.14.1.4 Safety Data Sheets shall be readily available to all laboratory personnel.

IVA.14.1.5 All chemicals, biohazards and supplies shall be stored and disposed of according to applicable government regulations and laboratory policy.

IVA.14.1.6 Safety hazards such as syringes, items with sharp edges or noxious substances should be so labeled.

IVA.15 Additional documentation

In addition to casework documentation, laboratories shall maintain documentation on the following topics:

- test methods/procedures for drug analysis
- reference materials (including source and verification)
- preparation and testing of reagents
- evidence handling protocols
- instrument and equipment calibration and maintenance
- instrument and equipment inventory (e.g., manufacturer, model, serial number, acquisition date)
- proficiency testing
- personnel training and qualifications
- quality assurance protocols and audits
- health, safety and security protocols
- validation data and results
- uncertainty data.

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PART IV B

QUALITY ASSURANCE/VALIDATION OF ANALYTICAL METHODS

IVB.1 Introduction

IVB.1.1 Definition and purpose of validation

Validation is the confirmation by examination and the provision of objective evidence that the particular requirements for a specific intended use are fulfilled. There are numerous documents that address the topic of validation but there are few validation protocols for methods specific to seized drug analysis.

IVB.1.2 Analytical scheme

An analytical scheme shall be comprised of validated methods that are appropriate for the analyte.

IVB.1.2.1 The combinations of methods chosen for a particular analytical scheme shall identify the specific drug of interest, preclude a false positive and minimize false negatives.

IVB.1.2.2 For quantification the method should reliably determine the amount of analyte present.

IVB.1.2.3 If validated methods are used from published literature or another laboratory's protocols, then the methods shall be verified within each laboratory.

IVB.1.2.4 If non-routine validated methods are used, then the method shall be verified prior to use.

IVB.1.2.5 Verification should, at a minimum, demonstrate that a representative set of reference materials has been carried through the process and yielded the expected results.

IVB.1.3 Individual laboratory responsibility

Each laboratory should determine whether their current standard operating procedures have been validated, verified or require further validation/verification.

IVB.1.4 Operational environment

All methods shall be validated or verified to demonstrate that they will perform in the normal operational environment when used by individuals expected to utilize the methods on casework.

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IVB.1.5 Documentation

The entire validation/verification process shall be documented and the documentation shall be retained. Documentation shall include, but is not limited to the following:

- personnel involved
- dates
- observations from the process
- analytical data
- a statement of conclusions and/or recommendations
- authorization approval signature.

IVB.1.6 Recommendation

To meet the above requirements, SWGDRUG recommends that laboratories follow the applicable provisions of Section 2 [General Validation Plan] when validating seized drug analytical methods. For further information, see Supplemental Document SD-2 (Preparing Validation Plans, Section I: Analytical Techniques – Elements to Consider and Section II: Example Validation Plan for GC/MS Identification and Quantitation of Heroin).

IVB.2 General validation plan

IVB.2.1 Purpose/scope

This is an introductory statement that will specify what is being tested, the purpose of the testing and the result(s) required for acceptance.

IVB.2.1.1 Performance specification

A list of specific objectives (e.g., trueness and precision) should be determined prior to the validation process.

IVB.2.1.2 Process review

After completion of the validation process the objectives should be revisited to ensure that they have been satisfactorily met.

IVB.2.2 Analytical method

State exactly the method to be validated. It is essential that each step in the method be demonstrated to perform satisfactorily. Steps that constitute a method for the identification and/or quantification of seized drugs may include:

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- visual characterization (e.g., macroscopic examination)
- determination of quantity of sample, which may include:
  - weight
  - volume
  - item count
- sampling (representative or random, dry, homogenized, etc.)
- stability of analyte
- sample preparation
  - extraction method
  - dissolution
  - derivatization
  - crystallization
  - techniques for introducing sample into instrumentation
- instrumental parameters and specifications
  - list the instruments and equipment (e.g., balance and glassware) utilized
  - instrument conditions
- software applications (e.g., software version, macros)
- calculations
  - equation(s) to be used
  - unit specification
  - number of measurements required
  - reference values
  - significant figure conventions
  - conditions for data rejection
  - uncertainty determination.

IVB.2.3 Reference materials

Appropriate reference materials (see Part IV A – Assessment of Reference Materials) shall be used to develop and validate analytical procedures. The validation documentation and operating protocol should define the frequency of usage of the relevant reference materials and their minimum specification (e.g. salt form, minimum purity, isomeric form).

IVB.2.4 Performance characteristics

IVB.2.4.1 Selectivity

Assess the capability of the method to identify/quantify the analyte(s) of interest, whether pure or in a mixture.

IVB.2.4.2 Matrix effects

Assess the impact of any interfering components and demonstrate that the method works in the presence of substances that are commonly

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encountered in seized drug samples (e.g. cutting agents, impurities, by-products, precursors).

IVB.2.4.3 Recovery

May be determined for quantitative analysis.

IVB.2.4.4 Accuracy

IVB.2.4.4.1 Precision (Repeatability/Reproducibility)

Determine the repeatability and reproducibility of all routine methods. Conditions under which these determinations are made shall be specified.

NOTE Reproducibility determination may be limited to studies within the same laboratory.

IVB.2.4.4.1.1 Within the scope of the validation, determine acceptable limits for repeatability and reproducibility.

IVB.2.4.4.1.2 For qualitative analysis, run the qualitative method a minimum of ten times.

IVB.2.4.4.1.3 For quantitative analysis run the quantitative method a minimum of ten times.

IVB.2.4.4.1.4 Validation criteria for non-routine methods may differ from what is stated above.

IVB.2.4.4.2 Trueness

Trueness shall be determined for quantitative methods to assess systematic error. Trueness can be assessed through various methods such as:

- comparison of a method-generated value for the reference material with its known value using replicate measurements at different concentrations
- performance of a standard addition method
- comparison to proficiency test results
- comparison with a different validated analytical method.

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IVB.2.4.5 Range

Determine the concentration or sample amount limits for which the method is applicable.

IVB.2.4.5.1 Limit of detection (LOD)

Limit of detection shall be determined for all qualitative methods.

IVB.2.4.5.1.1 Determine the lowest amount of analyte that will be detected and can be identified.

IVB.2.4.5.1.2 The results obtained at the LOD are not necessarily quantitatively accurate.

IVB.2.4.5.2 Limit of quantitation (LOQ)

Limit of Quantitation shall be determined for all quantitative methods. Determine the lowest concentration that has an acceptable level of uncertainty.

IVB.2.4.5.3 Linearity

Linearity shall be determined for all quantitative methods.

IVB.2.4.5.3.1 Determine the mathematical relationship (calibration curve) that exists between concentration and response over a selected range of concentrations.

IVB.2.4.5.3.2 The LOQ effectively forms the lower end of the working range.

IVB.2.4.5.3.3 Determine the level of acceptable variation from the calibration curve at various concentrations.

IVB.2.4.5.3.4 Determine the upper limits of the working range.

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IVB.2.4.6 Robustness

Robustness shall be determined for either qualitative or quantitative methods. Alter method parameters individually and determine any changes to accuracy.

IVB.2.4.7 Ruggedness

Ruggedness may be determined for either qualitative or quantitative methods. Ruggedness should assess the factors external to the method.

IVB.2.4.8 Uncertainty

The contribution of random and systematic errors to method result uncertainty shall be assessed and the expanded uncertainty derived for quantitative methods (see PART IV C – Uncertainty).

IVB.3 Quality control

Acceptance criteria for quality control parameters should be adopted prior to implementation of the method.

IVB.4 References

a) *The Fitness for Purpose of Analytical Methods, A Laboratory Guide to Method Validation and Related Topics*, EURACHEM Guide, 1998.

b) *Federal Register, Part VIII*, Department of Health and Human Services, March 1995, pages 11259-62.

c) "Validating Analytical Chemistry Methods", Enigma Analytical Training Course (Version 2000-1), Breckenridge, CO, 2000, pages 8-4, 8-5.

d) "Guidelines for Forensic Science Laboratories", ILAC-G19:2002, page 10.

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PART IV C

Quality Assurance/Uncertainty

IVC.1 Introduction

This recommendation provides guidance on the concept of uncertainty and its application to the qualitative and quantitative analysis of seized drugs. In this context, uncertainty encompasses limitations of qualitative methods as well as numerical ranges as applied to quantitative analyses.

IVC.1.1 SWGDRUG considers an understanding of uncertainty to be fundamental to the interpretation and reporting of results.

IVC.1.2 The term “uncertainty” does not imply doubt; rather, its consideration provides assurance that results and conclusions from methods and analytical schemes are fit for purpose.

IVC.1.3 SWGDRUG recommends the concept of uncertainty be considered for all analytical results.

IVC.1.4 Laboratory management shall ensure that uncertainty be addressed through the provision of training, procedures and documentation.

IVC.1.5 Laboratory management should consider customer requirements which influence the application of uncertainty.

IVC.1.6 Benefits

The benefits of determining and understanding uncertainty include:

- Enhancing confidence through increased understanding of results
- Providing a mechanism to express the reliability of results
- Enabling the laboratory and customer to evaluate the fitness for purpose of results
- Facilitating the identification of procedural limitations and providing a basis for improvement
- Complying with accreditation requirements.

IVC.1.7 Application of uncertainty

Qualitative and quantitative analyses require different approaches. Analysts shall understand the limitations of qualitative and quantitative determinations and have tools to estimate a value for measurement uncertainty of relevant, but not necessarily all, numerical results. In this regard, efforts should be made to use the vocabulary, symbols,

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and formatting expressed in documents published by a Standards Developing Organization (SDO) such as ISO and ASTM International.

IVC.2 Qualitative Analysis

The identification of seized drugs requires the combination of methods to form an analytical scheme (see PART III B - Drug Identification).

IVC.2.1 Individual methods have limitations and, consequently, uncertainty. Uncertainty of qualitative methods is not typically expressed in numerical terms.

IVC.2.2 Understanding these limitations enables the laboratory or analyst to build an appropriate analytical scheme to correctly identify a drug or chemical.

IVC.2.2.1 It is expected that, in the absence of unforeseen circumstances, an appropriate analytical scheme effectively results in no uncertainty in reported identifications.

IVC.2.2.2 Relevant limitations of an analytical scheme (e.g., inability to differentiate isomers, unavailability of reference material) should be documented and may need to be included in the report (see Part IV C - Reporting Examples).

IVC.3 Quantitative Measurements

IVC.3.1 Quantitative measurements have an associated uncertainty, which is defined as a parameter that “characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement or characteristic subject to test” (see Glossary).

IVC.3.2 A rigorous calculation of measurement uncertainty is not always required.

IVC.3.2.1 A laboratory shall understand the contributing factors of measurement uncertainty for each analytical procedure and evaluate them with respect to customer, accreditation or jurisdictional requirements.

IVC.3.2.2 Where a value is critical, such as a weight or purity level close to a statutory threshold, an appropriate measurement uncertainty estimation shall be applied.

IVC.3.3 Primary numerical values reported in the analysis of seized drugs are weight and purity. Where other values are measured (e.g., size,

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volume, estimated tablet numbers), the same principles stated herein apply.

IVC.4 Estimation of measurement uncertainty for quantitative determinations

IVC.4.1 Sources of uncertainty for weight determination

IVC.4.1.1 The uncertainty of a reported value is dependant on the weighing process. Factors for consideration include:

- Single versus multiple items (number of weighing operations)
- Taring of a weighing vessel as a separate weighing operation
- Extrapolation of population weight from limited sampling of multiple items
- Aggregate weighings
- Incomplete recovery of material from the packaging
- Balance selection (e.g., readability, capacity, calibration uncertainty)
- Balance operation (e.g., sample placement on pan, environmental conditions).

IVC.4.1.2 For further information and examples of estimation of measurement uncertainty for weight determinations, see Supplemental Document SD-3 (Measurement Uncertainty for Weight Determinations in Seized Drug Analysis).

IVC.4.2 Sources of uncertainty for purity determination

The uncertainty of a reported purity value is dependant upon the entire quantitation process. Factors for consideration include:

- Sampling plan (e.g., handling of multiple exhibits)
  - Sample homogeneity
- Analytical method
  - Sample preparation (e.g., sample size, matrix effects, solubility)
  - Analytical technique
  - Reference material (e.g., purity of standard)
  - Equipment and instrument properties (e.g., glassware, pipettors, balances, chromatographs)
  - Concentration of analyte
  - Environmental conditions.

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IVC.4.3 Factors relevant to estimation of measurement uncertainty

IVC.4.3.1 When estimating measurement uncertainty, the following sources of error shall be considered:

IVC.4.3.1.1 Analytical Error: Systematic and random error both contribute to measurement uncertainty and shall be addressed through method validation and quality assurance practices (Part IV B). SWGDRUG recommends that for all validated procedures, systematic error is characterized and minimized.

IVC.4.3.1.2 Sampling Error: The sample and sampling procedure are often the greatest contributors to measurement uncertainty.

IVC.4.3.2 Where appropriate, confidence levels (e.g., 95% or 99.7%) shall be selected based on considerations relevant to the analytical context.

IVC.4.3.3 Uncertainty information shall be recorded in validation documents and/or case records.

IVC.4.4 Approaches for estimating measurement uncertainty

IVC.4.4.1 Uncertainty budget approach

IVC.4.4.1.1 In this approach all sources of error are separately identified and tabulated.

IVC.4.4.1.2 A value is assigned to each source of error (collectively or individually) using either:

- empirical data (e.g., from validation process, historical performance data, control chart data, proficiency tests)
- published data (e.g., volumetric glassware tolerances)
- combination of empirical and published data.

NOTE: Control chart data, including measurement quality assurance, should be derived from multiple data points over time and is expected to capture the typical variations of realistic laboratory processes.

IVC.4.4.1.3 Where a source has an uncertainty which is insignificant compared to other sources, it can be excluded.

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IVC.4.4.1.4 The remaining significant values are used to calculate the combined standard uncertainty and expanded uncertainty.

IVC.4.4.2 Non-budget approaches

IVC.4.4.2.1 The sources of uncertainty that are separately assessed in the budget method are collectively assessed by experimental measurement. In this approach data obtained from a statistically significant number of replicate analyses utilizing a validated method with an appropriate sampling plan may be utilized to calculate the standard or expanded uncertainty.

IVC.4.4.2.2 An alternate approach involves the use of two standard deviations (2σ) of the test method results from reproducibility data from the validation studies. This provides an approximation of the measurement uncertainty for non-critical values.

IVC.5 Reporting of uncertainty

IVC.5.1 Reporting

Uncertainty shall be reported when it may impact the use of a result by the customer, unless the laboratory has documented reasons (i.e. specific accreditation, customer or jurisdictional considerations), for not doing so. Factors which influence the decision to report uncertainty include:

IVC.5.1.1 Jurisdictional

- Prevailing statutory requirement
- Relevant governing body (agency) requirements
- Customer requests
- Potential exculpatory value

IVC.5.1.2 Types of Analysis

- Qualitative: Qualitative results where limitations of analytical scheme are known and relevant (e.g., inability to differentiate isomers, unavailability of reference material)
- Quantitative: Quantitative measurements where a value is critical (e.g., weight or purity level close to a statutory threshold)

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IVC.5.1.3 Laboratory accreditation requirements

IVC.5.2 Reporting Examples

Reporting requirements and styles differ among agencies. The examples listed below are drawn from laboratories with varied requirements.

IVC.5.2.1 Qualitative Results

IVC.5.2.1.1 Contains ephedrine or pseudoephedrine. Item tested: 5.2 grams net.

IVC.5.2.1.2 Visual examination determined that the physical characteristics are consistent with a Schedule IV pharmaceutical preparation containing Diazepam. There was no apparent tampering of the dosage units and no further tests are being conducted.

IVC.5.2.1.3 Contains cocaine (salt form not determined)

IVC.5.2.2 Quantitative Results

Factors to be considered when reporting measurement uncertainty include use of significant figures, confidence intervals and rounding/truncating of results.

IVC.5.2.2.1 Active drug ingredient (established or common name) methamphetamine hydrochloride
Gross weight: 25.6 grams
Net weight: 5.2 grams
Conc. or purity: 54.7% (± 2.8%)*
Amount of actual drug: 2.8 grams
Reserve weight: 5.1 grams

* This value represents the quantitative uncertainty measurement estimate for the laboratory system.

IVC.5.2.2.2 Positive for cocaine in the sample tested
Net weight of total sample: 5.23 grams ± 0.03 grams
Quantitation: 54.7% ± 2.8%

IVC.5.2.2.3 Sample tested positive for cocaine

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Net weight: 5.23 grams
Purity: 54.7%
Confidence Range: ± 2.8%*
Calculated net weight of drug: 2.8 grams of cocaine

*Confidence range refers to a 95% confidence level.

IVC.5.2.2.4 Cocaine was identified in the Item 1 powder at a purity of 65 ± 9% (99.7% confidence level). The Item 1 powder weighed 800 ± 4 mg (99.7% confidence level).

IVC.5.2.2.5 White powder: 5.6 grams
The range of heroin concentration identified in the sample was not less than 53.2% and not more than 56.2%.

IVC.6 Training

IVC.6.1 Individuals responsible for determining, evaluating and documenting uncertainty in the context of seized-drug analysis shall be capable of competently demonstrating familiarity with foundational concepts and principles of estimating uncertainty.

IVC.6.1.1 Useful topics to review include:

- General metrology to include: terminology, symbols, formulae, publications, international organizations, and global application as related to seized-drug analysis
- The concepts of random and systematic error, accuracy, precision (repeatability, reproducibility, and their conditions), statistical control, standard and expanded uncertainty, correlation and propagation of error
- Reporting conventions including use of significant figures, truncation and rounding
- Basic statistics (descriptive and inferential) to include: measures of central tendency (e.g., median), measures of variation, statistical modeling, sampling, probability, confidence interval, and significance level

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IVC.6.2 All analysts shall be capable of explaining their laboratory's procedures for evaluating uncertainty of qualitative and quantitative analyses.

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ANNEX A

SWGDRUG GLOSSARY OF TERMS AND DEFINITIONS

A.1 Introduction

This glossary of terms and definitions has been developed and adopted by the SWGDRUG core committee from a variety of sources that are listed in endnotes. In some instances, the core committee modified existing definitions or created definitions where none could be found in standard references.

A.2 Terms and definitions

A.2.1 accuracy

closeness of agreement between a test result or measurement result and the true value

NOTE 1 In practice, the accepted reference value is substituted for the true value.
NOTE 2 The term “accuracy”, when applied to a set of test or measurement results, involves a combination of random components and a common systematic error or bias component.
NOTE 3 Accuracy refers to a combination of trueness and precision.

[ISO 3534-2:2006]

A.2.2 analyst

a designated person who:

- examines and analyzes seized drugs or related materials, or directs such examinations to be done,
- independently has access to unsealed evidence in order to remove samples from the evidentiary material for examination and,
- as a consequence of such examinations, signs reports for court or other purposes

[SWGDRUG]

A.2.3 analyte

the component of a system to be analyzed

[IUPAC]

A.2.4 audit

systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled

[ISO 9000:2005 (E)]

A.2.5 bias

the difference between the expectation of the test results and an accepted reference value.

[ASTM E 177-06b, ASTM E456-06]

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A.2.6 blank
specimen or sample not containing the analyte or other interfering substances

[Modified UNODC Definition]

A.2.7 byproduct
a secondary or incidental product of a manufacturing process.

[Collins English Dictionary - Complete & Unabridged 10th Edition]

A.2.8 calibration
operation that, under specified conditions, in a first step, establishes a relation between the quantity values with measurement uncertainties provided by measurement standards and corresponding indications with associated measurement uncertainties and, in a second step, uses this information
to establish a relation for obtaining a measurement result from an indication

NOTE 1 A calibration may be expressed by a statement, calibration function, calibration diagram, calibration curve, or calibration table. In some cases, it may consist of an additive or multiplicative correction of the indication with associated measurement uncertainty.
NOTE 2 Calibration should not be confused with adjustment of a measuring system, often mistakenly called “self-calibration”, nor with verification of calibration.

[VIM 2008]

A.2.9 capacity
the amount of finished product that could be produced, either in one batch or over a defined period of time, and given a set list of variables.

[SWGDRUG]

A.2.10 catalyst
a substance whose presence initiates or changes the rate of a chemical reaction, but does not itself enter into the reaction.

[ASTM-D6161]

A.2.11 certified reference material (CRM)
reference material characterized by a metrologically valid procedure for one or more specified properties, accompanied by a certificate that provides the value of the specified property, its associated uncertainty, and a statement of metrological traceability

NOTE 1 The concept of value includes qualitative attributes such as identity or sequence. Uncertainties for such attributes may be expressed as probabilities.
NOTE 2 Metrologically valid procedures for the production and certification of reference materials are given in, among others, ISO Guides 34 and 35.
NOTE 3 ISO Guide 31 gives guidance on the contents of certificates.
NOTE 4 VIM has an analogous definition (ISO/IEC Guide 99:2007, 5.14).

[ISO GUIDE 30:2008]

A.2.12 chain of custody
procedures and documents that account for the integrity of a specimen or sample by tracking its handling and storage from its point of collection to its final disposition

[UNODC]

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A.2.13 clandestine
secret and concealed, often for illicit reasons.

[Collins English Dictionary - Complete & Unabridged]

A.2.14 combined standard uncertainty
standard uncertainty of the result of a measurement when that result is obtained from the values of a number of other quantities, equal to the positive square root of a sum of terms, the terms being the variances or covariances of these other quantities weighted according to how the measurement result varies with changes in these quantities

[GUM 2008]

A.2.15 control
material of established origin that is used to evaluate the performance of a test or comparison

[ASTM E1732-09]

A.2.16 deficiency of analysis
any erroneous analytical result or interpretation, or any unapproved deviation from an established policy or procedure in an analysis

[SWGDRUG]

A.2.17 detection limit
the lowest concentration of analyte in a sample that can be detected, but not necessarily quantitated under the stated conditions of the test

[EURACHEM]

A.2.18 expanded uncertainty (U)
quantity defining an interval about a result of a measurement that may be expected to encompass a large fraction of the distribution of values that could reasonably be attributed to the measurand

NOTES
1. The fraction may be regarded as the coverage probability or level of confidence of the interval.
2. To associate a specific level of confidence with the interval defined by the expanded uncertainty requires explicit or implicit assumptions regarding the probability distribution characterized by the measurement result and its combined standard uncertainty. The level of confidence that may be attributed to this interval can be known only to the extent to which such assumptions can be justified.
3. An expanded uncertainty U is calculated from a combined standard uncertainty u_c and coverage factor k using: $U = k \times u_c$

[EURACHEM, GUM 2008]

A.2.19 false negative
Test result that states that an analyte is absent, when, in fact, it is present above the established limit of detection for the analyte in question

[SWGDRUG]

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A.2.20 false positive
test result that states that an analyte is present, when, in fact, it is not present or, is present in an amount less than a threshold or designated cut-off concentration

[SWGDRUG]

A.2.21 finished product
a manufactured product ready for use.

[SWGDRUG]

A.2.22 intermediate
substance that is manufactured for and consumed in or used for chemical processing to be transformed into another substance.

[ASTM- F2725]

A.2.23 limit of detection
see A.2.13 *detection limit*

A.2.24 limit of quantitation
the lowest concentration of an analyte that can be determined with acceptable precision (repeatability) and accuracy under the stated conditions of the test

[EURACHEM]

A.2.25 linearity
defines the ability of the method to obtain test results proportional to the concentration of analyte

NOTE The Linear Range is by inference the range of analyte concentrations over which the method gives test results proportional to the concentration of the analyte.

[EURACHEM]

A.2.26 pharmaceutical identifiers
physical characteristics of tablets, capsules or packaging indicating the identity, manufacturer, or quantity of substances present

[SWGDRUG]

A.2.27 population
the totality of items or units of material under consideration

[ASTM E456-06]

A.2.28 precision
closeness of agreement between independent test/measurement results obtained under stipulated conditions

NOTE 1 Precision depends only on the distribution of random errors and does not relate to the true value or the specified value.
NOTE 2 The measure of precision is usually expressed in terms of imprecision and computed as a standard deviation of the test results or measurement results. Less precision is reflected by a larger standard deviation.
NOTE 3 Quantitative measures of precision depend critically on the stipulated conditions. Repeatability conditions and reproducibility conditions are particular sets of extreme stipulated conditions.

[ISO 3534-2:2006]

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A.2.29 precursor
a chemical that is transformed into another compound, as in the course of a chemical reaction, and therefore precedes that compound in the synthetic pathway.

[Webster's Unabridged Dictionary of the English Language]

A.2.30 procedure
specified way to carry out an activity or process

NOTES
1. Procedures can be documented or not.
2. When a procedure is documented, the term "written procedure" or "documented procedure" is frequently used. The document that contains a procedure can be called a "procedure document."

[ISO 9000:2005 (E)]

A.2.31 proficiency testing
ongoing process in which a series of proficiency specimens or samples, the characteristics of which are not known to the participants, are sent to laboratories on a regular basis. Each laboratory is tested for its accuracy in identifying the presence (or concentration) of the drug using its usual procedures. An accreditation body may specify participation in a particular proficiency testing scheme as a requirement of accreditation.

[UNODC]

A.2.32 qualitative analysis
analysis in which substances are identified or classified on the basis of their chemical or physical properties, such as chemical reactivity, solubility, molecular weight, melting point, radiative properties (emission, absorption), mass spectra, nuclear half-life, etc. See also A.2.29 *quantitative analysis*

[IUPAC]

A.2.33 quality assurance
part of quality management focused on providing confidence that quality requirements will be fulfilled.

[ISO 9000:2005 (E)]

A.2.34 quality management
coordinated activities to direct and control an organization with regard to quality

NOTE Direction and control with regard to quality generally includes establishment of the quality policy and quality objectives, quality planning, quality control, quality assurance and quality improvement.

[ISO 9000:2005 (E)]

A.2.35 quality manual
document specifying the quality management system of an organization

NOTE Quality manuals can vary in detail and format to suit the size and complexity of an individual organization.

[ISO 9000:2005 (E)]

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A.2.36 quantitative analysis

analyses in which the amount or concentration of an analyte may be determined (estimated) and expressed as a numerical value in appropriate units. Qualitative analysis may take place without quantitative analysis, but quantitative analysis requires the identification (qualification) of the analytes for which numerical estimates are given

[IUPAC]

A.2.37 random sample

the sample so selected that any portion of the population has an equal (or known) chance of being chosen. Haphazard or arbitrary choice of units is generally insufficient to guarantee randomness

[IUPAC]

A.2.38 reagent

a chemical used to react with another chemical, often to confirm or deny the presence of the second chemical.

[ASTM-E1605]

A.2.39 recovery

term used in analytical and preparative chemistry to denote the fraction of the total quantity of a substance recoverable following a chemical procedure

[IUPAC]

A.2.40 reference material (RM)

material, sufficiently homogeneous and stable with respect to one or more specified properties, which has been established to be fit for its intended use in a measurement process

NOTE 1 RM is a generic term.
NOTE 2 Properties can be quantitative or qualitative, e.g. identity of substances or species.
NOTE 3 Uses may include the calibration of a measurement system, assessment of a measurement procedure, assigning values to other materials, and quality control.
NOTE 4 A single RM cannot be used for both calibration and validation of results in the same measurement procedure.
NOTE 5 VIM has an analogous definition (ISO/IEC Guide 99:2007, 5.13), but restricts the term “measurement” to apply to quantitative values and not to qualitative properties. However, Note 3 of ISO/IEC Guide 99:2007, 5.13, specifically includes the concept of qualitative attributes, called “nominal properties”.

[ISO GUIDE 30:2008]

A.2.41 repeatability (of results of measurements)

closeness of the agreement between the results of successive measurements of the same measurand carried out subject to all of the following conditions:
- the same measurement procedure;
- the same observer;
- the same measuring instrument, used under the same conditions;
- the same location;
- repetition over a short period of time.

[ISO GUIDE 30:1992]

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A.2.42 reproducibility (of results of measurements)

Closeness of the agreement between the results of measurements of the same measurand, where the measurements are carried out under changed conditions such as:
- principle or method of measurement;
- observer;
- measuring instrument;
- location;
- conditions of use;
- time.

[ISO GUIDE 30:1992]

A.2.43 robustness

the robustness of an analytical procedure is a measure of its capacity to remain unaffected by small, but deliberate variations in method parameters and provides an indication of its reliability during normal usage

[EURACHEM]

A.2.44 ruggedness

The ruggedness of an analytical method is the degree of reproducibility of test results obtained by the analysis of the same samples under a variety of conditions, such as different laboratories, analysts, instruments, lots of reagents, elapsed assay times, assay temperatures, or days. Ruggedness is normally expressed as the lack of influence on test results of operational and environmental variables of the analytical method. Ruggedness is a measure of reproducibility of test results under the variation in conditions normally expected from laboratory to laboratory and from analyst to analyst.

[USP 28:2005]

A.2.45 sample

subset of a population made up of one or more sampling units

NOTE 1 The sampling units could be items, numerical values or even abstract entities depending on the population of interest.
NOTE 2 The definition of sample in ISO 3534-2 includes an example of a sampling frame which is essential in drawing a random sample from a finite population.

[ISO 3534-1:2006(E/F)]

A.2.46 sampling

act of drawing or constituting a sample

[ISO 3534-2:2006]

A.2.47 sampling plan

a specific plan which states the sample size(s) to be used and the associated criteria for accepting the lot

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NOTES
1. A criterion is, for example, that the number of nonconforming items is less than or equal to the acceptance number.
2. The sampling plan does not contain the rules on how to take the sample.

[ISO 3534-2:1993 (E/F)]

A.2.48 sampling procedure

operational requirements and/or instructions relating to the use of a particular sampling plan; i.e., the planned method of selection, withdrawal and preparation of sample(s) from a lot to yield knowledge of the characteristic(s) of the lot

[ISO 3534-2:1993 (E/F)]

A.2.49 sampling scheme

a combination of sampling plans with rules for changing from one plan to another

NOTE Some schemes have switching rules for automatic change to tightened inspection plans or reduced inspection plans or change to 100 % inspection.

[ISO 3534-2:1993 (E/F)]

A.2.50 selectivity (in analysis)

1. (Qualitative): The extent to which other substances interfere with the determination of a substance according to a given procedure.

2. (Quantitative): A term used in conjunction with another substantive (e.g. constant, coefficient, index, factor, number) for the quantitative characterization of interferences.

[IUPAC]

A.2.51 standard uncertainty

uncertainty of the result of a measurement expressed as a standard deviation

[GUM 2008]

A.2.52 traceability

ability to trace the history, application or location of that which is under consideration

NOTES
1. When considering product, traceability can relate to
   - the origin of materials and parts,
   - the processing history, and
   - the distribution and location of the product after delivery.
2. In the field of metrology the definition in VIM:1993, 6.10, is the accepted definition.

[ISO 9000:2005 (E)]

A.2.53 trueness

closeness of agreement between the expectation of a test result or a measurement result and a true value

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NOTE 1 The measure of trueness is usually expressed in terms of bias.
NOTE 2 Trueness is sometimes referred to as “accuracy of the mean”. This usage is not recommended.
NOTE 3 In practice, the accepted reference value is substituted for the true value.

[ISO 3534-2:2006]

A.2.54 uncertainty (measurement)

parameter, associated with the measurement result, or test result, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement or characteristic subject to test

NOTE 1 This definition is consistent with VIM but differs from it in phrasing to fit into this part of ISO 3534 concepts and to include the testing of characteristics.
NOTE 2 “Parameter” is defined in ISO 3534-1. The parameter can be, for example, a standard deviation or a given multiple of it.
NOTE 3 Uncertainty of measurement or test comprises, in general, many components. Some of these components can be estimated on the basis of the statistical distribution of the results of a series of measurements and can be characterized by standard deviations. Other components, which can also be characterized by standard deviations, are evaluated from assumed probability distributions based on experience or other information.
NOTE 4 Components of uncertainty include those arising from systematic effects associated with corrections and reference standards which contribute to the dispersion.
NOTE 5 Uncertainty is distinguished from an estimate attached to a test or measurement result that characterizes the range of values within which the expectation is asserted to lie. The latter estimate is a measure of precision rather than of accuracy and should be used only when the true value is not defined. When the expectation is used instead of the true value, the expression “random component of uncertainty” is used.

[ISO 3534-2:2006]

A.2.55 uncorrelated techniques

Uncorrelated techniques are those that yield uncorrelated measurements. In practice this is often achieved by using techniques that have a different fundamental mechanism for characterization. For example, a gas chromatographic test based on a partition mechanism and a thin layer chromatographic system based on an adsorption mechanism would be considered uncorrelated techniques, but two gas chromatographic tests based on a partition mechanism would not.

[SWGDRUG]

A.2.56 validation

confirmation, through the provision of objective evidence, that the requirements for a specific intended use or application have been fulfilled

NOTES
1. The term “validated” is used to designate the corresponding status.
2. The use conditions for validation can be real or simulated.

[ISO 9000:2005(E)]

A.2.57 verification

confirmation, through the provision of objective evidence, that specified requirements have been fulfilled

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NOTES

1. The term “verified” is used to designate the corresponding status.
2. Confirmation can comprise activities such as
   - performing alternative calculations,
   - comparing a new design specification with a similar proven design specification,
   - undertaking tests and demonstrations, and
   - reviewing documents prior to issue.

[ISO 9000:2005(E)]

A.2.58 yield, expected

the quantity of material or the percentage of theoretical yield anticipated at any appropriate phase of production based on previous laboratory, pilot scale, or manufacturing data.

[ASTM-E2363]

A.2.59 yield, theoretical

the quantity that would be produced at any appropriate phase of production based upon the quantity of material to be used, in the absence of any loss or error in actual production.

[ASTM-E2363]

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End of Document

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CIRCUIT COURT OF FRANKLIN COUNTY, MISSOURI
DIVISION 6
401 EAST MAIN STREET
UNION MO 63084
(636) 583-7365

STATE OF MISSOURI)
)
VS)
)
Redacted)
Defendant)

CAUSE NO. _____

2/11/2019
Date

In open court, the defendant appears with his/her counsel, Scott Rose.

The Defendant and the State announce ready. Thereafter,

(X) evidence is heard, and the cause is submitted. The court fails to find probable cause to believe the Defendant committed the felony/felonies charged. The Defendant is discharged.

( ) the Defendant waives his/her right to preliminary hearing in writing. The Court finds the waiver to be knowing and voluntary.

( ) evidence is heard, and the cause is submitted. The Court finds probable cause to believe the Defendant committed the felony/felonies charged.

The Defendant is ordered bound over for trial in the court having jurisdiction of the offense(s), which is the Circuit Court of Franklin County, with arraignment set for _____, and trial thereafter according to Due Process of Law.

Bond continued as posted.

So ordered,

Associate Circuit Judge

FILED

APR 24 2018

SUPERIOR COURT
COUNTY OF IMPERIAL
CLERK
DEPUTY
T. Escalera

SUPERIOR COURT OF CALIFORNIA

COUNTY OF IMPERIAL

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
RANDY CHACON,
Defendant,

Case No. JCF36904

STATEMENT OF DECISION AND ORDER RE: MOTION TO SET ASIDE, DISMISS, GRAND JURY INDICTMENT [Pen. Code, § 995]

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
GREGORY MOORE,
Defendant,

Case No. JCF36709

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
SHARREL ANN MYERS,
Defendant,

Case No. JCF36710

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
OSCAR MARTINEZ,
Defendant.

Case No. JCF37344

INTRODUCTION

Imperial County, California, has two prisons Calipatria State Prison and Centinela State Prison. Both prisons are under the jurisdiction of the California Department of Corrections and Rehabilitation (hereinafter "CDCR"). Three of the four defendants in this case, Randy Chacon ("Chacon"), Gregory Moore ("Moore"), and Oscar Martinez ("Martinez"), are currently serving state prison sentences. Defendant Sharrel Ann Myers ("Myers"), has been indicted on felony charges.

The Imperial County District Attorney has established a prison unit that prosecutes crimes committed on the grounds of Calipatria and Centinela State Prisons. The District Attorney has authorized that unit to proceed either by way of Grand Jury Indictment or by way of complaint. As a matter of policy, the unit has chosen to proceed by way of indictment in the majority of cases it prosecutes, including the cases at issue here.

In the instant consolidated cases defendants were each arrested for possession of suspected heroin within Calipatria or Centinela State prison. The principal issue in each case is the scientific validity of a color test, commercially known and marketed as the "Narcotics Identification Kit" (hereafter referred to as the "NIK" test) used to identify heroin and other seized drugs.

CDCR Correctional Officers, who were trained by CDCR personnel to use the NIK test in the fashion recommended by Safariland, LLC ("Safariland"), its manufacturer routinely testify before the Imperial County Grand Jury, resulting in criminal indictments. No published California case has addressed a scientific challenge to a NIK color test or any similar color test. Color tests oftentimes referred to as "field tests" are routinely used by police officers in the field as part of an illegal drug investigation before making an arrest decision.

The court conducted more than 7 days of hearings, at which six Correctional Officers, three expert witnesses, and a representative of Safariland testified, during which it admitted over 112 exhibits all focused on the ability of the NIK color change test to correctly identify heroin as a suspected seized drug. Suspected heroin, a federally scheduled one (1) narcotic drug derived and illicitly manufactured from the opium poppy, is typically manufactured in

clandestine laboratories. Illicit drugs are frequently diluted (cut) with a variety of materials prior to sale or resale to bulk up the product and increase profit. Adulterants are generally selected due to their physical resemblance to a drug, low cost, or added physiological effects. Cutting agents are constantly changing over time.

With the NIK color field test in question, a small portion of the suspected substance is placed in a clear vinyl pouch containing glass vials with chemical reagents using a device provided with the NIK testing kit. The reagent identified and used with the test for heroin is known as the "Mecke modified" test, where the sample is mixed with the reagents and is agitated. If the reagent solution turns green, the test is positive for heroin.

The Imperial County District Attorney's office regularly calls CDCR officers as expert witnesses before the criminal Grand Jury to testify as to NIK drug identification test results. Such officers testify that precautions are taken to avoid cross-contamination, that the test procedures prescribed by Safariland are followed, and that although false positives could occur that in the officer's experience no false positive has ever been experienced. CDCR officers before this court testified, consistent with training and educational materials from the manufacturer, that the NIK test was reliable and according to the testifying officers in sworn testimony, was "100%" accurate.

GRAND JURY PROCEEDINGS

Statement of the Cases:

RANDY CHACON

Correctional Officer Alejandro Paniagua (Paniagua), while conducting a clothed body search on Chacon, discovered a small object in the inmate's right pocket. The item was wrapped in clear plastic and contained what appeared to be a tar-like substance. Paniagua transferred the item to correctional Sergeant Alejandro Gonzalez (Gonzalez) for chemical testing. Gonzalez, an eight and a half year veteran of CDCR, subjected the contents of the item to an examination utilizing the Narcotics Identification Kit (NIK). Gonzalez testified before the Imperial County Criminal Grand Jury that he conducted a NIK color test for heroin. Gonzalez testified that the way the NIK test works is that depending on the color, it will be

positive or negative. When asked what was the result was of the substance found on Chacon that he conducted the NIK color test on was that it tested "positive for heroin". Gonzalez was also asked before the grand jury,

"Q. Have you ever heard of what a false positive is?

A. Yeah, but I never had it.

Q. What is a false positive?

A. I guess when you get mixed readings when you conduct a test. It's not clear.

Q. Was there a false positive?

A. No."

The bindle weighed .4 grams and Gonzalez also testified before the Imperial County Criminal Grand Jury that, based upon his training and experience and on multiple conversations he has had with both Correctional Officers and inmates, this was a usable quantity of heroin. The Grand Jury indicted Chacon on one felony count of custodial possession of contraband (heroin) in violation of Penal Code section 4573.6.

GREGORY MOORE & SHARREL ANN MYERS

Correctional Officer Waymond Fermon (Fermon) was watching from his office activities in one of Calipatria State Prison's visiting rooms via surveillance monitor when he noticed Myers exit the women's restroom and returned to her assigned table where she sat down next to Moore. Shortly thereafter, the couple stood up from the table and walked over to the area in the visiting room designated for the taking of photographs. As Fermon watched, he saw the visiting room porter, Inmate Lamar Williams (Williams), purportedly taking a photograph of Moore and Myers. Moore is standing behind Myers and Fermon sees the inmate taking something from Myer's right-side waistband area and keeping it in his hand.

After taking the photo, Williams walks up to the couple to show them the photograph and Moore is then seen taking the unknown object from his own hand and placing it inside Williams's right rear pants pocket. Fermon, along with his supervisor, Sgt. Robert Moore (no relation to defendant Moore) went to the visiting room and made contact with all three individuals. Sgt. Moore escorted Inmate Moore to the inmate strip room. Fermon, meanwhile,

made contact with Williams, and after placing him in handcuffs, escorted him to the strip room where he performed a clothed body search on the inmate. During the search, Fermon located two items in Williams's right rear pants pocket. No contraband was found on Inmate Moore.

Fermon then contacted Myers in the prison's Main Visiting Processing Area. Myers agreed to an unclothed body search by two female Correctional Officers; no contraband was found during this search. Fermon then left Myers with the female officers and went to an evidence room where he tested the contents of the two using a NIK color test for herion test. The tests resulted in a positive result for heroin. Both bindles had a combined gross weight of 157 grams which Fermon testified that, based upon his training and experience, along with conversations he has had with both other Correctional Officers and inmates, that was a usable quantity of heroin. Fermon and another Correctional Officer later interviewed Myers, during which, she admitted to bringing the bindles into the prison where Moore took them from her waistband area. Because of this testimony, the Grand Jury indicted both Moore and Myers on July 29, 2016.[1] Inmate Williams was not indicted.

OSCAR MARTINEZ

Correctional Sergeant John Truchanovich (Truchanovich) exited the Facility C Program Office at Centinela State Prison and observed Inmate Martinez (Martinez) walking towards him. Martinez was heading for the inner perimeter. As he walked towards Truchanovich, he noticed that Martinez kept his hand closed in an awkward fashion. Truchanovich ordered Martinez to "cuff up." At this point, Martinez opened his left hand and Truchanovich could see that he held a clear, small plastic object with a dark brown substance inside. Truchanovich took possession of the object and later gave it to Correctional Officer Ricardo Estrada for a "field test"..., "in order to determine whether it is indeed a controlled substance".

After taking possession of the object, Officer Estrada weighed it (determined to be 0.1 grams gross weight), opened it and observed a dark brown substance. Estrada told the

[1] Meyer's disputes the evidence testified to before the Grand Jury that she confessed. In her Penal Code section 995 motion Myers counsel quotes the actual transcript of her recorded interview with Correctional Officers that does not show she made any such admissions.

Imperial County Criminal Grand that he utilizing the NIK test that he had been trained to use and had utilized over 50 times determined that the substance was heroin. Estrada told the Grand Jury that the results, depending on the color the results will be positive or negative. Estrada testified the NIK test was "positive for heroin". Also, that he knew what a false positive was, "when the substance is not – it doesn't come up positive or results of the test are not what you expected". He later opined based upon his training and experience, and based upon conversations he has had with both Correctional Officers and inmates, that the item contained .1 grams, a usable quantity of heroin. Based on this testimony, the Grand Jury indicted Martinez on one felony count of custodial possession of contraband (heroin) in the state prison in violation of Penal Code section 4573.6.

ISSUES PRESENTED

1. Whether or not Narcotics Identification Kit ("NIK") color test result is legally admissible evidence for purposes of finding probable cause by a Grand Jury;

2. If the answer to question 1. Is "yes", what the appropriate parameters are for administration of such test and the presentation of the results of same to the Grand Jury;

3. Whether California Department of Corrections officers are qualified to testify as experts as to the results of the NIK test and the accuracy of such results before the Grand Jury; and

4. Whether probable cause existed for the indictment in the cases before the court were it to decline to consider the evidence of the NIK test and the Correctional Officer's interpretation of its results.

LEGAL ANALYSIS

The defendants are asking this court to rule the NIK color test was legally inadmissible before the Grand Jury and therefore the indictments should be dismissed.

In considering a motion to dismiss charges brought in a Grand Jury indictment pursuant to Penal Code section 995 the Superior Court sits as a reviewing court. (*People v. Block* (1971) 6 Cal.3d 239, 245.) The role of the Grand Jury in issuing an indictment is to "determine whether probable cause exists to accuse a defendant of a particular crime."

(*Cummiskey v. Superior Court* (1992) 3 Cal.4th 1018, 1026.) Probable cause "means such a state of facts as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain a strong suspicion of the guilt of the accused." (*Cummiskey v. Superior Court, supra*, 3 Cal.4th at p. 1029.) As with a preliminary hearing where a magistrate presides, the Grand Jury must determine whether sufficient evidence has been presented to support holding a defendant to answer on an indictment. In the usual case "The duty of determining whether or not an indictment should be found is lodged exclusively in the Grand Jury and not in the courts," and the court's duty is to determine whether the defendant has been committed without reasonable or probable cause. (*Lorenson v. Superior Court* (1950) 35 Cal.2d 49, 55.) The reviewing court does not substitute its judgment as to the weight of the evidence for that of the Grand Jury, and upon a review the court must draw all reasonable inferences in favor of the indictment. (*Williams v. Superior Court* (1969) 71 Cal.2d 1144, 1148.) The evidence presented to the Grand Jury need not be sufficient to support a conviction beyond a reasonable doubt; there must however be some factual showing as to each element of the crime. Such a showing may be made by circumstantial evidence supportive of reasonable inferences. *(Ibid.)*

The defendants in the instant cases have raised legal and evidentiary issues that were not addressed in the Grand Jury proceedings. In effect defendants have made a pretrial non-statutory motion to dismiss. This procedure is an appropriate way to raise a variety of defects in preliminary hearings. (See, e.g., *People v. McGee* (1977) 19 Cal.3d 948; *People v. Superior Court (Hartway)* (1977) 19 Cal.^{3d} 338; *People v. Durrett* (1985) 164 Cal.App.3d 947]; *Lockwood v. Superior Court* (1984) 160 Cal.App.3d 667]; People v. Smith (1984) 155 Cal.App.3d 1103; *People v. Crudgington*, (1979) 88 Cal.App.3d 295.)

The Supreme Court has approved the Superior Court's receipt of evidence outside the record of the preliminary examination when reviewing a claim of violation of a substantial right. *People v. Coleman* (1988) 46 Cal.3d 749 [testimony on whether counsel was effective]; *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 263 n.5 [potential bias or appearance

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of conflict of prosecutor at preliminary examination]; *People v. Pennington* (1991) 228 Cal.App.3d 959, 964 [conflict of interest of defense counsel].

In *People v. Laney* (1981) 115 Cal.App.3d 508, 513, the appellate court held:

> "We conclude and hold that the rule announced in *People v. Pompa-Ortiz* (1980) 27 Cal.3d 519, 529, with regard to irregularities in preliminary examination procedures applies also to grand jury proceedings. Consequently the irregularities, if any there be, require reversal only if an accused can show he was deprived of a fair trial or otherwise suffered prejudice. Relief without showing of prejudice is limited to pretrial challenges."

In *People v. Towler* (1982) 31 Cal.3d 105, 123, the Supreme Court concurred, holding: "The reasoning in *Pompa-Ortiz* applies with equal force in the grand jury context."

In the case of *Stanton v. Superior Court* (1987) 193 Cal.App.3d 265 ("*Stanton*"), at page 271 the court held that the prosecution's duty to disclose material evidence that is favorable to the defense (commonly referred to as a *Brady* [2] obligation) applied to preliminary hearings. In *Stanton* the court struck an element of the charged offense because of the prosecution's failure to disclose evidence material to defense cross-examination of eyewitnesses at a preliminary hearing.

The People have objected to the court allowing any evidence to be considered outside of the Grand Jury record and have argued that the *Stanton* decision does not apply to a Grand Jury indictment case being challenged by a motion to dismiss pursuant to Penal Code section 995. However several case decisions have referred with approval to a trial Court receiving evidence outside the record of a Grand Jury proceeding when reviewing a claim of violation of a substantial right. In *Cumminskey v. Superior Court, supra,* 3 Cal.4th 1018, at page 1022 the defendant asserted that the District Attorney failed to present exculpatory evidence at Grand Jury proceedings. *Berardi v. Superior Court* (2007) 149 Cal.App.4th 476, held at page 481 that in assessing substantial prejudice under Penal Code section 939.71 the test is whether, evaluating the entire record, it is reasonably probable that a result more favorable to the defendant would have been reached if the exculpatory evidence had been disclosed to the Grand Jury. Neither of these Grand Jury cases directly refer to *Stanton*;

[2] *Brady v. Maryland* (1963) 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215

however, the only manner to adjudicate errors outside of the record, just like with respect to a preliminary hearing, is to allow in evidence during a pretrial motion proceeding.

Thus a *Brady* violation claim and inadmissible scientific evidence claim, as being made herein, could be raised in a non-statutory motion to dismiss, distinguishing Penal Code section 995 motions, which are confined solely to the record. The trial court has authority, because of the constitutional nature of the issue and would be obligated, based upon due process and equal protection principles, to allow the defense to raise such claims. In *Stanton*, at page 272, the Court stated "Nondisclosure of evidence impeaching eyewitnesses on material issues is the deprivation of a substantial right". In a Grand Jury proceeding, there is no meaningful way to reach the issue because *Brady* and improper admission of scientific evidence claims are inherently always outside the record. Also, by statute the prosecution's failure to inform the Grand Jury of exculpatory evidence of which it is aware is grounds for dismissal if that failure results in substantial prejudice. (Penal Code section 939.71.)

The standard of the review is the same under a statutory or non-statutory motion to set aside the information. (*People v. Woods* (1993) 12 Cal.App.4th 1139,1147.)

THE LAW AS TO WHAT EVIDENCE IS ADMISSIBLE IN A GRAND JURY PROCEEDING.

The rules of evidence that apply to a criminal trial are statutorily applicable in Grand Jury proceedings. (Penal Code section 939.6. subdivision (b).) A Grand Jury indictment predicated on evidence that is legally inadmissible at a trial is subject to dismissal (*People v. Barkus* (1979) 23 Cal.3d 360, 393; *Cook v. Superior Court* (1970) 4 Cal.App. 3d 822.) Evidentiary objections may be properly raised by a defendant in a Penal Code section 995 motion to dismiss an indictment due to the inability to object beforehand. (*Dong Haw v. Superior Court* (1947) 81 Cal.App.2d 153.)

The question herein raised by defendants is whether evidence of a color change field test that identifies heroin, the modified Mecke "L" "Narcotics Identification Kit" ("NIK"), is admissible before a Grand Jury over a multiple prong scientific validity challenge. The admissibility of the NIK "L" test for heroin must be determined under the trial evidence

standard of *People v. Kelly* (1976) 17 Cal.3d 24 ("*Kelly*"), and *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 ("*Sargon*"). Admissibility of a NIK color "L" test under *Kelly* or *Sargon* is dependent on proof of a "preliminary fact" as a foundation to each. (Cal. Evid. Code §§ 400-401.) Any evidence is excluded if the foundation is not made. (Cal. Evid. Code §702(a).) The People have the burden of establishing the reliability of the color drug field test for heroin and the validity of the underlying principles upon which it is based both under a *Kelly* or *Sargon* analysis.

Correctional Officers testify to the results of the NIK "L" test used in the field to identifying herion before the Grand Jury. The Correctional Officers do not know anything as to how the chemical features of the NIK field colorimetric tests work or why they produced or fail to produce a certain color that either identifies or fails to identify a suspected substance as heroin. The evidence presented during the hearing was that Correctional Officers do not know about the overall reliability or accuracy of the color field test. It is unknown to them, except what the Correctional Officers learn from their Safariland training. The Correctional Officers acknowledged in testimony that they are not experts in identifying seized drugs, they just follow the directions that come with the NIK kit.

By their very nature, the People have impliedly conceded that NIK field colorimetric tests lack the reliability necessary to make their results proof beyond a reasonable doubt. The People only use the NIK colorimetric test at Grand Jury and always send the drug evidence to the California Department of Justice if a case proceeds to trial. A question is raised as to whether a lay witness can testify to the results of a scientific test as evidence before a Grand Jury that the material tested, as they did in these consolidated cases, is a controlled substance, specifically heroin. The testimony by Correctional Officers about the performance and results of a field test is expert testimony. Therefore to be admissible at a trial over objection the NIK L heroin field test would have to be admissible as expert witness evidence. (Evid. Code, §§801, 802.) CDCR officers a typically testify: (1) they are trained to administer the field test; (2) they follow the proper procedures and instructions for the test; (3) they

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explain what they did; and (4) the NIK field test is used routinely by the California Department of Corrections and Rehabilitation.

There is now an extensive record before this court as to the nature and performance of NIK tests. The NIK modified Mecke "L" color test for heroin (3, 6-Diacetylmorphine) as with all color tests is sensitive; hence, very small quantities of sample are used. Generally, from a chemistry standpoint, color testing can be used for a variety of purposes, including as a field test for suspected drugs. NIK testing is based on color testing principles known and used in basic chemistry.

The chemistry discipline examines the way atoms and molecules interact with each other ("chemical reactions"). All chemical compounds have chemical signatures or functional groups, a set of characteristics that determine the type of interactions a molecule will be amenable to. All chemical compounds have functional groups, some more than others, and many share common chemical groups. The latter are sometimes classified in terms of chemical classes.

In simple terms, functional groups are the parts of a molecule that extend beyond the "core" body of the molecule. Certain chemicals called reagents can cause a color change when a substance, a chemical compound, is added and a reaction occurs. Color reactions have been used by chemists for hundreds of years. A visible color change when a reagent is mixed with a substance is evidence of a chemical reaction. A color change reaction occurs when there is a change in the environment surrounding the chemical compound, for example via chemical bonding. A color change is viewed by the naked eye. An average human being can discriminate from up to one million different colors from the seven basic colors of red, orange, yellow, green, blue, indigo and violent. The human eye can perceive 142,000 shades of Green. (Bell, Forensic Chemistry, (2nd ed., 2013) p. 228.)

The Narcotic Identification Kit, NIK test, is manufactured and sold only by Safariland and is distributed worldwide primarily to military and civilian law enforcement agencies. Safariland manufactures a test kit plastic pouch that contains sealed ampule(s) containing color reagents. The type of color reagent contained varies depending on the type of drug

being tested for. The ampules are systematically broken after a measured amount of a suspected material is added to the pouch. The pouch is re-sealed and then agitated. If no color change occurs, according to the manufacturer Safariland, the drug being tested for is not identified and the test result is considered negative for its presence. If a color change occurs, a color chart known as the "IDENTIDRUG™ CHART" [Exhibit 3] that comes with each kit, is referenced by the user of the test and the illicit drug, according to the manufacturer Safariland, is identified.

Safariland, in addition to selling the NIK kit, also markets to law enforcement a "NIK public safety basic competency training coarse" for use with its "NIK Polytesting system" that teaches law enforcement how to use its color test kits. Safariland offers a certificate of completion for officers who pass a self-guided test after 4 hours of training given by a master trainer who is also certified by Safariland using a PowerPoint-based training program. [Exhibit 70, CD-ROM] The master trainer certification takes four hours and allows the master trainer to instruct others on how to conduct drug identification testing using the NIK Polytesting system. Part of the training is hands-on so that the students can learn how to use the pouches and break the ampoules.

Terry Allen Miller, called as a witness by the People, has a bachelor's degree in chemistry. Miller testified that he has been employed for 17 years by an entity based in Florida, by the name of Safariland LLC (manufacturer of the NIK tests) as its product manager. Prior to his employment with Safariland Miller was a senior crime scene analyst at the Florida Department of Law Enforcement Jacksonville Regional Crime laboratory for 21 years. Safariland has DEA and ISO certifications for the manufacturing of the NIK and other color tests. Only informal unpublished studies have been done in Virginia and Nevada as part of the bid process for public entities to purchase the test kits. NIK tests are sold to the FBI, DEA, ATF, Customs and Border Patrol, U.S. embassies around the world, Army, Navy, and Coast Guard, as well as entities in Germany, Italy, France, Spain, England, the Netherlands, South America, South Africa, the Middle East, and the Pacific Rim.

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The court finds that Miller is a properly qualified expert on color tests based upon his degree in chemistry. The court however finds that Miller is not a qualified expert in making an identification of an illegal controlled substance (seized drug) due to him not ever having engaged in identifying such other than supervising the quality control of the NIK test manufacturing process. The court notes that Miller has never worked as a criminalist in a crime laboratory. Miller demonstrated his lack of knowledge of seized drug chemistry when he testified that the Scientific Working Group for Drug (SWIGDRUG) was started by the Federal bureau of Investigation (FBI) when the record herein shows that the group was started and is administered by the Drug Enforcement Administration (DEA).[3] As a product manager Miller overseas the manufacturing and product training for Safariland. The NIK color test kits, also known as colorimetric tests, are marketed for use as an in the field test to aid law enforcement officers in making an arrest decision. Safariland does not train police officers on the color tests chemistry because it is not within the law enforcement officer's purview of what they are doing, they are required to follow directions and look for a specific color change, only if it happens or if it does not. Why the color change occurs is not knowledge they need to know, according to Miller.

Miller explained the reasons for a color change, noting that the kits are set up to find classes of chemicals, and are labeled based on the chemical family to which the specific drug belongs, with the idea being that based on the circumstances of the discovery of the substance to be tested, the law enforcement personnel already have an idea of what they think the drug is. Miller testified that it is possible for a test to come up presumptively positive for a substance that is not an illegal drug but belonged to the same chemical family as an illegal drug. Miller testified that the tests are marketed as presumptive identification tests, as not being able to actually identify a controlled substance, and that the actual existence of an illegal drug must always be confirmed in a laboratory. For example it does not identify cocaine, the test just tells you that it has the components of cocaine. The NIK colorimetric

[3] See Exhibit 49, Letter by Scott R. Olton, Secretariat an Chair, Drug Enforcement Administration, Washington, D.C.

tests should be the last item to be checked off the probable cause list, not the first, second, or even third. Miller also stated there are plenty of instances that can be found where colorimetric tests were used to wrongly detain a suspect only to have the compound or substance test negative in the laboratory. According to Miller the Safariland field tests are manufactured as presumptive for the determination of probable cause to effect confiscation and/or arrest or a detainment. Safariland maintains a list of 50 to 60 non-illicit substances that, based on NIK test user customer information, have yielded presumptive positive for controlled substance results using the NIK type colorimetric tests.

Allison Baca was called by the People as an expert criminalist who is employed by the California Department of Justice (DOJ) As a DOJ criminalist Baca is experienced in doing confirmatory testing for suspected controlled substances. Her DOJ laboratory in Riverside is accredited.

The court found Ms. Baca's testimony to be entirely credible.

Ms. Baca works in the DOJ laboratory in Riverside where she receives and processes evidence from all different police agencies. She was the criminalist that processed the evidence in the *Chacon* case. The prosecution asked Ms. Baca whether she could tell by observation as to what she was looking at when she first opened the envelope relating to the *Chacon* case. Ms. Baca responded she does not guess on what something is by what it looks like. Ms. Baca explained that the procedure in her DOJ lab is to first weigh the substance and then take a small sample to do a presumptive color screen. Baca defined a "presumptive color screen" (also sometimes referred to in laboratories as a "spot test") as just a test that she runs on a sample using a combination of reagents that may possibly produce a color change that can indicate what type of drug it possibly could be, like what family of drugs it could possibly be. The color screen test she used in the *Chacon* case was the Marquis reagent which is usually the color-screening test that she starts with just because it covers a wide variety of possible controlled substances. Ms. Baca described the results of the Marquis Color screen as "purple" and that purple is "indicative of an opiate". She also described the reporting of results of any color test as "very subjective" and it is DOJ protocol to always

document exactly what is observed. So, if the color reaction observed is yellow-green, a DOJ analyst would not just record that as "green" and if it was a faint purple, it would be recorded exactly as that, not just "purple."

Ms. Baca indicated in her training at DOJ she is made aware that there are substances other than controlled substances that will turn a color test screen similar to that of a controlled substance. The DOJ has list of some of these items in a training binder in the lab but it is not an exhaustive list because there are millions of compounds. After concluding the color screen, the next step is to prepare a sample for a confirmatory analysis on a gas chromatograph mass spectrometer (GC/MS). A sample is prepared for a GC/MS by placing the substance in a solution that reduces it to liquid form which is called an extraction. The extracted solution is then injected into a GC/MS instrument where it is analyzed. Ms. Baca defined a confirmatory test one that gives a complete result. It gives an exact result that it is this and no other, a complete structural analysis done on that piece of evidence, a result enabling a forensic chemist to make an identification of an illegal drug. Ms. Baca stated that without a confirmatory test result you cannot identify an unknown suspected drug.

Ms. Baca explained the color screen testing is only for the extraction process to determine the most efficient method for extracting the sample to put in the GC/MS. If the laboratory did not use a color screen test or if all of the color screen tests showed no color result, a GC/MS could still be completed but it would just involve more extractions. For her and the DOJ laboratory the color screen does not contribute in any way to the confirmatory answer of if a controlled substance is present in a sample. The color test essentially tells the criminalist what to do next as far as the analytical scheme. Color tests are never used to make any type of an identification of a specific drug. Baca also explained that all DOJ criminalist's work is reviewed by two peer reviewers.

Ms. Baca understands the concept of a “false positive”. As to color tests the DOJ does not use the term "false positive" or "presumptive false positive" because they do not consider a color test to be either positive or negative. When recording the result of a color test, they write the color, not positive or negative, because they never make a determination based

upon the color spot test. Ms. Baca said the use of the term "false positive," is not a proper scientific conclusion with color tests. Baca is familiar with scientific standards and protocols to test for seized drugs. She agreed with the scientific bases of the SWIGDRUG guidelines [Exhibit 49] and the consensus standard published by the ASTM ("ASTM") International E-30 Committee on Forensic Science – E2329-14 "*Standard Practice for Identification of Seized Drugs.*" [Exhibit 48] Although her laboratory uses a different standard (ISO 17025[4]) she agrees with the SWIGDRUG and ASTM E2329-14 minimum standards for making drug identification decisions.

Ms. Baca conducted the testing on suspected heroin that was collected and tested positive as heroin from Correctional Officer Jose Espinoza using the NIK test. She conducted several color screens on the substance and noted that there was no color change on any of them. [Exhibit 59] Ms. Baca also took a photograph of the evidence. [Exhibit 60] After completing the GC/MS, the conclusion was that the suspected heroin was identified as being caffeine. [Exhibit 58]

The people called expert witness Dr. Hanoz Santoke a professor at California State Bakersfield in the department of chemistry. Although not an expert in testing controlled substances Dr. Santoke is a qualified expert in colorimetric tests of the type used in the NIK kit. The court found Dr. Santoke to be, within the scope of his academic experience a credible expert witness.

Dr. Santoke testified that colorimetric tests are "preliminary" because they are a first indication, not definitive, so you have to be followed up with more accurate tests. It was Dr. Santoke's expert opinion that he would not base a decision solely on a colorimetric spot test. Dr. Santoke testified, consistently with the other experts, that a "false positive" is possible when someone is testing for a particular compound, because the test is for "functional groups" which could also occur in other compounds, which would produce the exact same

[4]ISO 17025 is a Forensic Scientific standard promulgated by the International Organization for Standardization ("ISO"). Standard 17025 specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

color change, and that it would not be used to determine a substance is a controlled substance because of the false positive potential, but is useful as a preliminary indicator. Dr. Santoke testified that the exact amount of reagent is not significant when you are doing a qualitative analysis, as to whether the substance is there, as opposed to a quantitative analysis regarding the amount of a substance. It was Dr. Santoke's opinion that the NIK test has not gone through any validation studies, hence there would be no error rate known. Dr. Santoke does believe it has errors. According to Dr. Santoke "scientific reliability" depends on the intended application. If it's 99 percent, then it does not meet that standard, referring to spot tests in general. Dr. Santoke further testified that "presumptive positive" as used by the chemist, product manager Terry Miller from the Safariland Corporation, with whom he spoke about the NIK tests, is not a scientific term that all positive results would properly be submitted to a laboratory for confirmation, and that NIK tests are not a confirmation of a controlled substance.

A scientifically reliable analytical testing technique should ideally have a high probability of a "true" result, and minimize the probability of a false positive. The NIK field color tests are not specific as they fail in discriminating between controlled substances and other compounds. As with all color testing that are used for drug identification, it is not uncommon for there to be a false positive. Limitations with color tests including: (1) they are not specific tests, (2) the possibility of using of too much sample, thereby overwhelming the chemical reagent, and (3) contribution to the color change from other components within in the sample. Opium, "black tar" heroin, and samples containing dyes can produce problematical color test results. (Lerner, *New Color Test for Heroin,* (February 1960) Analytical Chemistry, vol.32, no. 2, 198).

The court has been unable to find any California case that discusses the sufficiency of the use of the "NIK" or similar color tests as used in this case. *People v. Bautista* (2014) 223 Cal.App.4th 1096 involved the use of the Valtox color test, which is similar to the NIK heroin test used in the instant case, by an officer on a substance suspected to be heroin. However,

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that case involved analysis as to whether the substance in question was held for personal use, as opposed to sale, and a qualified expert testified at the preliminary hearing.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, in its publication "Color Test Reagents/Kits for Preliminary Identification of Drugs of Abuse NIJ Standard–0604.01" (2000) includes in its list of "requirements" item 4.1.4 General, which provides:

a) A statement that the kit is intended to be used for presumptive identification purposes only, and that all substances tested should be subjected to more definitive examination by qualified scientists in a properly equipped crime laboratory.

b) A statement that users of the kit should receive appropriate training in its use and should be taught that the reagents can give false-positive as well as false-negative results.

c) A discussion of the possibility of reagent and/or sample contamination and consequent misleading results.

d) A discussion of proper kit storage in buildings and vehicles.

If there is no California legal authority that has approved of a scientific test method the court may to look to precedent from other jurisdictions for guidance in determining whether the theoretical or technical methodology underlying an analytical technique is accepted as scientifically reliable. With un-established techniques the court may look to indices of reliability, to determine whether the expert's proffered scientific or technical method is sufficiently reliable. Several jurisdictions have looked at color tests of the nature used in the consolidated cases being litigated herein. In *State v. Carter*, 765 S.E.2d 56 (2014) the North Carolina Court of Appeals found that a trial court abused its discretion by admitting an officer's testimony that narcotics indicator field test kits ("NIK" tests) indicated the presence of cocaine on various items. *Carter* cited the case of *State v. Ward*, 364 N.C. 133, 142, 694 S.E.2d 738, 744 (2010) which held that "expert witness testimony required to establish that the substances introduced . . . are in fact controlled substances must be based on a scientifically valid chemical analysis" (Id.) In *Carter*, a sheriff's deputy tested for the presence of cocaine on various items in a residence using a NIK test. As in the instant cases involving the defendants herein, the CDCR officers did not introduce evidence about what the color

change was or how the color change chemical analysis worked or any testimony about the test's reliability apart from personal experience with the NIK kits.

In *State v. Morales*, 45 P.3d 406, 411 (N.M.App. 2002) the court held that the State has the burden of establishing the reliability of the drug field test and the validity of the underlying principles upon which it is based. In *Morales*, like the instant case with the CDCR officers, the deputies did not know or explain the chemical features of the field test or how it produced a certain color that identified the substance as heroin. No evidence was presented as to the level of reliability of the field test. The *Morales* court therefore held the results of the test were inadmissible.

In *State v. Hagberg*, 703 N.E.2d 973, 976 (Ill. App. 1998) the court held that a field test, without more, is insufficient to prove beyond a reasonable doubt that substance tested is a controlled substance. "[B]y their very nature, [field tests] lack the reliability necessary to make their results proof beyond a reasonable doubt absent sufficient foundational evidence establishing their reliability beyond something more than the probable presence of a narcotic".

Smith v. State, 874 S.W.2d 720, 721 (Tex. App. 1994) held that testimony about the performance and results of a field test must be given by an expert. In *Meister v. State*, 864 N.E.2d 1137 (Ind. Ct. App. 2007) the court found a field test admissible under Rule 702 where the officer testified: (1) he had been trained to administer the field test; (2) he followed the proper procedures for the test; (3) how the field test worked . . . ; and (4) that the field test was used routinely by the Sheriff's Department.

Similar testimony was presented to the Grand Jury by Correctional Officers in this case. No case has been found by the court that actually explores or evaluates what illegal drug identification color test do, how they work, there validation, the error rate or there scientific reliability. There is no evidence in the Grand Jury records as to the reliability of the NIK color test.

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SARGON

Defendants' motions to dismiss the indictment because of faulty scientific evidence testimony in this case involves the "interplay" between the California Supreme Court's decision in *Sargon Enterprises, Inc. v. University of Southern California, supra,* 55 Cal.4th 747, and a defendant's constitutional right to a lawful probable cause determination by a Grand Jury. In *Sargon*, the Supreme Court held that trial courts have a gatekeeper role on the question of the admissibility of expert witness testimony. The Supreme Court identified the statutory bases for the trial court's gatekeeper function as Evidence Code sections 801 and 802, which provide that an expert's testimony must be based on matter "that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates . . ." Thus *Sargon* operates as a paradigm for a trial court's exercise of discretion regarding admission of expert opinion testimony. It holds: "Under California law, trial courts have a substantial 'gate keeping' responsibility." (*Id.*, at p. 769.)

Evidence Code section 802 provides: "A witness testifying in the form of an opinion may state ... the reasons for his opinion and the matter ... upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. *Sargon* also states speculative testimony should be excluded. (*Sargon Enterprises, Inc. v. University of Southern California, supra,* 55 Cal.4th 747, 770.)

While Evidence Code section 801 tests the acceptability of the type of matter the expert relies upon, section 802 tests the expert's reasoning from the data to support his/her opinion (*Sargon Enterprises, Inc. v. University of Southern California, supra*, 55 Cal.4th 747, 771). This means trial courts are obligated to critically evaluate any challenged expertise to determine if it meets the *Sargon* evidentiary standards for admission.

Does the *Sargon* expert witness opinion gatekeeper standard apply to a court reviewing the sufficiency of evidence of a Grand Jury record? The People argue it does not while the defendants argue that it does.

Recently the Fourth District Court of Appeal addressed the question of the applicability of *Sargon* to the use of expert opinion evidence in the context of a pre-trial Class Certification

decision being made by a trial court. (*Apple Inc. v. Superior Court* (2018) 19 Cal, App.5th 1101 ("*Apple*").) The court in *Apple* held that a trial court may consider only admissible expert opinion evidence in deciding class certification. Although *Sargon* involved expert opinion evidence presented at trial, the Supreme Court's discussion was not so limited. The *Apple* court held:

> Sargon interpreted the relevant provisions of the Evidence Code. Its interpretation therefore applies wherever the Evidence Code does. For example, courts have applied Sargon to declarations submitted in connection with motions for summary judgment and summary adjudication. (See, e.g., *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 156; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 253.)

Therefore there is no reason why *Sargon* should not apply with its full force and effect in the review of a Grand Jury indictment through a Penal Code section 995 or non-statutory motion to dismiss. This court must apply the evidence code standard for admissibility of any expert opinion evidence, and *Sargon* describes that standard. All trial courts are bound to adhere to the *Sargon* and *Apple* decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Even if this court were we free to disregard *Sargon* (as the People argue), this court concludes that its standards for admissibility must apply to protect the defendants' due process rights to a fair Grand Jury probable cause determination.

Although a Penal Code section 995 motion is a pretrial motion and not a determination on the merits, it has consequences for the litigation and the due process rights of the parties. Grand Jury indictments based on unfounded scientific and therefore improper expert opinion testimony should be not be permitted. The trial court's gatekeeping role required by *Sargon* serves a purpose in each of these consolidated cases.

Applying the *Sargon* standard in a Penal Code section 995 review of probable cause is a limited scope of inquiry, when compared with an inquiry at trial. Opposing this conclusion, the People object to a hearing claiming that applying *Sargon* would require the trial court to hold evidentiary hearings under Evidence Code section 802 for every expert who provides evidence at a Grand Jury proceeding. The People seem interpret *Sargon* primarily as describing the "process" for admitting expert evidence at trial, which the People assert then

and only then requires a hearing under Evidence Code sections 801 and 802 hearing. This court disagrees. *Sargon's* discussion of admissibility is a requirement, and nothing in the Supreme Court opinion directs holding a hearing for every expert, at trial or otherwise. Whether to hold a hearing is in the trial court's discretion. *Sargon's* substance is to ensure that expert opinion evidence is reasonable, reliable, and logical. The court concludes that *Sargon* applies to the admissibility of the NIK modified Mecke "L" color tests for heroin that was proffered as evidence to the Grand Jury in each of the consolidated defendant's cases.

KELLY-FRY

A significant issue being raised with the disputed NIK color test for heroin drug identification evidence is an objection under the standard of *People v. Kelly*, *supra*, 17 Cal.3d 24. The defendants argue that the NIK modified Mecke "L" heroin test Grand Jury evidence was not admissible because the scientific method employed is not generally accepted in the scientific community. The People contend that *Kelly* does not apply to Grand Jury proceedings.

At a trial the admissibility of the NIK heroin color field test would depend on whether it was derived from a method that is generally accepted to be reliable. To make this determination, a trial court would apply the standard set forth in *Kelly*.[5] The *Kelly* standard has three "prongs": (1) It must be established, usually by expert testimony, that the scientific methods utilized are generally accepted as reliable by the relevant scientific community, (2) The witness furnishing such testimony must be properly qualified as an expert to give an opinion on the subject, and 3) the proponent of the evidence must demonstrate that correct scientific procedures were used in the particular case. (*Id.*, at p. 30.)

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[5]In *Kelly*, the California Supreme Court adopted a test for the admissibility of scientific evidence that was first articulated in *Frye v. United States* (D.C. Cir. 1923) 293 Fed. 1013. Hence, the test has long been known as the *Kelly-Frye* rule. In 1993, the United States Supreme Court held that *Frye* had been superseded by the Federal Rules of Evidence, so *Frye* is no longer the rule in federal courts. *Daubert v. Merrill Dow Pharmaceuticals, Inc.* 113 S.Ct. 2786 (1993). Nevertheless, *Kelly* remains the law in California. (*People v. Venegas, supra,* 18 Cal 4th 47, at p.76 n.30)

Important for the litigation of the NIK "L" color test in the instant case is *People v. Venegas*, *supra,*18 Cal.4th 47 ("*Venegas*"), where the California Supreme Court clarified, at page 78, that

> The *Kelly* test's third prong does not apply the *Frye* requirement of general acceptance--it assumes the methodology and technique in question has already met that requirement. Instead, it inquiries into the matter of whether the procedures *actually utilized in the case* were in compliance with that methodology and technique, as generally accepted by the scientific community. The third prong inquiry is thus case specific; 'it cannot be satisfied by relying on a published appellate decision. (Citations omitted, emphasis theirs.)[6]

Nevertheless, as *Venegas* requires the court herein, "(I)n determining the question of general acceptance, courts must consider the quality, as well as quantity, of the evidence supporting *or opposing* a new scientific technique." (*Id.*, at p. 85) *Venegas* requires the trial court's role in the inquiry not to be one of abdication to the scientists. The point being is that the court's role in the inquiry is not passive acceptance. *Kelly* requires that each step of a NIK testing procedure be generally accepted as reliable by the scientific community.

RULING

In reaching its decisions in this case the court has not considered the case of *People v. Rios*, Superior Court of California, County of Imperial case number JCF35453. The Rios case is not a published opinion and does not involve a commonality of parties that would make it relevant to the instant case. The court expresses a serious concern that a decision by any counsel to cite the decision, relate the facts of or result of a case that does not appear in the Official Reports and does not involve the exact same parties could be viewed as a violation of California Rules of Court rule 8.1115, and, concomitantly, of California Rules of Professional Conduct rule 5-200.

The legal burden of proof and persuasion applicable to a case presented to a Grand Jury pertains to a level of subjective confidence that is reasonably based on the evidence.

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[6]When evaluating whether a new scientific technique is generally accepted, the Court may take judicial notice of transcripts of scientific testimony in previous hearings. (Cal.Evid.Code, § 452(d).) The Court may also consider scientific and legal articles and judicial opinions from other jurisdictions. (*People v. Brown* (1985) 40 Cal.3d 512, 530; *People v. Smith* (1989) 215 Cal.App.3d 19, 25.) The parties have provided numerous such publications that have all been marked and for the most part been admitted into evidence.

In *Santosky v. Kramer*, 455 U.S. 745 (1982), the Supreme Court, citing earlier cases, observed that:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.

Although the burden of proof before a Grand Jury to sustain an indictment is relatively low, the defendants nonetheless have an important due process right that the Grand Jury process complies with statutory and constitutional legal requirements.

SARGON

The court, in compliance with its gatekeeping role under *Sargon*, is required to exclude invalid and unreliable expert opinion. In short, the gatekeeper's role is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field. The NIK colorimetric test or any similar color test does not meet the admissibility requirements of *Sargon*. The People argue that the NIK tests, that were testified to by Correctional Officers as positive for heroin are a valid "presumptive test". In fact the NIK test is not presumptive in nature because it identifies other compounds other than controlled substances. The training received by CDCR Officers was evidenced in detail in the instant hearing. The marketing by Safariland that suggests that the NIK "modified Mecke L" color test for heroin is presumptive is incorrect. The full name of the test itself, "Narcotics Identification Kit" ("NIK") is misleading because it uses the word "Identification".

The term "presumptive," although very frequently used in the American legal system is scientifically a dubious term. Some forensic scientists argue that there is really no such thing as a "presumptive" test. When the forensic science community uses the term "presumptive," it usually means that a test method has high sensitivity but low specificity. "Presumptive" also suggests that the test method is designed to be used as a preliminary screening tool, usually not in a laboratory.

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The term "confirmatory" is used to describe a scientific test method that has high specificity. It suggests that the test method is used in a forensic laboratory setting by a criminalist were the test method has been validated for use and determined to be fit for purpose. An unfortunate consequence of the use of the term "presumptive" in the legal system and in this case in particular is that its use created a false sense that an identification of a seized drug was made and that it was valid and accepted in the forensic science discipline of forensic chemistry; it's not.

Accuracy can only be demonstrated thorough validation studies for any test method used for making a drug Identification. A valid qualitative identification method should clearly describe its sensitivity and specificity. Words like "sensitivity" and "specificity" are better able to describe the performance of a scientific test method. These terms provide an accurate description about the accuracy of conclusions in terms of Type I Errors (False Positive) and Type II Errors (False Negative) and allows for an evaluation of the uncertainty that comes with any scientific measurement.

Although the chemical reagents used in the color testing process by Safariland have been in use within the field of general chemistry for hundreds of years for a variety of purposes they were not developed or designed to identify any controlled substance. The experts who testified in the hearing all agreed that colorimetric tests in general are not specific for a controlled substance.

Testimony presented at the hearing of this motion shows that the test does not work as marketed by Safariland or that it has ever been validated for use specifically in identifying the chemical compound structure of heroin. Exhibit 75, a chapter from *Clarke's Analysis of Drugs and Poisons,*[7] *Fourth Edition,* Chapter 30 at page 471: Colour Tests states:

> Colours exhibited by these tests cannot be described with any accuracy. They may vary in intensity or tincture with the concentration of compounds in the test samples and the presence of extraneous material. In addition, their assessment is always a subjective one, even in people with normal colour vision. Some of the complexes formed are unstable such that the colour changes or fades with time.

[7] *Clarke's Analysis of Drugs and Poisons* is considered an authoritative reference in the field of Drug Chemistry.

> For some of the tests, the colour reactions can be correlated with certain aspects of the chemical structure of a compound or group of compounds. However, anomalous responses often occur that cannot be explained on that basis…

The NIK color drug field test kits, specifically the "Modified Mecke L" test for heroin, does not comply with any recognized standard for drug identification nor is it part of an analytical scheme that is a validated test method. All scientific tests should, to comply with the requirements of *Sargon*, incorporate methods that are validated or verified to demonstrate that they perform reliably in the operational environment used and are done by individuals who are qualified to use the test method in casework. In order for the NIK heroin test to be *Sargon* admissible it would have to be demonstrated to be valid and reliable. Reliability, scientifically and statistical would require consistency of results as demonstrated by reproducibility or repeatability. Evidentiary or legal reliability implies credibility and trustworthiness of proffered evidence. The NIK test satisfies neither definition of reliability.

The NIK test has not been validated. Validation is a process of evaluating a system or component, through objective evidence, to determine that requirements for an intended use or application have been fulfilled. According to the peer reviewed publications admitted into evidence and the expert testimony presented at the hearing colorimetric field tests such as the one used in this case has never been subject to scientific peer review. Peer review would require a competent independent party's evaluation of a work product to evaluate the methods, claims, and conclusions before dissemination in a scientific or academic publication.

The only testing that Safariland does with its NIK color test kit products is against known, pure controlled substances. Safariland has never conducted testing with any of its kits actual tests with real world drug samples under conditions that actually exist. Testing of actual samples as encountered in the field is needed to determine an error rate. Known sample testing of pure controlled substances against the reagents is a quality control measure. Safariland's product manager Alan Miller testified that Safariland's testing does not replicate testing in the field with variables such as testing samples with adulterants or cutting

agents that are commonly in controlled substances. Safariland has not conducted any controlled validation study with regard to its color testing products.

Multiple examples have been evidenced to the court that the NIK colorimetric test will identify non-controlled substances. For example, with the NIK colorimetric test used for identifying methamphetamine the master trainer will use the sugar substitute "equal" to simulate methamphetamine as it mimics the same exact color change as the one that occurs with the illicit substance. [Exhibit 102]

It is clear from the Grand Jury records put into evidence that the People regularly seek and obtain Grand Jury indictments relying on NIK testing even though the manufacturer states the tests are not evidentiary and that a confirmatory test should always be done. When confirmatory testing is done by the Department of Justice some Grand Jury charged cases there turns out to be no controlled substances. One of the many examples of the NIK testing errors was a case were heroin was identified using a NIK colorimetric test and a second Valtox colorimetric test. The substance was determined to be chocolate. So, if one were to accept the logic proffered by the People that the NIK heroin test is presumptive for heroin it would also be true that it is a presumptive test for chocolate. Likewise, if the NIK colorimetric test for methamphetamine is presumptive the same colorimetric test would also be a presumptive test for "equal", the sugar substitute.

The NIK Color test for heroin does not meet any recognized forensic scientific standard. Criminalist Allison Baca, from the California Department of Justice (DOJ), whose laboratory follows a recognized scientific standard protocol, ISO 17025, does not recognize color testing as valid for any use other than assisting the drug laboratory chemist in evaluating a drug sample for more definitive testing done by a GC/MS method. A recognized standard practice for doing seized drug testing, ASTM Designation E2329-14: *Standard Practice for Identification of Seized Drugs* [Exhibit 48] has incorporated the recommendations from the DEA sponsored Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG). [Exhibit 49] These standards describe minimum test criteria for the qualitative analysis (identification) of seized drugs.

Ms.Baca, as the Peoples expert criminalist from the DOJ, acknowledged SWGDRUG as a reputable scientific group that produces credible forensic science. She also explained that SWGDRUG was a "minimum standard" and emphasized that her laboratory has even higher standards. ASTM E2329-14 Standard 4.2 Practice for Identification of Seized Drugs, section 4.2 [Exhibit 48] states: "Correct identification of a drug or chemical depends on the use of an analytical scheme based on validated methods." The NIK color testing methods fall far short of meeting minimum scientifically acceptable criteria.

The People contend that the Safariland NIK color test at issue is validated as explained and demonstrated in a scientific publication. In a peer reviewed article, O'Neala, et. al., *Validation of twelve chemical spot tests for the detection of drugs of abuse,* Forensic Science International 109 (2000) 189–201, [Exhibit 47A] color spot tests were evaluated and reported upon. In this peer reviewed publication validation procedures were described for 12 separate chemical spot tests, using similar reagents as the NIK test kits that are used within a crime laboratory. Each laboratory had done validation on their methods and procedures for color testing, including specificity and the limits of detection of each color spot test utilized. Each of the 12 chemical spot tests the final colors resulting from positive reactions with known amounts of analytes (controlled substances) were compared to two reference color charts used for the identification of unknown drugs. The centroid color charts, were published by the Inter-Society Color Council and the National Bureau of Standards. These laboratory based chemical spot tests were found to be sensitive depending on the drug (analyte) being tested. The color test procedures for conducting the chemical spot tests included using porcelain plates with wells, glass culture tubes using a known control and a negative control. The article notes that the validated chemical spot tests were described as presumptive and provided information that would allow the analyst to select the appropriate testing procedure to confirm the result.

Unlike the peer reviewed study described, in the NIK color testing method used by CDCR, the color change was matched to the pouch that it was tested in or a chart provided by Safariland. No controls, positive or negative are used in NIK colorimetric testing. Allison

Baca testified that her DOJ laboratory would not do any type of test without a negative and positive control. The Study does not support the People's view that the NIK testing system was found to be scientifically reliable. A careful review of spot test study actually contradicts the validity of NIK color testing.

KELLY-FRY

The defendants contend that allowing the NIK "Modified Mecke L" color test result for heroin to be evidenced before the Grand Jury because was erroneous because the People have failed to satisfy the *Kelly* three-prong test for admission of the NIK test scientific results. Under the *Kelly* analysis, the first prong of *Kelly* requires proof that the technique is generally accepted as reliable in the relevant scientific community. The second prong requires proof that the witness testifying about the technique and its application is a properly qualified expert on the subject. The third prong requires proof that the person performing the test in the particular case used correct scientific procedures. (*People v. Bolden* (2002) 29 Cal.4th 515, 544–545; *People v. Lucas* (2014) 60 Cal.4th 153, 244.)

Hanoz Santoke, Ph.D., the People's retained expert testified that he became familiar with the NIK tests by doing internet research and through discussions with Alan Miller, the product manager from the Safariland Corporation. Dr. Santoke found the NIK tests to be scientifically valid in his opinion, because the chemistry behind the tests is well understood and the reaction that takes place can be predicted. The chemistry according to Dr. Santoke has been studied, as long as you understand the limitations of the test, "I think that they are valid tests".

There was no evidence, by way of opinion or otherwise, that the relevant scientific community would agree that NIK color testing as use in this case by CDCR is scientifically acceptable for making a determination that a substance is a controlled substance. The People have failed in their burden to satisfy the *Kelly* standard because the People's retained expert, who apparently was not knowledgeable about the relevant scientific community, did not qualify or attempt to testify as an expert about the general acceptance of the NIK test within the relevant scientific community, Dr. Santoke did not offer any opinion on the subject.

Over all the evidence presented before the court throughout the hearing suggests that colorimetric tests are not accepted by the relevant scientific community as reliable scientific method to identify an illegal drug, presumptive or otherwise. The weight of evidence presented is that colorimetric testing is sometimes unreliable. At best color tests are an indication that an illegal drug may be present that would inform a chemist to proceed and do additional testing. The limits of the NIK color testing is well known to the manufacturer. Exhibit 72 was admitted into evidence and was described as a correspondence from an agent of Safariland wherein the limits of the NIK color testing products were described:

> The Safariland Group's training materials, instructions and labeling for its field test kits clearly state that the tests are presumptive aids, to be used only as a piece of information in helping an officer to determine if probably cause exists. False positives are possible in field tests due to the limitations of the science, which is why we also clearly state in our training materials and instructions that they are not a substitute for laboratory testing. Importantly, field tests are specifically not intended to be used as a factor in the decision to prosecute or convict a suspect, and our training materials and instructions make it clear that every test kit, whether positive or negative, should be confirmed by an independent laboratory.
>
> The implication that our testing equipment could give rise to reasonable doubt in criminal cases ignores the fact that these tests are not dispositive, are presumptive in nature and should be used only in the field. In a trial or other criminal procedure setting, field tests should not be used as evidence of the presence, or lack thereof, of any substance.

The goal of the *Kelly* decision requiring general acceptance standard was to "forestall the jury's uncritical acceptance of scientific evidence or technology that is as foreign to everyday experience as to be unusually difficult for lay persons to evaluate." (18 Cal.4th at p.80) It was felt that such scientific evidence would be overvalued by the jury due to an "aura of infallibility" that goes with scientific evidence. (*In re Amber B.* (1987) 191 Cal.App.3d 682, 690-91) With traditional jury trials there was a further concern that efforts to challenge controversial scientific evidence through cross-examination and expert testimony would consume inordinate amounts of time and raise issues outside of the abilities of average juror. Time would not be a concern with a Grand Jury; however, the danger of an "aura of infallibility" arises with even greater force and effect when scientific evidence is presented before a Grand Jury that will listen to it without the benefit of the expert witness being cross

examined. The aura of infallibility goes unchecked as it did in the Grand Jury determinations in each of the consolidated cases. In fact, color drug identification testing by its inherent design is quite fallible, when a critical analysis and understanding of the reliability of the technique is understood.

Therefore, the Grand Jury finding on possession of heroin must be reversed based on a failure of proof of general scientific acceptance of the NIK modified Mecke "L" test for heroin as required by *People v. Kelly* (1976) 17 Cal.3d 24. The People have failed to prove any of the *Kelly's* three prongs as required.

INADMISSABLE HEARSAY

In each of the consolidated cases, Correctional Officers gave expert witness testimony to the Grand Juries that the substances recovered were identified as heroin. The basis of this expert testimony was the written material published by Safariland and provided with its NIK test kits. The colorimetric tests required an observation of a color change when a portion of the suspected seized drug was placed in the sample pouch. The Correctional Officers were not, by their own admission, qualified as expert witnesses in drug identification. According to the testimony given at the evidentiary hearing the Correctional Officers are trained by materials provided exclusively by Safariland to observe whether there is or is not a color change and then follow the written directions given in the NIK kit manufacture and interpret the result. The "IDENTIDRUG™CHART" [Exhibit 3] contains detailed instructions for the use of the test and explains how make a controlled substance drug identification. Specifically, the instructions on use for the Mecke test "L" for heroin, state: "Modified MECKE's reagent-a test for heroin, including white, brown and black tar, and MDMA (ecstasy), as well as certain dye combinations designed to give false positive with test A." The instruction for use, in the column interpreting a "POSITIVE RESULTS" states as follows, "A purple color after breaking the first ampoule indicates Ecstasy (MDMA). A green color after breaking the second ampoule that intensifies with prolonged agitation indicates Heroin."

Essentially, what the Correctional Officers are doing is viewing a color change, referencing the instructions, and reporting a test result consistent with what is written by

Safariland. The Correctional Officers, not being experts, are simply relating hearsay information provided by the manufacture to the trier of fact, which in this case is the Grand Jury. In some instances, the Correctional Officers testify that they look at the color on the outside of the NIK pouch and compare that to what is inside the pouch. On the outside of the NIK "Test L" pouch is a green colored box and beside it says it says "Heroin". The word "Heroin" is a hearsay statement printed by the Safariland manufacturer. (Samples of the actual NIK color testing pouches, including color test kit "L", the modified Mecke for heroin, were admitted into evidence, [Exhibit 2])

In the case of *People v. Stamps* (2016) 3 Cal.App.5th 988 the defendant was pulled over by police because her car did not display a license plate. Her car was searched, and suspected drugs were discovered. Stamps was convicted of multiple drug possession offenses. At trial the prosecution called an expert witness who identified pills found in the defendant's possession by comparing them to pills pictured on a website called "Ident-A-Drug." In reversing the multiple convictions for drug possession, the Court found that there was no hearsay exception that permitted such evidence. It further noted the recent case of *People v. Sanchez* (2016) 63 Cal.4th 665, in which the California Supreme Court limited what hearsay may be conveyed to the jury as a basis for an expert's opinion. The court of appeal reversed in *Stamps* finding that the trial court improperly admitted the testimony of an expert criminalist who identified the drugs in pill form as controlled substances (oxycodone and dihydrocodeineone) solely by comparing their appearance to pills pictured on a Web site called "Ident-A-Drug." The expert's testimony was based solely on unreliable and inadmissible hearsay from a Web site and did not involve the use of the witness's expertise.

What happened before the Grand Jury in each of the consolidated cases is that a non-expert Correctional Officer, testified as an expert, who referred to the Safariland "IDENTIDRUG™CHART" or NIK test pouch and conveyed a drug identification opinion based upon the hearsay provided by the manufacturer of the NIK kit. This testimony was inadmissible hearsay. Because the NIK color test kit does not meet a scientific admissibility

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standard on its own and is therefore not independently admissible, it does not support the Grand Jury indictment.

BRADY ERROR

When the NIK color tests are testified to by Correctional Officers the Grand Jurors are usually told that that although the test could yield a false positive, the testifying witness has never experienced one. Officer Gonzalez, testified that he knew what a false positive is, but had never had it in his experience. He further testified to the Grand Jury that a "False Positive was "when you get mixed readings when you conduct a test. It's not clear", and there was no false positive in this case.

Officer Michael Ramirez testified that he was a Lieutenant at Centinela State Prison for 24 years, he qualified as Master Trainer for the NIK test which is a presumptive test for the presence of any particular drug, and the California Department of Justice (DOJ) performs the confirmatory test. He testified he is not a chemist and that is why he only performs presumptive tests. He estimated he had performed over 100 NIK tests, described the NIK test procedure, and testified he had never had a "false positive".

A false positive is a test result that states that an analyte (suspected seized drug) is present, when, in fact, it is not present or, is present in an amount less than a threshold or designated cut-off concentration. Correctional Officers do not understand what a false positive is and therefore incorrectly testified before the Grand Jury. The Correctional Officer testimony was consistent with other Correctional Officers' testimony in the Grand Jury proceedings that were lodged as exhibits. In each case the Correctional Officer did not understand what a false positive was. The officers' Safariland education and training from Safariland seems to be deficient.

A prosecutor is duty bound to turn over exculpatory evidence within his or her possession. *Brady v. Maryland* (1963) 373 U.S. 83, 87 says: "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad

faith of the prosecution." Prosecutors are responsible not only for what they know and what they have in their files but also for all the files and records in the files of the "team" that works with the prosecutor including law enforcement agencies involved in investigating the case.

The Supreme Court has clearly held,

> [T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith, [citation]), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. (*Kyles v. Whitley* (1995) 514 U.S. 419, 437–438.)

A leading California case explaining the reach of the Brady obligation is *In re Brown* (1998) 17 Cal.4th 873. Brown secured habeas corpus relief due to the nondisclosure of a portion of toxicology blood test results on his blood (a radioactive immunoassay). The test was positive for PCP (a fact the defense wanted to establish) whereas other results presented at trial (gas chromatography mass spectrometry [GC/MS]) were negative for PCP. (*Id.* at p. 877.) The California Supreme Court held that a crime laboratory assisting the District Attorney's office in prosecution of case was "part of the investigative 'team.'" Failure to provide the toxicology test result showing PCP in the blood was *Brady* error because it was relevant to the defendant's defense. As to the issue of the *Brady* team concept, *Brown* held,

> Courts have thus consistently 'decline[d] "to draw a distinction between different agencies under the same government, focusing instead upon the 'prosecution team' which includes both investigative and prosecutorial personnel."' [Citation.] 'A contrary holding would enable the prosecutor "to avoid disclosure of evidence by the simple expedient of leaving relevant evidence to repose in the hands of another agency while utilizing his access to it in preparing his case for trial," [citation].' [Citations.] (*Id.,* at page 879.)

"In *Brady*, the high court announced a rule, founded on the due process guarantee of the federal Constitution that requires the prosecution to disclose evidence that is favorable and 'material' to the defense." (*Ibid.*) The prosecution's failure to inform the Grand Jury of exculpatory evidence of which it is aware is grounds for dismissal if that failure results in substantial prejudice. (Penal Code section 939.71.) Although Penal Code section 939.71 does not define "exculpatory evidence," it expressly codifies the holding in *Johnson v Superior Court* (1975) 15 Cal.3d 248, which described such evidence as evidence that tends

to explain away the charges and as evidence that reasonably tends to negate guilt (*Cummiskey v Superior Court, supra,* 3 Cal.4th 1018, 1033.).

Since the adversary system does not extend to Grand Jury proceedings if the District Attorney does not bring exculpatory evidence to the attention of the Grand Jury, it is unlikely to learn of it. Therefore, when a District Attorney seeking an indictment is aware of evidence reasonably tending to negate guilt, he is obligated under section 939.7 to inform the Grand Jury of its nature and existence, so that the Grand Jury may exercise its power under the statute to order the evidence (*Johnson v. Superior Court* (1975) 15 Cal.3d 248, 255.)

The prosecution was required to inform the Grand Jury of exculpatory evidence but failed to do so when Correctional Officers testified to incorrect definitions of a false positive. What Correctional Officers described is a failed or negative test result; when the NIK test is unable to render a clear answer, no result or a test result that is actually negative for a controlled substance.[8]

A false positive, on the other hand is when the NIK test indicates the substance is a controlled substance when it is fact not. Correctional Officers should not be allowed to testify that there was no false positive in any Grand Jury case because they don't know what it is. A *Brady* violation occurred when the People, who were aware of the many instances were true false positives have occurred using the NIK testing system, did not present that information to the Grand Jury. Essentially the Grand Jury was told a half truth, that a Correctional Officer has never had a false positive, yet the NIK colorimetric test used in fact can and does produce false positive results. This was well known to the prison investigators and the People. Half the truth is not the truth. *Brady* was violated.

It should be emphasized that the purpose of the hearings the court held in these matters was limited to the propriety of having the prosecution offer the chemical reagent test results as ultimate proof of the existence of a controlled substance into evidence for the purpose of obtaining an indictment in the context of a Grand Jury proceeding. The court

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[8] Correctional Officer Ricardo Estrada told the Grand Jury in the Oscar Martinez case that the NIK test was "positive for heroin". Also, that he knew what a false positive was, "when the substance is not – it doesn't come up positive or results of the test are not what you expected".

expresses no opinion whatsoever that these color tests would not have utility in the context of field testing for the purpose of determining whether or not to proceed with further investigation or an arrest decision, by law enforcement or Department of Corrections and Rehabilitation personnel. It is clear that such tests, when properly administered, have utility as a tool to rule in or out the existence of a controlled substance, along with other case specific facts for purposes of determining whether further investigatory action is appropriate.

ORDER

In light of the foregoing, the court finds that as to each defendant in the consolidated cases there was insufficient legally admissible evidence before the Grand Jury to give it reasonable or probable cause to sustain the Indictment as to any count. Defendants' Penal Code section 995/non-statutory motions are therefore granted.

All Counts of each Grand Jury indictment as to each defendant are dismissed.

IT IS SO ORDERED.

Dated: April 24, 2018

Christopher J. Plourd

CHRISTOPHER J. PLOURD
Judge of the Superior Court

UNODC
United Nations Office on Drugs and Crime

Guidelines on Raman Handheld Field Identification Devices for Seized Material

Acknowledgements

UNODC's Laboratory and Scientific Section (LSS, headed by Dr. Justice Tettey) wishes to express its appreciation and thanks to Ms. Ying Ying Tan, Health Sciences Authority, Singapore, for the preparation of the final draft of the present *Guidelines*.

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Part 1.
General guidelines for Raman devices

1. Introduction

In recent years, there has been a significant increase in the use of Raman spectroscopy for forensic analysis of drugs of abuse. Raman spectrometers are available both as bench-top units as well as handheld devices. The development of handheld Raman spectrometers has drastically impacted end-users' ability to conduct field-based as well as in-situ analysis, allowing a rapid and non-destructive identification of unknown samples including controlled drugs, drug precursors, essential chemicals and cutting agents.

However, it is also important to recognise and understand the limitations of such devices. For instance, the handheld Raman spectrometers cannot be used to analyse compounds that are dark in colour or fluoresce. Its use in identifying mixtures with complex sample matrix may also be limited. As such, these devices should only be used as a preliminary screening tool to provide information on the possible identity of the seized material and should always be complemented with analysis using a confirmatory technique performed by the laboratory.

Fig. 1: Use of Raman handheld device as a preliminary screening tool, followed by confirmatory testing in a laboratory

2. Principles of Raman spectroscopy

Raman spectroscopy[1,2,3] is a form of molecular spectroscopy, based on inelastic scattering of monochromatic light, discovered by C.V. Raman and K.S. Krishnan in 1928[4].

In Raman spectroscopy, the sample is first illuminated with a monochromatic laser beam which interacts with the sample molecule, resulting in scattering of light. The majority of the photons (>99.99999%[5]) will be elastically scattered, i.e. photons will be scattered in all directions without a loss in energy or change in frequency. This form of scattering is known as Rayleigh scattering.

On the other hand, a small amount of scattered photons will be inelastically scattered (i.e. Raman scattering).

A Raman spectrum is a plot of the intensity of Raman scattered light as a function of its frequency difference from the incident radiation (usually expressed in wavenumber, cm^{-1})[5]. This difference is commonly known as Raman shifts and such shifts provide information about vibrational and rotational transitions in a molecule.

Generally, the vibrational and rotational transitions are unique for every molecule. As such, Raman spectroscopy can be an invaluable and powerful tool in providing molecular information, based on the structure of the molecule and its light scattering properties.

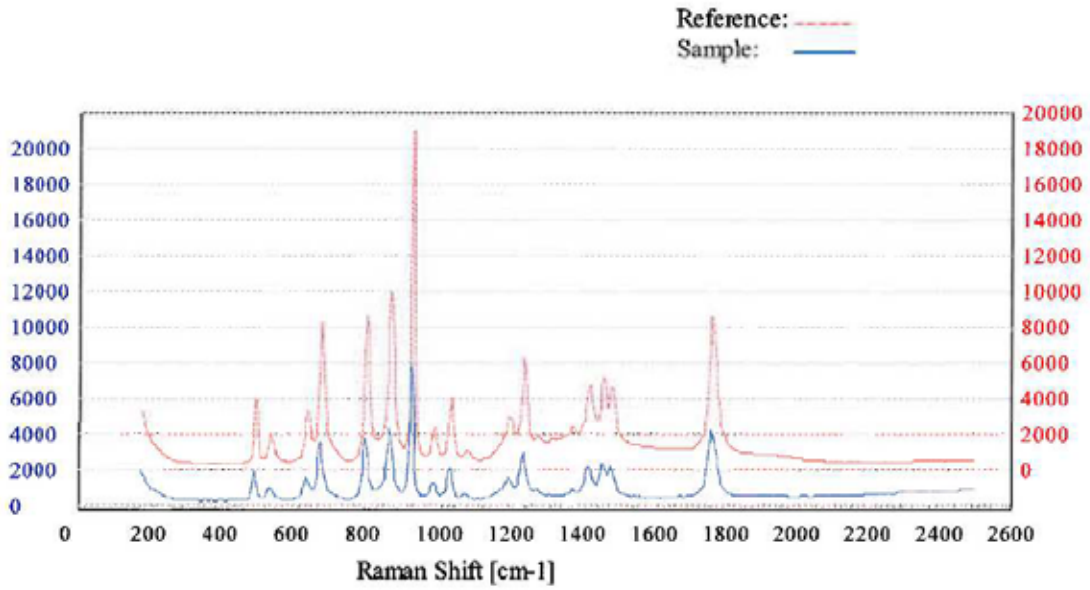


Fig. 2: A Raman spectrum of GBL sample (in blue) compared to a reference spectrum (in red).

3. Strengths and weakness of Raman technology

While there are numerous strengths that promotes the use of Raman handheld devices to analyse unknown samples in the field, users have to understand that there are weaknesses and limitations of the device. Some notable strengths and weaknesses of the technology are highlight below:

Strengths

- ✓ Analysis is rapid and can be easily performed
- ✓ Non-destructive
- ✓ High selectivity
- ✓ Provides specific functional group information
- ✓ Samples analysed directly through transparent or translucent containers (e.g. plastic, glass)
- ✓ Diverse types of samples possible: solid, liquid or slurry, either transparent or opaque
- ✓ Little or no sample preparation required
- ✓ No interference from water. Aqueous samples are possible

Weaknesses

- ✘ Relatively low sensitivity
- ✘ Fluorescence from sample interferes with analysis
- ✘ Not be suitable for dark samples, which absorbs laser energy and can heat up or ignite
- ✘ Not be suitable for sample with a complex matrix
- ✘ Laser source may experience fluctuation
- ✘ Only qualitative analysis can be performed

4. General operating principles

4.1 Performance check

Performance check is conducted to demonstrate that an instrument or equipment is able to perform according to the manufacturer's specifications and is appropriate for routine use. Most handheld Raman spectrometers are equipped with a reference material to conduct this check. Such performance check should be performed once at the beginning of a series of samples scanned.

4.2 Scanning of samples

Direct scanning of the samples can be performed using the Raman handheld devices with minimum or no sample preparation. Such devices can be used to scan samples present in different forms such as powder, crystal, tablet, capsule and liquid as well as scan through a thin layer of common packaging material such as transparent or translucent glass or plastic.

However, in some cases where the laser beam is unable to penetrate through the packing material, sample preparation may be necessary. For solid samples, transfer an appropriate amount into a transparent plastic packet and for liquid samples, place a small quantity into a transparent glass vial for direct scanning.

Scanning is usually performed by holding the test sample close to the laser aperture (for instance through direct contact or point-and-shoot) and pressing a few buttons on the Raman device to initiate the scan. Results of the scan will then appear on the screen in 1 to 2 minutes.

TIPS

- Perform 3 scans in different locations as sample may not be homogeneous
- To minimise interference from background light, perform scan in a shaded area or away from direct sunlight

4.3 Safety precautions

General safety precautions should be adhered when handling test samples including wearing of gloves and donning on safety glasses, if necessary.

As the device makes use of a laser beam, it is also important for all users to understand the potential dangers of this device and the types of samples that require extra care.

The following safety precautions should be adhered to at all times when operating the Raman handheld devices:

- ! Handle the device at a safety distance recommended by the manufacturer in all direction during a scan.
- ! Never look directly into the laser source, laser beam path or scattered laser light from any reflective surface.
- ! Never point the device directly at a person.
- ! Avoid scanning dark-coloured compounds. The laser beam in this analyser can potentially cause the dark-coloured substance to burn or ignite if scanned directly.
- ! Avoid scanning sample that is suspected to be explosive as the sample may burn or ignite if scanned directly (for both light- or dark-coloured compounds).
- ! Avoid performing “point-and-shoot” scan on sample placed on a dark-coloured surface as the surface may absorbed enough laser energy to heat up a potential flammable or explosive material to its ignition point.

5. Preventing cross contamination

All working surfaces where scanning is performed should be properly cleaned with a clean cloth wet with alcohol (e.g. ethanol, isopropanol) prior to performing each scan to prevent cross contamination. Contaminated surfaces often pose a challenge to the users and may result in inaccurate scan result indicated on the Raman device.

6. Interpretation and documentation of scan results

Interpretation of scanned results may be necessary when inconclusive results are obtained or addition intelligence information is available. In such situation, further confirmatory testing performed by the laboratory is necessary.

Most Raman devices are supported with software which allows the user to upload or copy scan results stored in the device to the computer or laptop for review, generation of test reports or archival. Alternatively, the scan results can be documented manually using a recording sheet including information such as scan ID, date and time of analysis, test results and name of analyst performing the scan.

7. Validation of Raman devices

Validation of the Raman devices is recommended to be performed by a laboratory to assess and verify its operational performance and effectiveness in the preliminary screening of seized material. The following studies may be performed:

(i) Verification study of the spectral library

(ii) Repeatability and reproducibility study

(iii) Interference study from packaging materials

(iv) Studies on matrix effects using street samples and sample mixtures prepared in-house

7.1 Verification study of library

The validity of the spectral library installed on the device can be verified by scanning a variety of drug reference material of different drug classes to determine if a correct identification can be made. An example is shown below:

Drug Classes	Drug Reference Standards used for Verification
Amphetamine-type stimulants	Amphetamine, methamphetamine, MDMA
Benzodiazepines	Diazepam, clonazepam, oxazepam
Opiates	Heroin, morphine, oxycodone
Synthetic cathinones	Mephedrone, MDPV, methylone
Synthetic cannabinoids	JWH-018, JWH-073, THJ-2201, UR-144
New psychoactive substances	25B-NBOMe, 2C-B, 3-CMC, methoxetamine
Miscellaneous drugs	Cocaine HCl, ketamine, GHB, GBL
Precursors	Ephedrine, phenyl-2-propanone, safrole
Essential chemicals	Acetic anhydride, ammonium chloride
Cutting agents/diluents	Dimethyl sulfone, caffeine, levamisole, lactose, acetaminophen
Solvents	Acetone, methyl ethyl ketone, toluene

Table 1: Examples of reference material used for verification study of library

7.2 Repeatability and reproducibility study

For the repeatability and reproducibility study, each sample prepared for the above study (i.e. verification study of library in Section 7.1) will be scanned in triplicates by three different operators. The triplicates analysis conducted on each sample will provide the repeatability data while the analysis conducted by three different operators will provide the reproducibility data.

7.3 Interference study from packaging materials

Common packaging materials used to contain seized material will be used in this interference study and these may include plastic packet, straw and container as well as glass vial, bottle and tube. An appropriate reference material or street samples will be contained in these packaging materials for direct scanning to determine if a positive identification can be made.

7.4 Studies on matrix effects

7.4.1 Study on matrix effects using sample mixtures

Sample mixtures will be prepared by mixing drug reference material with common cutting agents in different proportions. Each mixture will be sufficiently pulverized and homogenized using a mortar and pestle prior to scanning to determine if the drug of interest can be detected and correctly identified. An example is shown below:

Mixture No.	Drug of interest		Cutting agents	
	Controlled substance	Percentage (%)	Cutting agent	Percentage (%)
1	Heroin	75	Caffeine	25
2	Heroin	50	Caffeine	50
3	Heroin	25	Caffeine	75

Table 2: Sample mixtures for study on matrix effects

7.4.2 Study on matrix effects using street samples

Street samples of the different drug classes with different purity and sample matrix are scanned with the handheld Raman device. The scan results obtained by the handheld device will then be compared against that obtained using a confirmatory analytical technique (e.g. Gas Chromatograph-Mass Sepctrometry, GCMS).

Key information

- Raman Handheld devises should only be used as a screening tools.
- Follow up confirmatory analysis should be conducted in a laboratory.
- The device makes use of a laser beam, thus all users should understand the potential dangers of this device and the types of samples that require extra care.

Part 2.
User guide for Trunarc Analyser

1. Introduction to Trunarc Analyser

The TruNarc analyser is one of many handheld Raman spectrometers commercially available in the market. It is used for the presumptive screening of suspected controlled substances, drug precursors, essential chemicals and cutting agents. There are also other handheld Raman devices which are capable of screening other analytes such as pharmaceuticals and toxic industrial chemicals.

Samples in various forms such as powder, crystal, tablet, capsule and liquid can be screen directly on the TruNarc analyser. Drugs or analytes that can be identified by the TruNarc analyser include:

- Narcotics such as heroin and oxycodone
- Stimulants such as cocaine and methamphetamine
- Depressants such as clonazepam and diazepam
- Hallucinogens such as ketamine and MDMA (commonly found in Ecstasy tablets)
- New Psychoactive Substances, NPS, such as synthetic cannabinoids and synthetic cathinones
- Cough suppressants such as dextromethorphan
- Drug precursors and essential chemicals such as safrole, ephedrine, piperonal and acetic anhydride
- Cutting agents and diluents such as caffeine, dimethyl sulfone and lactose.

Fig. 1: Common drugs of abuse which can be screened using the TruNarc Analyser

2. Key components of Trunarc Analyser

The key components of the TruNarc analyser include the nose cone, keys on the analyser unit, self-check standard, laser indicator light/aperture, USB connector as well as the AC adaptor cable.

Key Components	Location on Analyser	Function
Nose Cone		• Removable black plastic cap used for holding of sample in the correct position for scanning
Keys		• Buttons on the analyser used for the selection of the respective menu options
Self-check Standard		• Removable transparent plastic bar used for the performance of a self-check
Laser Indicator Light		• Indicator light on the analyser that glows when the laser light is active during a scan (a safety feature)

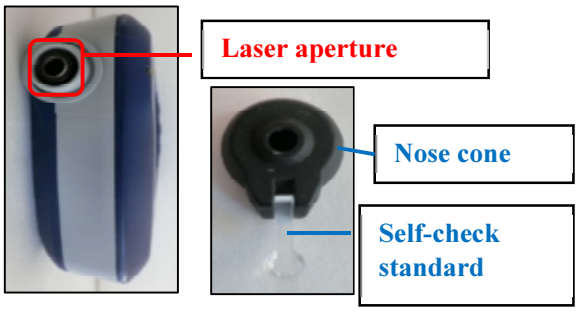
Laser Aperture		• Clear glass window beneath the nose cone where the laser beam exits to strike the sample during a scan
USB Connector		• Beneath the access door of the analyser is the USB connector which allows two types of cables to be attached: ○ AC adaptor cable to connect the analyser to an electrical outlet for charging the analyser battery ○ USB cable to connect the analyser to a computer/laptop for the synchroniaation of scan results from the analyser to the computer/ laptop as well as for software upgrades and library updates of the analyser • To open the access door, grasp the tab on the door and tub gently to open it
AC adaptor cable		• AC adaptor cable connects the analyser to an electrical outlet for charging. • A fully charged battery can last for approximately 8 to 10 hours

Table 1: Key components of the TruNarc analyser and their functions

3. Working principle of Trunarc Analyser

3.1 How the TruNarc Analyser Works

The TruNarc analyser is based on Raman spectroscopy and how it works can be illustrated in Fig. 2 below.

1. The sample in the packet is placed against the nose cone of the analyser. The key on the analyser to initiate the laser beam is pressed.
2. The laser beam exits the analyser through the nose cone and strikes the sample contained in the packet.
3. The energy of the laser beam excites the molecules in the sample causing them to scatter Raman light. Some of the scattered Raman light enters the analyser through the nose cone, where it is collected and analysed by the detector.
4. The analysis produces information about the wavelength in the collected Raman light and the detector uses this information to create a spectrum.
5. The spectrum created is then compared and matched against the TruNarc Substance Library[2] using a cheometric logarithm.
6. If a positive match is found, the identity of the drug of interest will be reflected on the result screen of the TruNarc analyser.

Fig 2: How the TruNarc analyser works

3.2 Second Derivative Processing of Spectral Plot

The TruNarc analyser uses the second derivative processing of spectral plot to sharpen peaks of interest and remove broad fluorescence bands. As such, this helps to improve the sensitivity of this analyser, especially in the detection of drug of interest in sample mixtures.

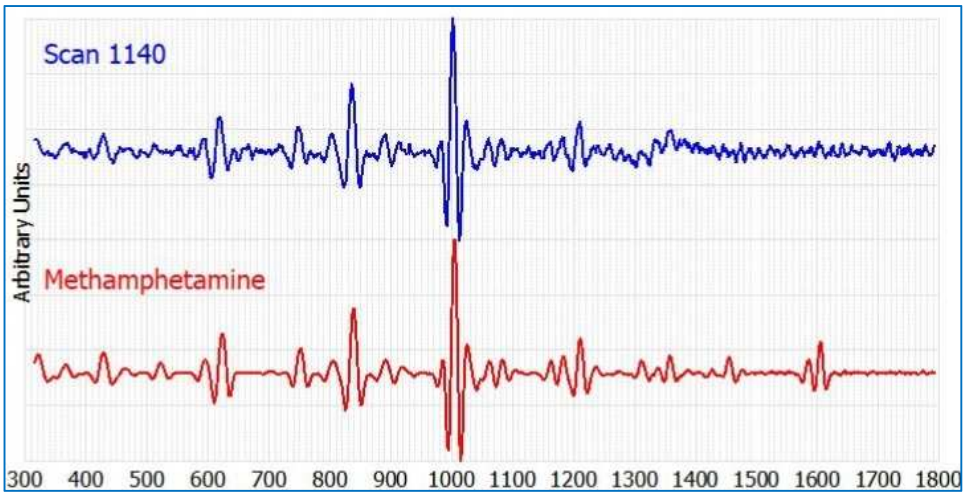


Fig 3: Second derivative processing of spectral plot

However, one drawback of the second derivative plot is that the spectrum obtained by the analyser could not be compared with that found in literature.

4. Trunarc substance library

The TruNarc Substance Library[2] is used by the TruNarc analyser to identify compounds of interest present in the unknown sample. This library can be updated during software upgrade and such updates will be provided by Thermo Fischer Scientific annually throughout the lifetime of the analyser.

Categories	Types of Compounds	Background Colour Displayed
Alarm	Controlled substances	
Clear	Cutting agents and diluents	
Precursor/ Chemical	Drug precursors and essential chemicals	
Warning (Cannot rule out the presence of narcotic)	Substances that have strong Raman signals which can potentially mask certain drugs of interest: • Paracetamol • Aspirin • Ephedrine • Ibuprofen For the above four substances, an alternative test method is recommended.	

Table 2: Different categories of compounds of interest in TruNarc Substance Library

5. Safety precautions

The TruNarc analyser makes use of a Class 3B laser to perform scans and this can cause ocular damage. As such, they should be operated by trained personnel who are familiar with the safety precautions when handling such devices. The safety distance of this device is 14 inches or 35 cm from the nose cone of the analyser in all direction.

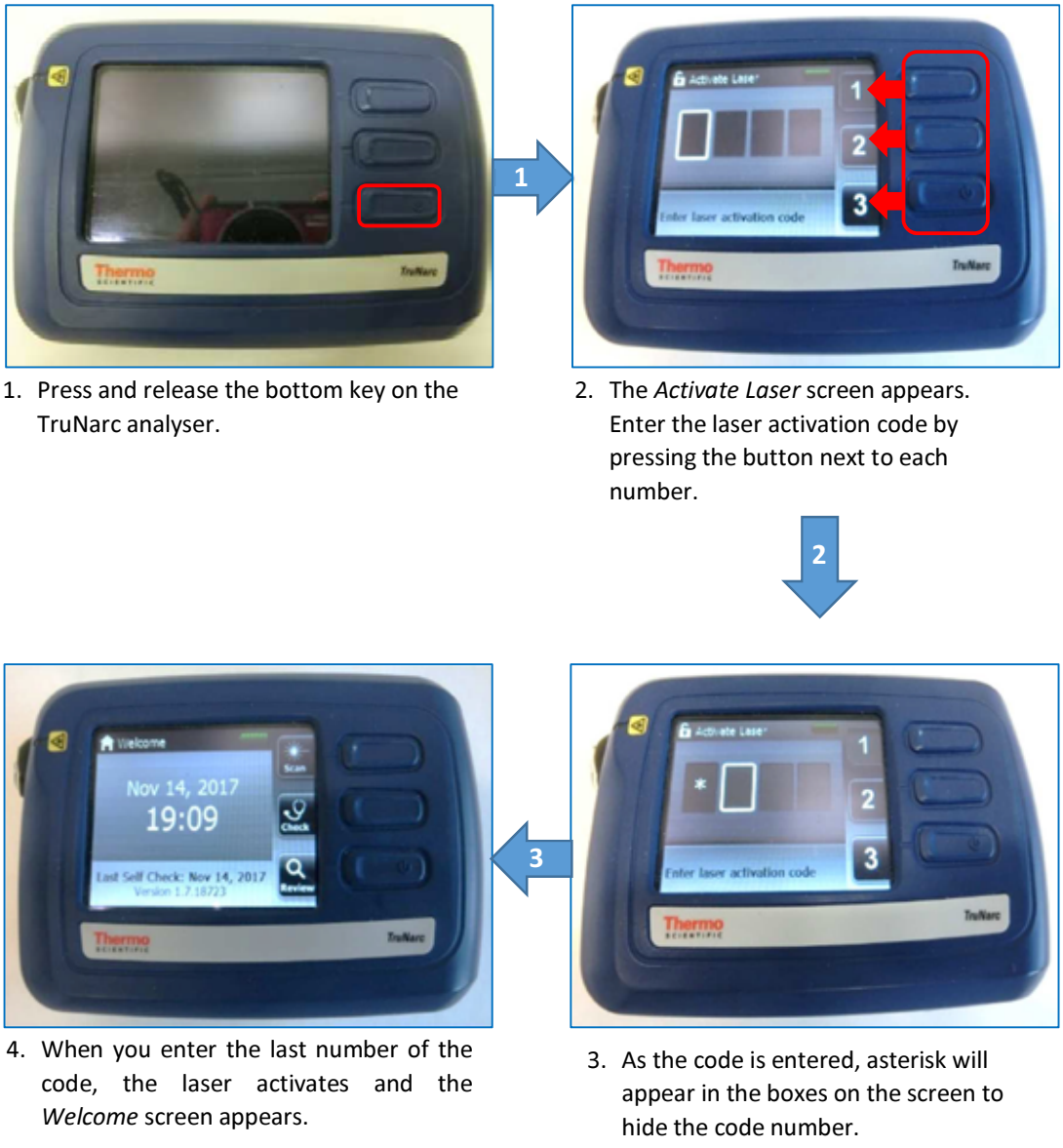
Fig. 4: Safety distance from nose cone of analyser when scanning is performed

6. Operation of Trunarc analyser

6.1 Power On/Off the TruNarc Analyser

6.1.1 Power On the TruNarc Analyser

The TruNarc analyser can be powered on using the following procedures:



1. Press and release the bottom key on the TruNarc analyser.
2. The *Activate Laser* screen appears. Enter the laser activation code by pressing the button next to each number.
3. As the code is entered, asterisk will appear in the boxes on the screen to hide the code number.
4. When you enter the last number of the code, the laser activates and the *Welcome* screen appears.

Fig. 5: Power on the TruNarc analyser

6.1.2 Power off the TruNarc Analyser

The TruNarc analyser can be turned off at any time, even during the scan. When the analyser is turned off, it will be completely powered down. The TruNarc analyser can be powered off using the following procedure:

1. Press and hold the bottom key or 10 seconds.
2. After holding for 5 seconds, the analyser will begin a 5 seconds countdown and the analyser will be turned off after 5 seconds.

Fig. 6: Power off the TruNarc analyser

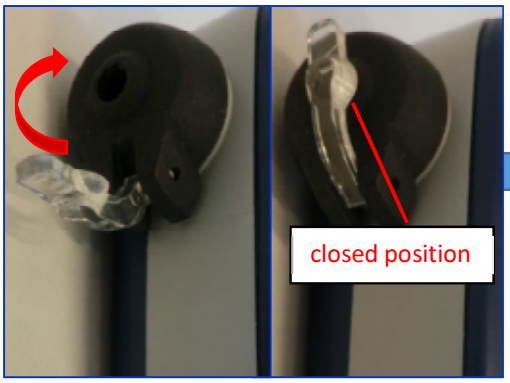
6.2 Performing a Self-Check

A self-check serves as a performance check to ensure proper functioning of the TruNarc analyser in accordance to the manufacturer's specifications. A self-check is recommended to be performed once at the beginning for a series of samples scanned.

The results of such self-checks will be stored in the analyser and they can be uploaded or copied from the analyser to the TruNarc Admin software along with other scan results. Reports of self-check can also be created and printed using this software and be kept as supporting evidence of proper functioning of the analyser during the sample scans.

For procedures on uploading of self-check results from the analyser to TruNarc Admin software as well as creation and printing of such reports, refer to Section 7.2 and 7.4, respectively.

A self-check can be performed using the following procedures:



1. Place the self-checkstandard in the closed position (i.e. flip the self-checkstandard up and insert it into the nose cone).

2. Select the "Check" option in the *Welcome* screen by pressing the key next

3. The *Self-check* screen appears.
Select "Check" option again by pressing the key next to it

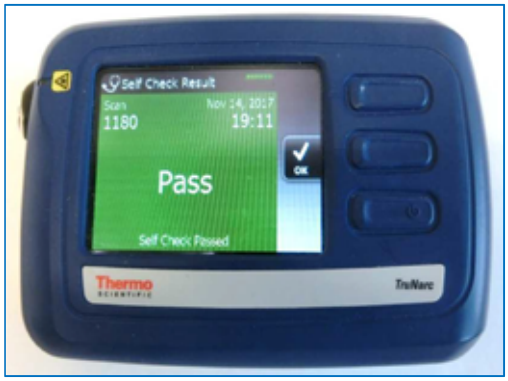
4. The laser light glows indicating that the laser is active and analyser is performing the scan.

5. The result of the check will appear in the *Self-check Result* screen after a few seconds.
Select "OK" option by pressing the key next to it to return to the *Welcome*

Fig. 7: Procedures to perform self-check

6.2.1 Self-check results:

Two possible self-check results can be obtained:



Pass

✓ This result indicates that the analyser is operating in accordance to the factory specifications.

Fail

✘ This result means that the analyser is not operating correctly.

✘ Wipe the self-checkstandard with a clean cloth damped with ethanol.

✘ Perform the self-checkagain. If a "Pass" result is achieved, select the "OK" option by pressing the key next to it to return to the Welcome screen to start scanning samples.

✘ If a "Fail" result is achieved again, remove the analyser from use and contact Thermo Fisher

6.3 Preparation of Sample for Scanning

The TruNarc analyser can be used to scan samples present in different forms, such as powder, crystal, tablet, capsule or liquid. In addition, the analyser can scan through common packaging materials such as transparent or translucent glass or plastic with a thickness of < 2 mm. As such, direct scanning can be easily performed with minimum or no sample preparation except in situations where the Type H test kits are used. For sample preparation procedures using such test kits, refer to Section 6.5.3.

6.4 Scanning of Sample

6.4.1 Scanning of Sample through a Plastic Packet

Scanning of a sample contained in a plastic packet can be performed using the following procedures.

1. Self-check standard should be in the open position. Press the packet of sample firmly against the nose cone of the analyser. Ensure the laser sample point (i.e. 2 mm away from nose cone) is positioned at the sample inside the packet.

2. Select the "Scan" option in the *Welcome* screen by pressing the key next to it.

3. The *Scan Ready* screen appears. In this screen, select the "Scan" option again by pressing the key next to it.

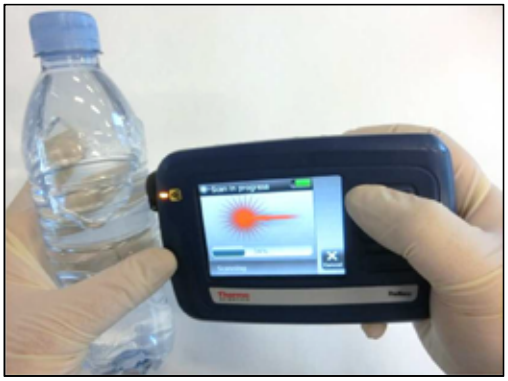
5. The laser light glows indicating the laser is active and the analyser scanning. Hold the sample still during the scan to avoid moving the sample during the scan.

6. When the laser indicator light turns off, the analysis screen appears. The packet can now be move away from the nose cone.

4. The analyser will display a result in the *Scan Result* screen. Select "OK" to return to the *Welcome* screen.

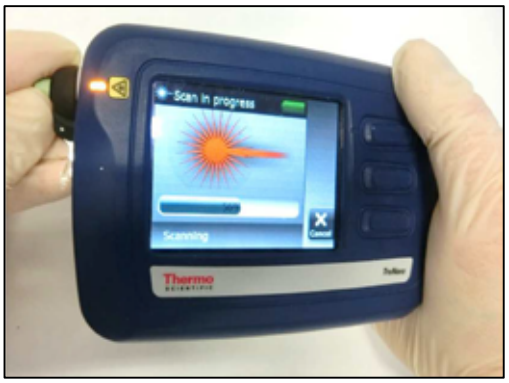
Fig. 8: Procedures to scan samples

6.4 Scanning a Sample through a Container



Scanning of a sample contained in a plastic or glass container can be performed using the same procedures outlined in Section 5.4.1. However, the wall of such containers must be relatively thin (i.e. < 2 mm) since the sample point is only 2 mm from the nose cone. When you try to scan through a thick-wall container, the sample point is inside the container wall instead of the sample contained within the container. This makes it hard for the analyser to collect enough data to identify the sample.

6.5 Scanning a Tablet or Pill



Scanning of a tablet or pill can be performed using the same procedures outlined in Section 5.4.1, except that the tablet or pill must be pressed firmly against the nose cone.

If the tablet or pill is coated, its coating may interfere with the scan. In such a scenario, the coating can be removed by scraping it off and the resulting exposed surface is then pressed against the nose cone for scanning. Alternatively, the tablet or pill may be broken into half and the exposed interior surface is then scanned.

6.6 Scanning a Spilled Powder

Scanning of spilled powder can be performed using the “point-and-shoot” technique. The powder is first worked into a pile and the nose cone is positioned on the surface of the pile to perform the scan using procedures outlined in Section 6.4.1.

6.7 Types of Scan Results

Different types of scan results may be returned by the TruNarc analyser. Examples of possible scan results obtained are shown in Table 5 below.

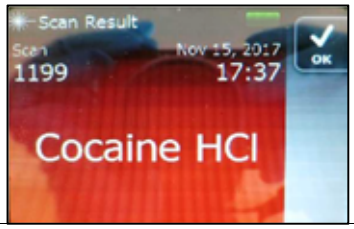
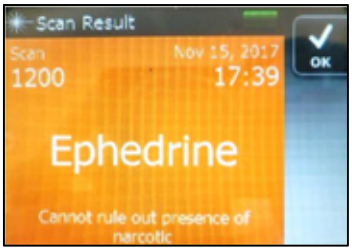
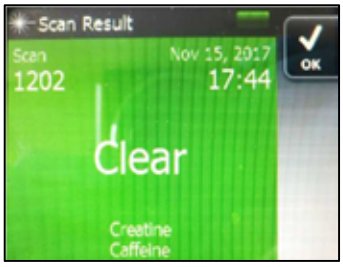
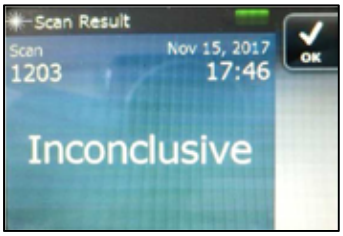
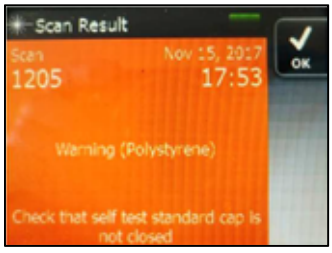
Type of Scan Results	Display on Result Screen	What it means?
Alarm		• A <u>controlled substance</u> present in the TruNarc Substance Library is detected and identified on the result screen. • If any drug precursor, essential chemical, cutting agent or diluent is also present in combination with the controlled substance, it will not be identified.
Precursor/ Chemical		• A <u>drug precursor or essential chemical</u> present in the TruNarc Substance Library used in the manufacture of illicit drugs is detected and identified on the result screen. • No controlled substance present in the TruNarc Substance Library is detected and identified. • <u>*Note:*</u> If a controlled substance is present in trace amount as compared to that of the drug precursor or essential chemical, it may not be detected and identified.
Clear		• A <u>cutting agent or diluent</u> present in the TruNarc Substance Library is detected and identified on the result screen. • No controlled substance, drug precursor or essential chemical present in the TruNarc Substance Library is detected and identified. • <u>*Note*</u>: If a controlled substance, drug precursor or essential chemical is present in trace amount as compared to that of the cutting agent or diluent, it may not be detected and identified.
Inconclusive		• No controlled substance, drug precursor or essential chemical as well as cutting agent or diluent present in TruNarc Substance Library is detected and identified. • However, the possibility of the above substances not <u>present</u> in the library, cannot be ruled out. • Other techniques of analysis should be used to identify the unknown sample.
Cannot rule out presence of narcotics		• Acetaminophen/ Aspirin is detected and identified on the result screen. • Such drug is sometimes found in combination with narcotics (e.g. Percocet, Vicodin) present in trace amount which is below the detection limit of this analyser. • Other techniques of analysis should be used to rule out the presence of narcotics.
Polystryene (check that self-test standard is not in closed position)		• Polystryene warning indicates that the self-checkstandard may be in the closed position.

Table 3: Different types of scan results shown on TruNarc analyser

The priority of scan results displayed on the Scan Result screen is in the following order:

(i) Controlled substances

(ii) Drug precursors or essential chemicals

(iii) Cutting agents or diluents

If the sample contains a mixture of substances in group (i) to (iii), only substances in the higher priority group will be displayed on the screen.

6.8 Scanning of High Fluorescence Samples using Type H Test Kits

6.8.1 Emission of Fluorescence Light by Test Samples

Detection of test samples which fluoresce pose a challenge for the TruNarc analyser. When a laser beam strikes such a sample, it spontaneously emits a high amount of fluorescent light which interferes and masks the Raman signals obtained. As such, this makes it difficult for the analyser to detect and identify any analyte of interest present in the sample and an inconclusive result will be obtained. Some examples of such samples include heroin, diazepam and fentanyl.

6.8.2 Type H Test Kits

To resolve this problem, a special test kit that compensates for the emission of fluorescence light can be used to produce a more reliable scan. This special test kit is known as the Type H test kit. Such test kits are equipped with a small 4 mL vial containing 1 mL of ethanol and a plastic test stick with a scoop at one end.

At the base of the scoop is a small metal wafer that has been chemically treated to reduce the amount of fluorescence light emitted by the test samples.

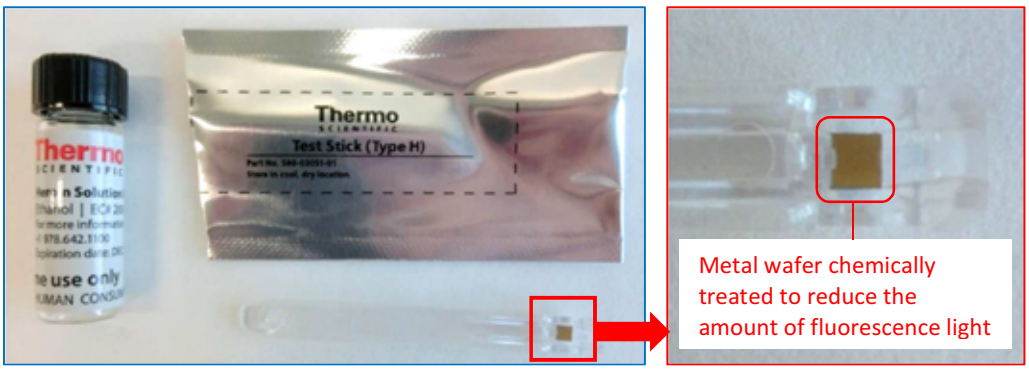
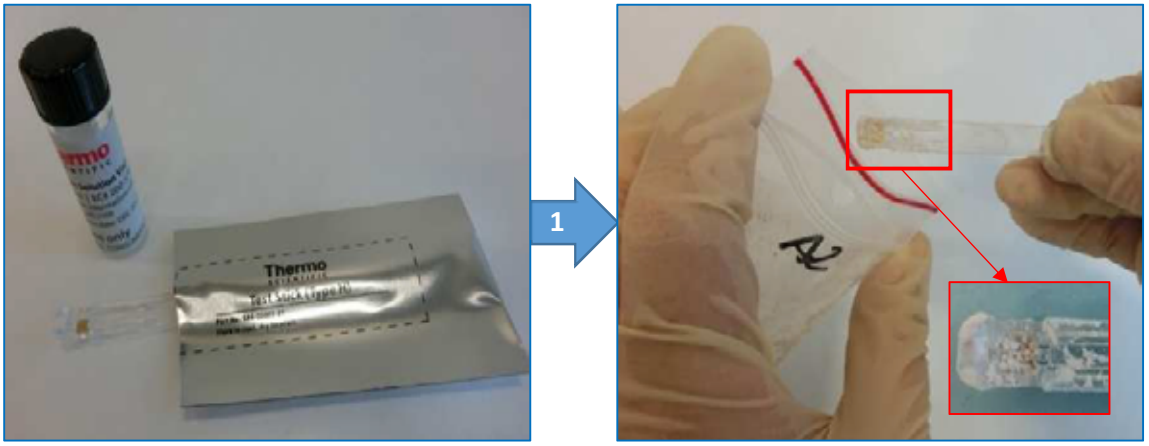


Fig. 9: Components of a Type H test kit

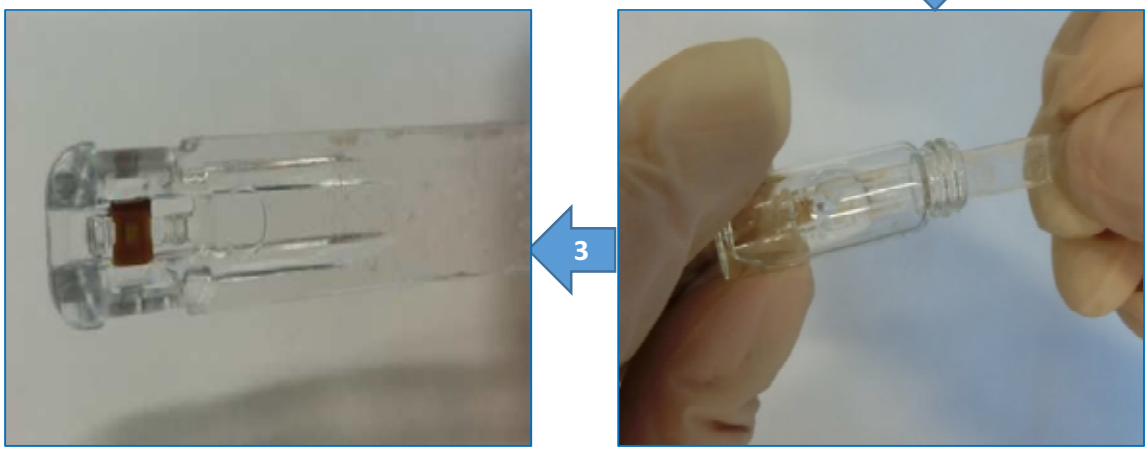
6.8.3 Preparation of Sample for Scanning using Type H Test Kit

Preparation of sample for scanning using the Type H test kits can be performed using the following procedures:



1. Open the test kit from the package

2. Remove an appropriate amount of test sample (~10 mg or ¼ scoop) using the scoop of the test kit.



3. Insert the scoop containing the sample into the vial and stir gently to dissolve the sample. Ensure the filled scoop is fully submerged in the ethanol solution.

4. Remove the test stick and shake it in the air to allow the ethanol to evaporate.
   A thin film of dried sample will be coated on the metal wafer at the base of the scoop.

Fig. 10: Procedures to prepare sample for scanning using the Type H test kit

6.8.4 Procedures for Scanning

Scanning of the metal wafer prepared in Section 5.5.3 can be performed using the following procedures:

1. Ensure that the self-check standard is in the open position. Hold the scoop end of the test kit against the nose cone of the analyser to scan the metal wafer.The cup of the scoop should be centered over the opening of the nose cone. Use the forefinger to firmly press against the nose cone.

2.The *Scan Ready* screen appears. In this screen, select the "Scan" option again by pressing the key next to it.

3. When the test kit is in the correct position, select the "Scan" option in the *Welcome* screen by pressing the key next to it.

4.The laser light glows in a few seconds indicating that the laser is active and the analyser is performing the scan. Hold the test kit on the nose cone until the laser light turns off.

5.When the laser indicator light turns off, the analysis screen appears. The test kit can now be move away from the nose cone.

6. When the analysis step completes, the analyser display a result in the *Scan Result* screen. Select "OK" to return to the *Welcome* screen.

Fig. 11: Procedures to scan samples using Type II test kit

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6.9 Reviewing of Scan Results on Analyser

The TruNarc analyser saves all sample scan and self-checkresults in the analyser. Both sample scan and self-checkresults can be reviewed at any time from the analyser by performing the following procedures:

1. Select the "Review" option in the *Welcome* screen by pressing the key next to it.

2. The *Review Scans* screen appears. Scroll through the list using "▲" or "▼" option by pressing the key next to it to view the appropriate scan result.

Fig. 12: Procedures to review scan results

7. Trunarc admin software

7.1 Introduction to TruNarc Admin Software

The TruNarc Admin software is a program used by the TruNarc analyser to allow users to manage scan results on a computer/laptop. With the scan results uploaded or copied from the analyser to the computer/laptop, users will be able to create a database where he/she can:

(i) create customised columns in the database to input additional information such as officer's name, case name etc.

(ii) search for scan results by selection of different categories such as name, result type, dates etc.

(iii) create, save and print scan results as reports

In addition, the TruNarc Admin software also allows the users to:

(i) set date and time on the analyser

(ii) remove scan results from the analyser

(iii) view and update the TruNarc Substance Library on the analyser

(iv) revise customer account information and send email to customer service support

7.1.1 Launching of the TruNarc Admin Software

After the TruNarc Admin software has been installed onto the computer/laptop, this program can be launched by double-clicking this software desktop icon as shown on the right.

Once the program is opened, the main window of the software appears. If the display area of this window is empty, this means that the user has not synchronised the analyser with the software.

On the other hand, if the display area of the main window of this software shows scan results, this means that the analyser has already been synchronised with the software and scan results available on the analyser have been uploaded or copied onto the database.

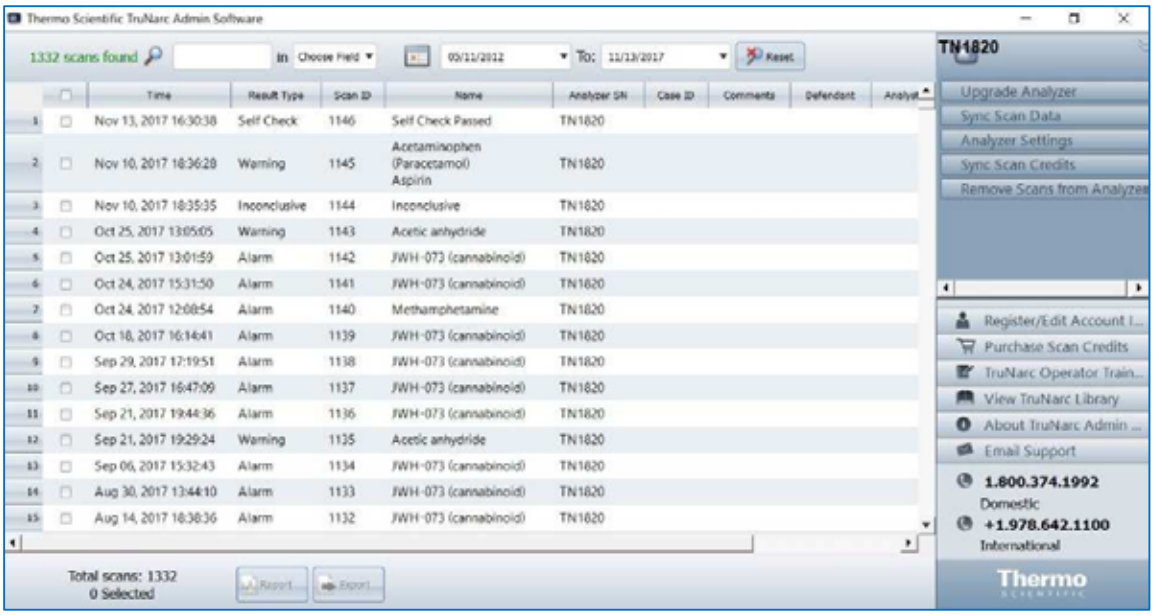


Fig. 13: Main window of TruNarc Admin software with scan results

7.1.2 Key Features on Main Window of the TruNarc Admin Software

The key features on the main window of the TruNarc Admin software include:

(i) Display area showing rows of scan results (available after synchronisation of the analyser with the software has been performed).

(ii) Serial number of the analyser that is connected to the computer/laptop

(iii) Buttons that are only available when the analyser is connected

(iv) Buttons that are always available (i.e. even when analyser is not connected)

(v) Tools for searching of scan results by selection of category or date

(vi) Buttons for generating scan reports for printing and saving scan data in a different format (eg. PDF)

(vii) Check boxes for selection of scan results

(viii) Customisable headers for entry of useful information (e.g. officer's name, comments etc)

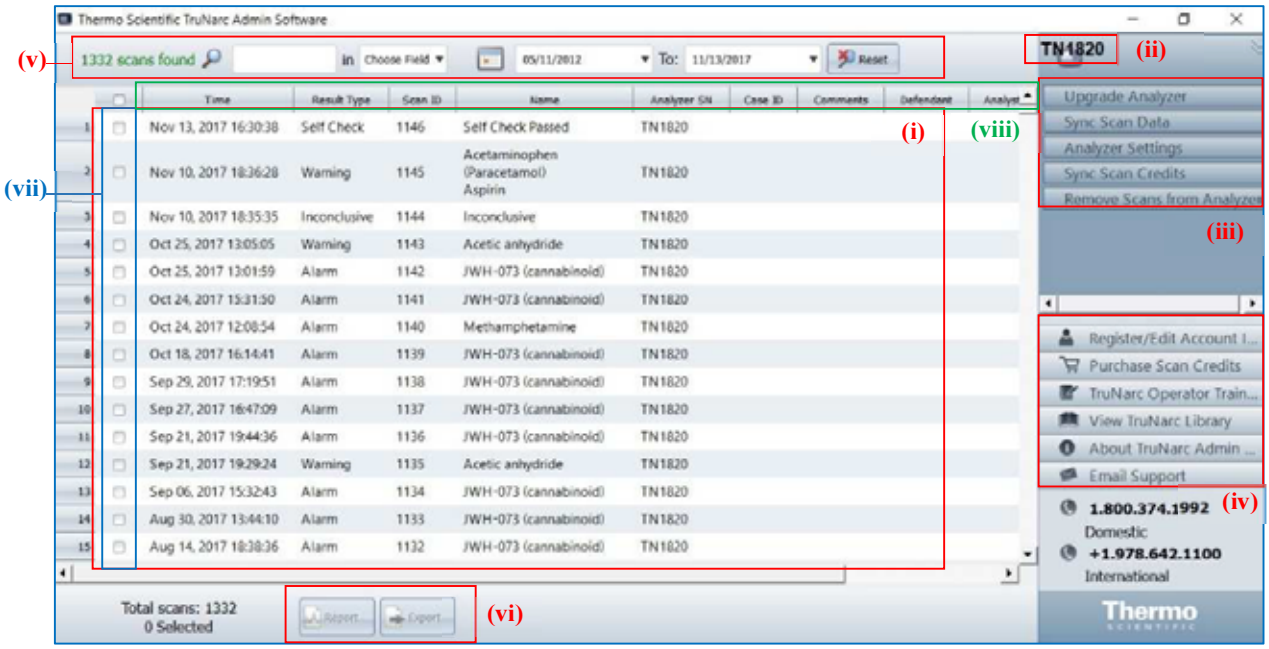


Fig. 14: Key features on main window of the TruNarc Admin software

7.2 Synchronisation of Scan Results

Synchronisation is performed to upload or copy scan results from the analyser to the computer/laptop. Such synchronisation process can be performed by the following steps:

(i) Open the TruNarc Admin software.

(ii) Power on the TruNarc analyser.

(iii) Connect the analyser to the computer/laptop with the use of the USB cable.

(iv) When the software opens, it will check to see if the analyser contains any new scan results or self-checkresults which have yet to be synchronised with the software. If there are such results available, the software will prompt the user to synchronise these scans.

(v) The" Analyser Detected" window appears. Click "Yes" to initiate the synchronisation process.

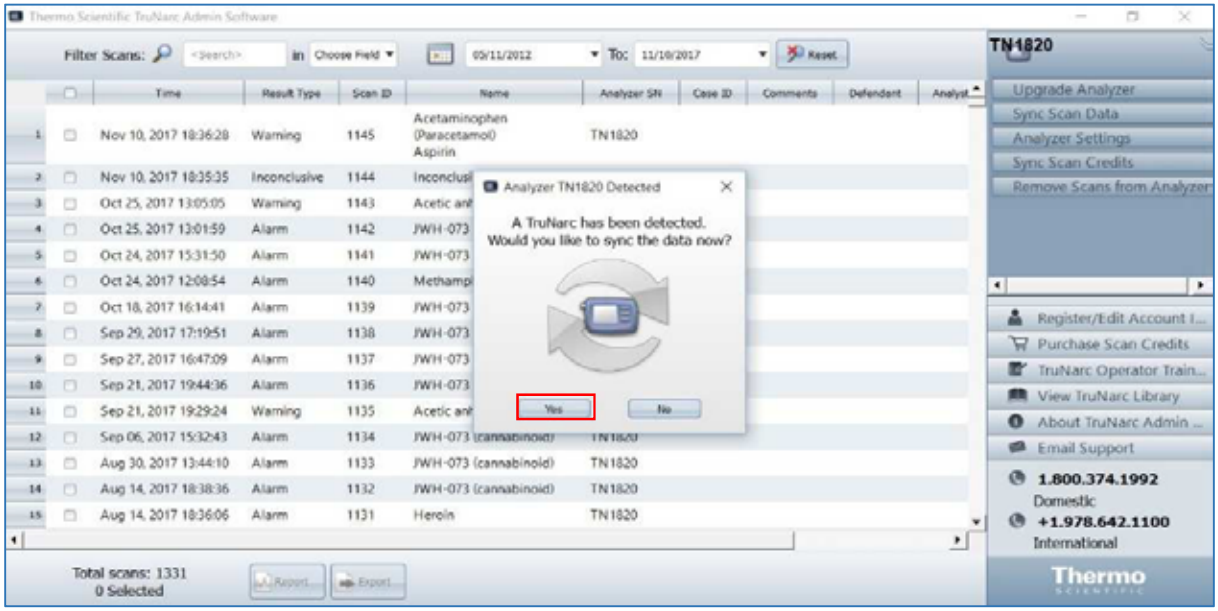


Fig. 15: Synchronisation of scan results

7.3 Searching for Scan Results

The TruNarc Admin software has search tools which allow the users to quickly locate their scans of interest. Such tools can be found in the main window of the software above the header row. Searching for scan results can be performed at any time even when the analyser is not connected to the computer/laptop as long as the required scans have already been synchronised with the software. Search for scan results can be performed either by selecting a category of interest or by selecting a date range.

7.3.1 Searching for Scan Results by Category

Searching for scan results by category can be performed by the following steps:

(i) Select the category of interest from the drop-down list by clicking on "▼".

(ii) Enter a search term in the box next to "Filter scans".

(iii) If the search is successful, a list showing all scans containing the specified word in the specified category will appear in the display area. If the search is unsuccessful, the display area will be empty.

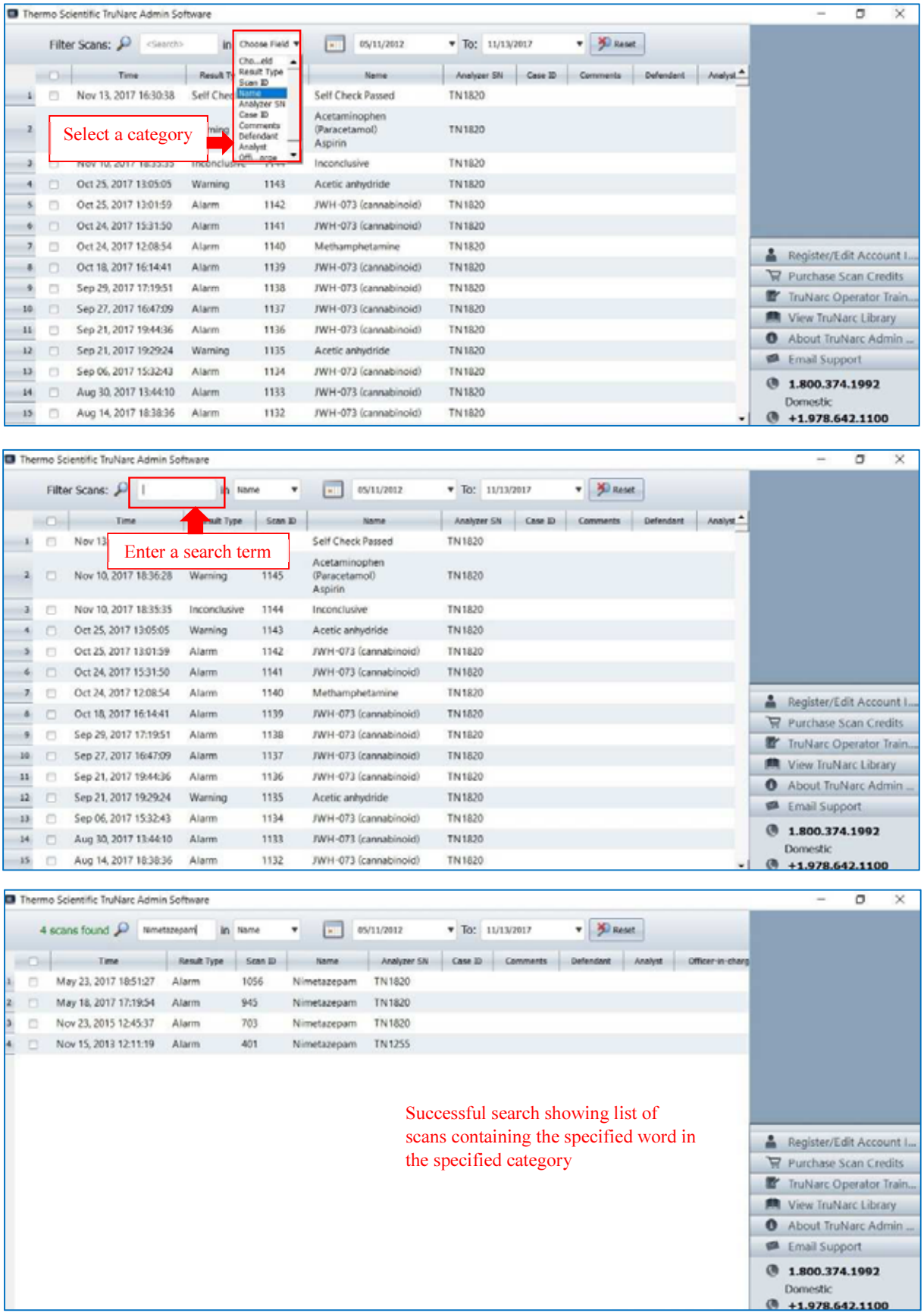


Fig. 16: Searching for scan results by category

7.3.2 Searching for Scan Results by Date Range

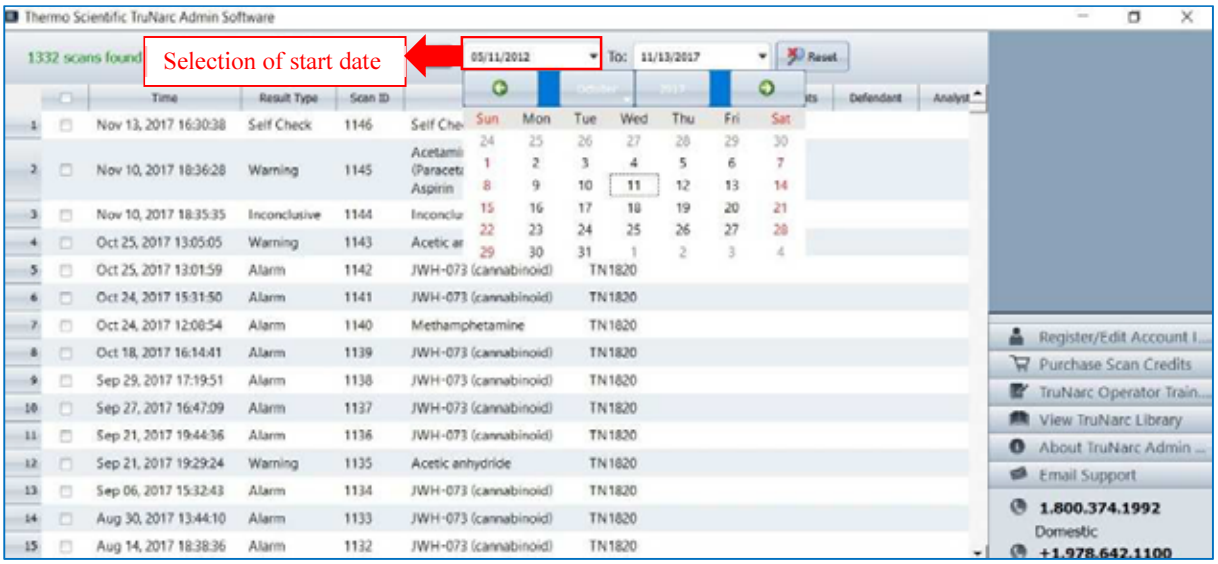
Searching for scan results by date range can be performed by the following steps:

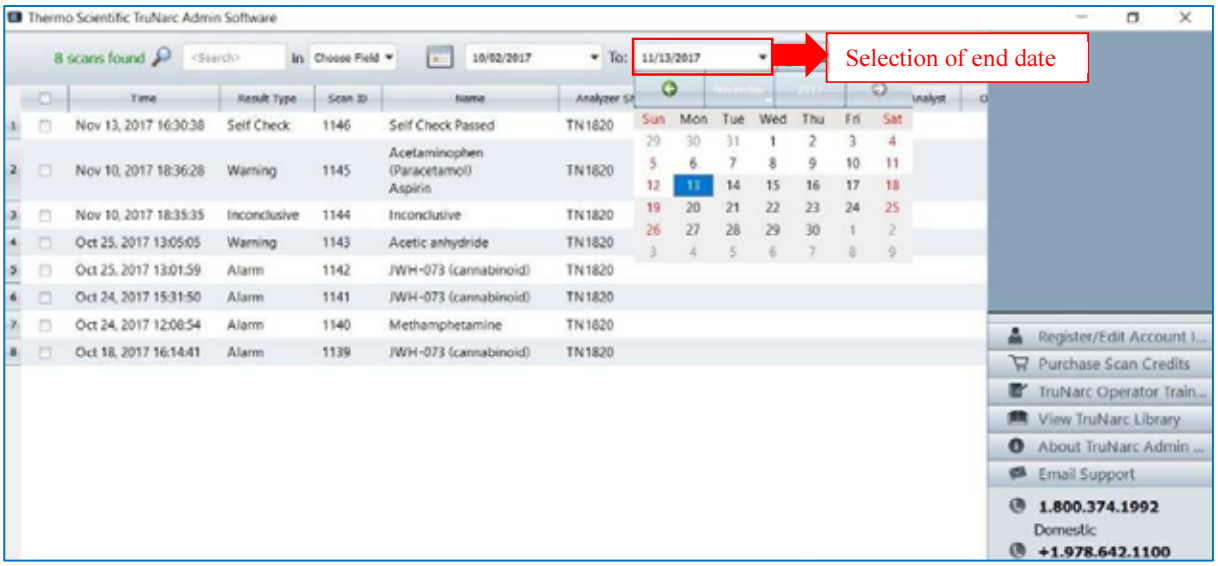
(i) Select the **start date** from the drop-down list by clicking on "▼" from the first date box. Any date from the calendar having a white background can be selected.

(ii) Select the **end date** from the drop-down list by clicking on "▼" from the second date box. Any date from the calendar having a white background can be selected.

(iii) If the search is successful, a list showing all scans performed between the date range will appear in the display area. If the search is unsuccessful, the display area will be empty.

(*Note:* Dates having a grey background cannot be selected as these dates fall after the date where the last scan result is synchronised to the software.)





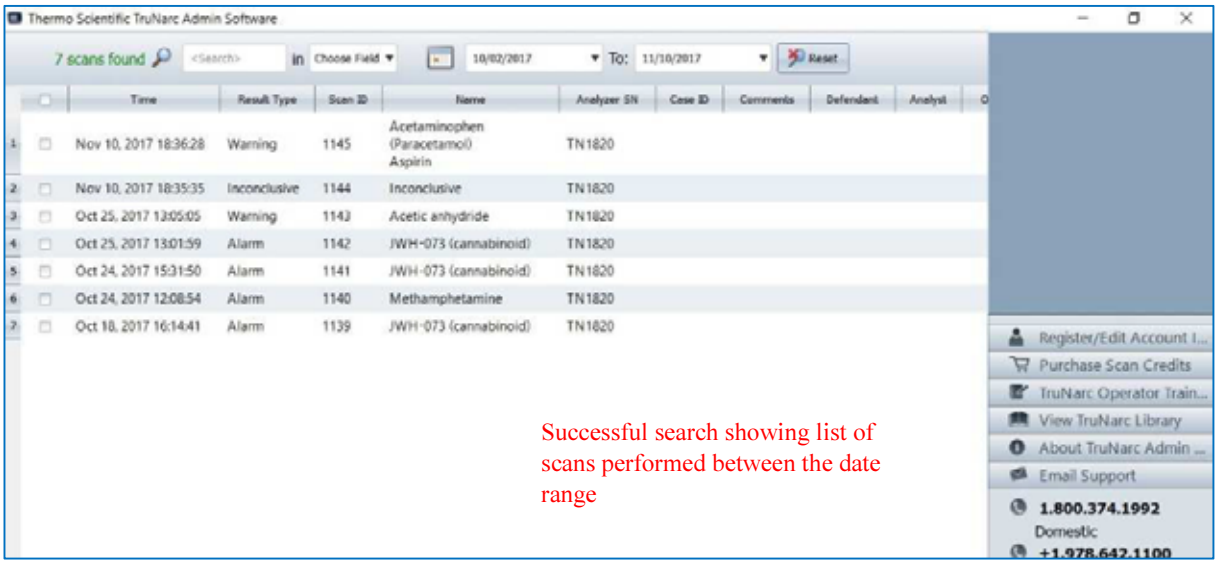


Fig. 17: Searching for scan results by category

7.4 Report Files

7.4.1 Information on Report File

A report file is a printable record of a specific scan result which can be attached to case records. Multiple report files can be easily created at any one time and information on such report files include:

(i) Scan spectrum which is the spectrum created by TruNarc analyser from the scan data it collects.

(ii) Library spectrum which is the spectrum that is saved in the TruNarc Substance Library.

(iii) Summary of information about the scan and self checks performed before and after the scan:

Scan	Result	Scan ID	Date and Time of Scan	Name of Compound	Analyser Serial No.
Self Check (Before and after scan)	Result	Scan ID	Date and Time of Scan	-	

(iv) Thermo Fisher Scientific logo which can be replaced with the organisational logo.

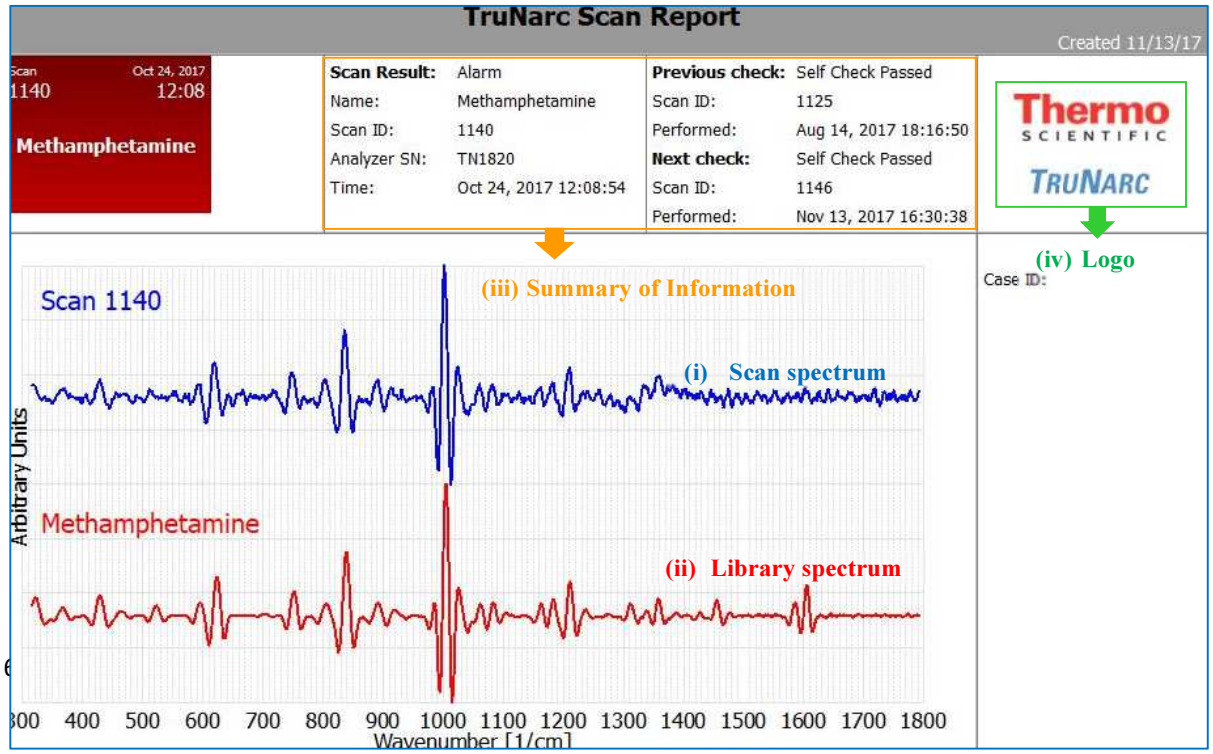


Fig. 18: Example of a report file

Report files can be created using the TruNarc Admin software by performing the following steps:

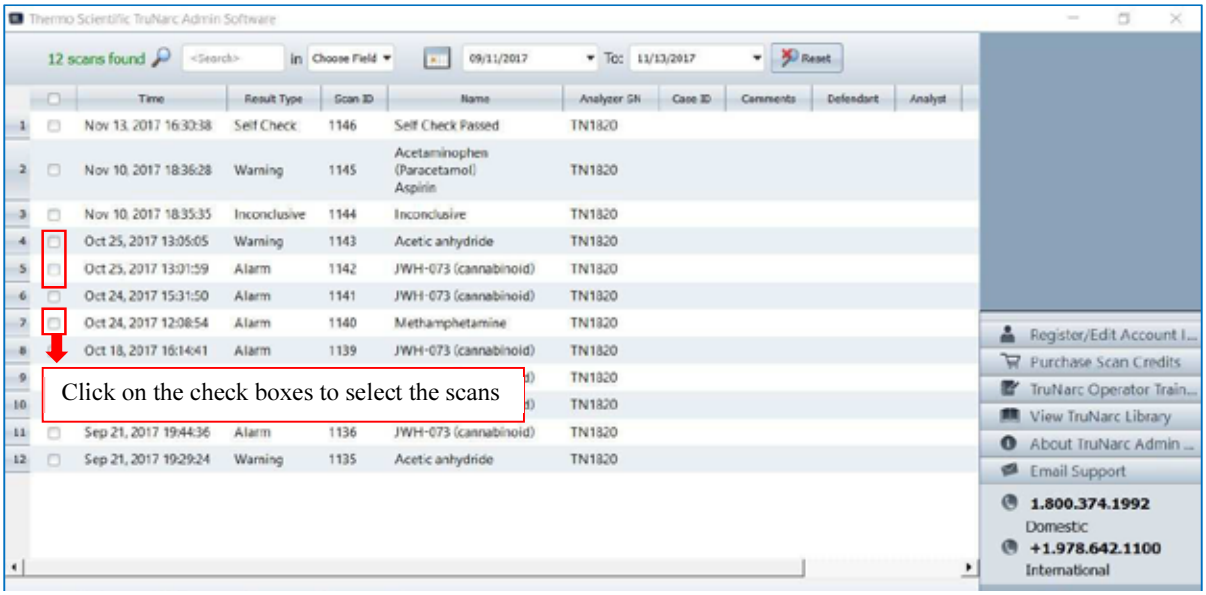
(i) Select the scan of interest by clicking on the check boxes of the scan.

(ii) Once the scans are selected (i.e. check boxes are ticked), the rows will be highlighted in yellow.

(iii) Click the "Report" button located at the bottom of the screen.

(iv) The Report Preview Window will appear immediately.

(v) If multiple scans are selected, click on "⬅" or "➡" to scroll through the preview of each report.



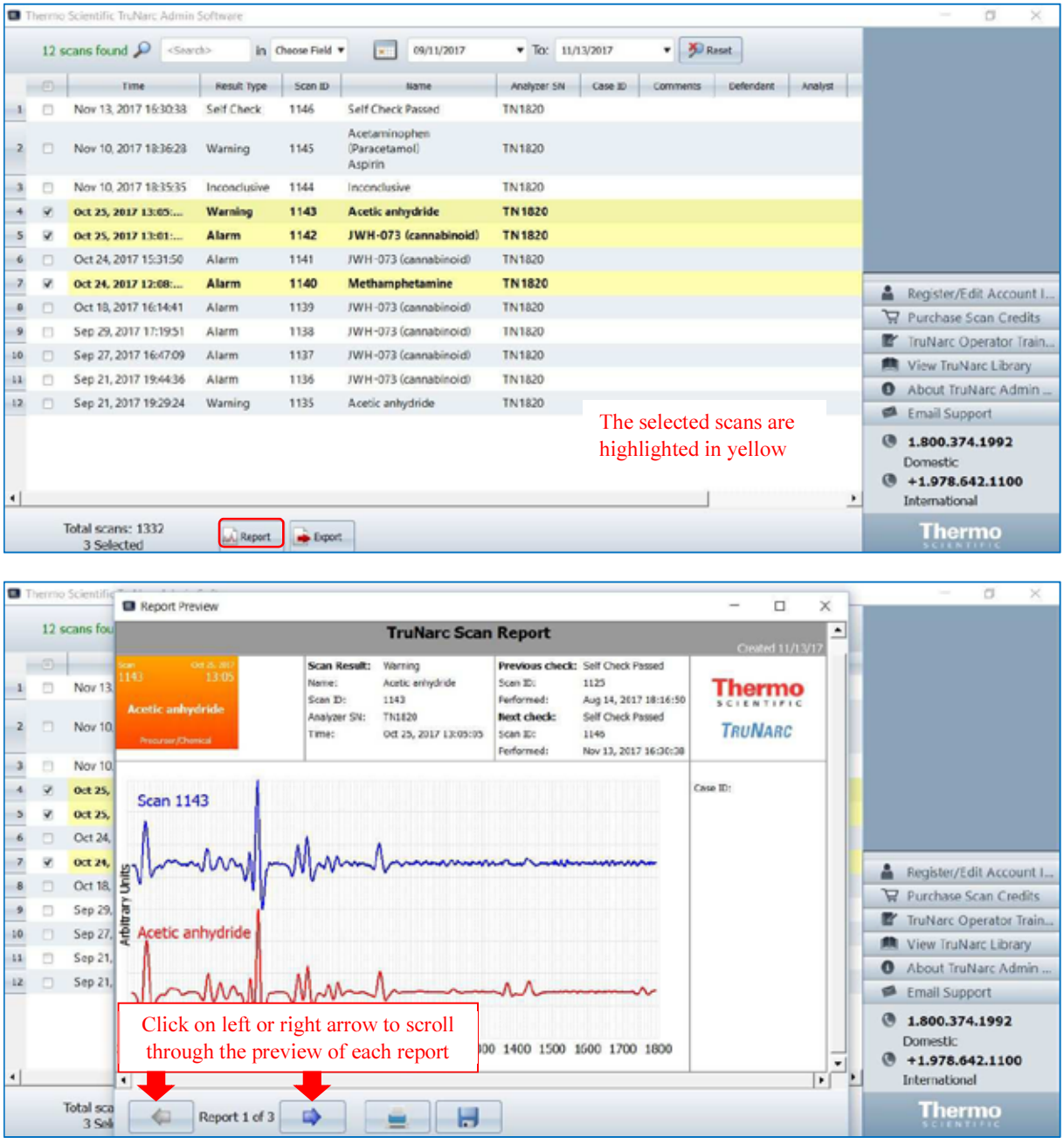


Fig. 19: Creation of report files

7.4.2 Printing of Report Files

The report files created can be printed by performing the following steps:

(i) Click on the "Print" button located at the bottom of the screen.

(ii) The Print window appears. Select the printer, specify the number of copies and the reports to be printed

(iii) Click “Print”.

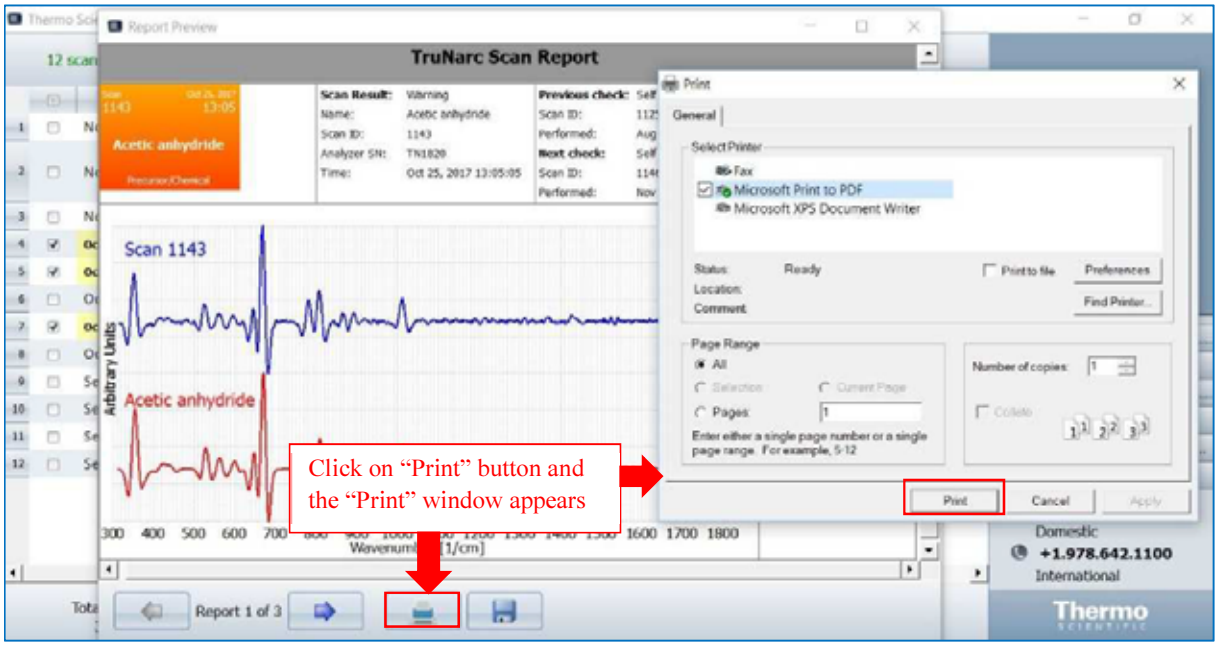


Fig. 20: Printing of report files

7.4.4 Saving of Report Files

A PDF copy of report files created can be saved by performing the following steps:

(i) Click on the “Save” button located at the bottom of the screen.

(ii) The Save PDF window appears. Specify the filename and location of the PDF file to be saved.

(iii) Click “Save”.

(*Note*: If the report preview shows more than one report, the PDF file saved will include all reports created.)

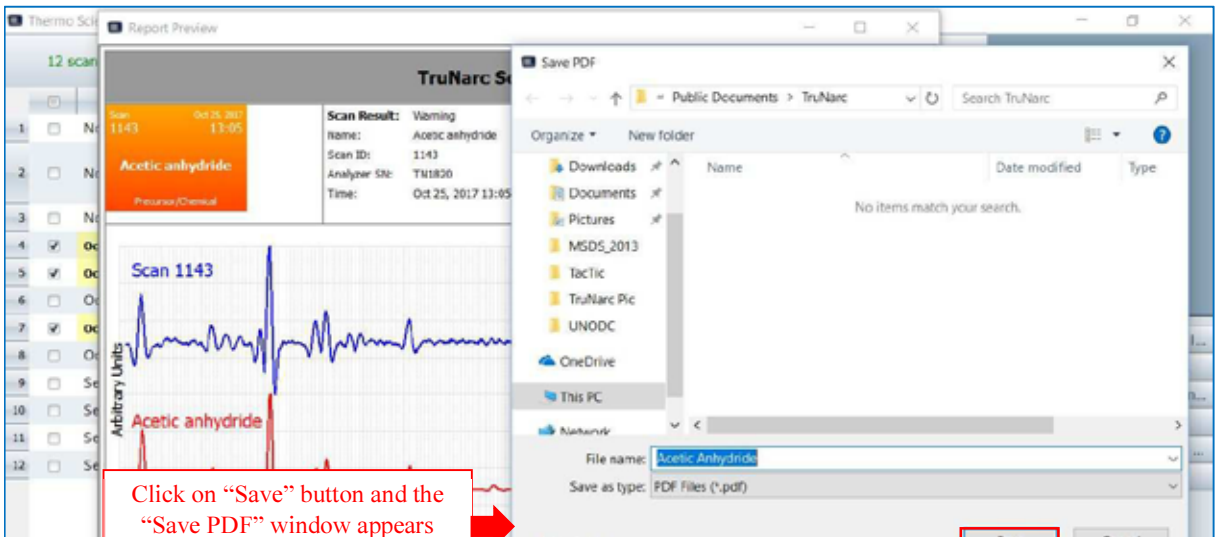


Fig. 21: Saving of report files

7.5 Resetting of Date/Time/Time Zone on TruNarc Analyser

It is important to update the date, time and time zone of the TruNarc analyser to match the local date and time of your country so that the timestamp on the scan results will be correct. Time setting on the TruNarc analyser can be changed using the TruNarc Admin software by performing the following steps:

(i) Open the TruNarc Admin software.

(ii) Power on the TruNarc analyser.

(iii) Connect the analyser to the computer/laptop with the use of the USB cable.

(iv) Click on the "Analyser Settings" button located on the right hand column.

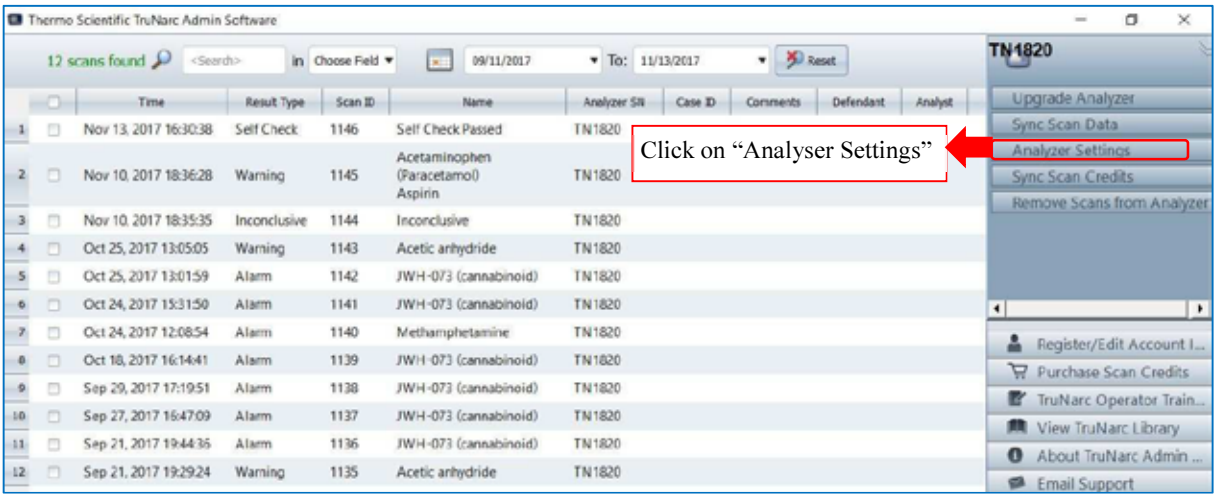
(v) The Analyser Setting window appears and shows the date, time and time zone currently set on the analyser.

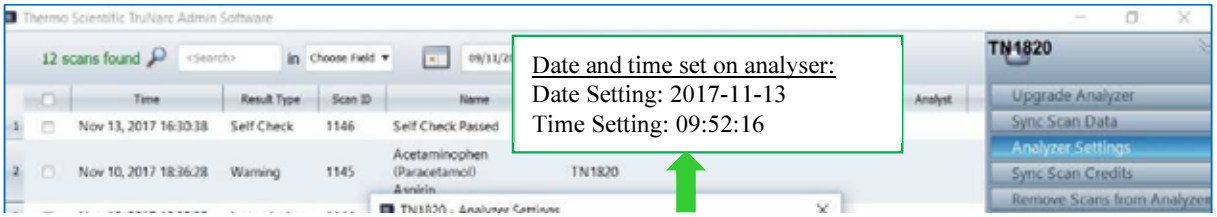
Note: Format of date setting: Year-Month-Day (e.g. 2017-11-13)

Format of time setting: Hour-Minutes-Seconds (e.g. 09: 52: 16)

(vi) To reset the date and time on the analyser, click on "Same Time as This Computer" check box. The date and time on the analyser will be updated to match that of the computer or laptop.

(vii) To reset the time zone, click on "▼" from the time zone drop-down list. Select the appropriate time zone and click "Set".





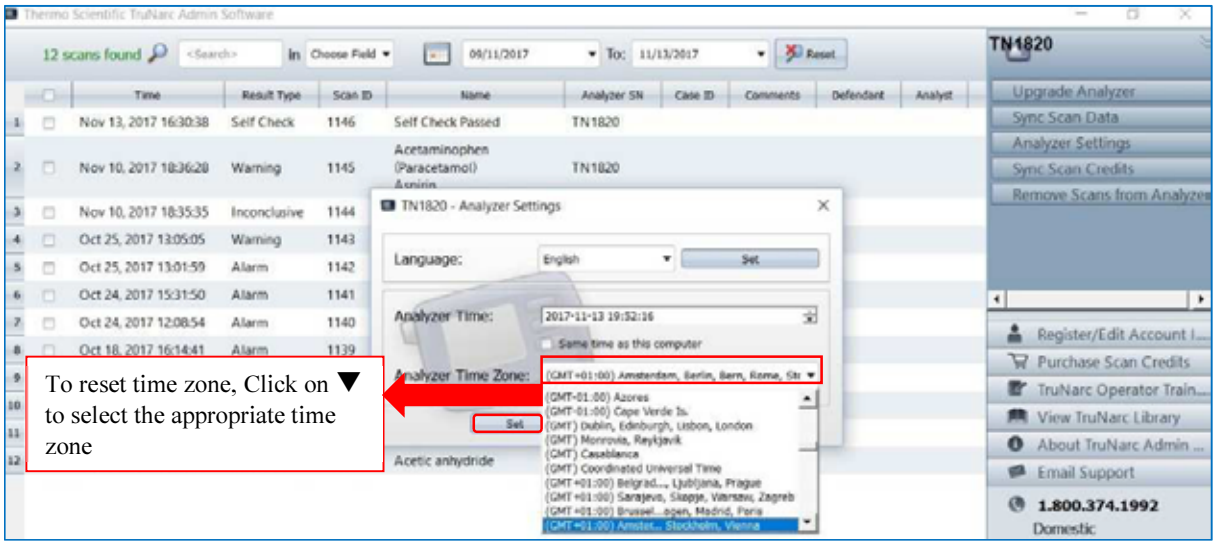


Fig. 22: Resetting of date, time and time zone on TruNarc analyser

7.6 Removing of Scan Results from TruNarc Analyser

Scan results may be removed from the TruNarc analyser once these scans have been uploaded or copied to the computer/laptop after synchronisation. For scan results that have yet to be synchronised, the TruNarc Admin software will prompt the user to perform synchronisation before he/she is allowed to remove these scans. Once the scan results are removed, they cannot be restored.

Scan results from the TruNarc analyser can be removed by performing the following steps:

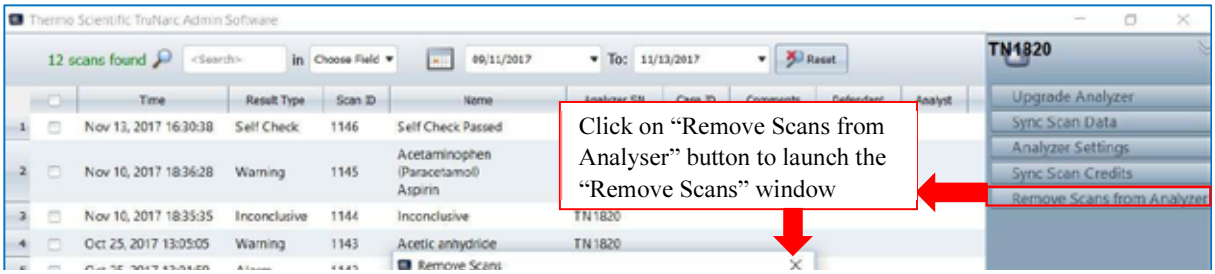
(i) Open the TruNarc Admin software.

(ii) Power on the TruNarc analyser.

(iii) Connect the analyser to the computer/laptop with the use of the USB cable.

(iv) Click on the "Remove Scans from Analyser" button located on right hand column.

(v) The Remove Scans window appears. Click "Yes".



7.7 Viewing and Updating of TruNarc Substance Library

The list of compounds present in the TruNarc Substance Library installed on the TruNarc analyser can be viewed using the TruNarc Admin software by performing the following steps:

(i) Click on the "View TruNarc Library" button located on the right hand column.

(ii) The TruNarc Substance Library window appears showing three columns, namely "Alarm", "Warning" and "Benign".

Alarm	Controlled substances
Warning	Drug precursors, essential chemicals as well as acetaminophen, aspirin and substances that create special scan warnings (e.g. polycarbonate and polystyrene)
Benign	Cutting agents and diluents

(iii) Click on "Close" button to exit this window after viewing.

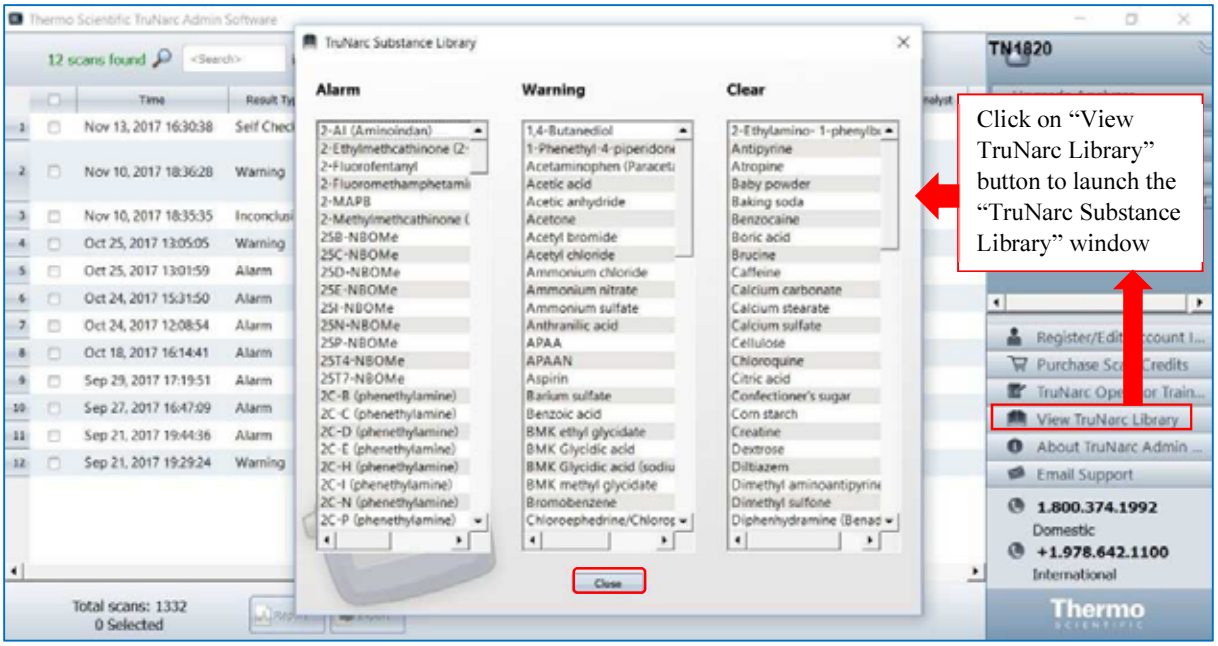


Fig. 24: Viewing of TruNarc Substance Library

8. References

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[ANNEX A: TRUNARC SUBSTANCE LIBRARY[2]]

TruNarc Substance Library: Display Names

Alarm

1. 25B-NBOMe
2. 25C-NBOMe
3. 25D-NBOMe
4. 25E-NBOMe
5. 25I-NBOMe
6. 25N-NBOMe
7. 25P-NBOMe
8. 25T4-NBOMe
9. 25T7-NBOMe
10. 2-AI (Aminoindan)
11. 2C-B (phenethylamine)
12. 2C-C (phenethylamine)
13. 2C-D (phenethylamine)
14. 2C-E (phenethylamine)
15. 2C-H (phenethylamine)
16. 2C-I (phenethylamine)
17. 2C-N (phenethylamine)
18. 2C-P (phenethylamine)
19. 2C-T-2 (phenethylamine)
20. 2C-T-7 (phenethylamine)
21. 2-Ethylmethcathinone (2-EMC)
22. 2-Fluorofentanyl
23. 2-Fluoromethamphetamine
24. 2-MAPB
25. 2-Methylmethcathinone (2-MMC)
26. 3,4-Dimethoxymethcathinone
27. 3-Bromoamphetamine
28. 3-Bromomethcathinone (3-BMC)
29. 3-Chloromethcathinone (3-CMC)
30. 3-Ethylmethcathinone (3-EMC)
31. 3-Fluoro amphetamine
32. 3-Fluorofentanyl
33. 3-Fluoromethcathinone (3-FMC)
34. 3-Fluorophenmetrazine
35. 3-MeO-PCP
36. 3-Methoxymethcathinone
37. 3-Methylmethcathinone (3-MMC)
38. 4-APDB
39. 4-Bromomethcathinone (4-BMC)
40. 4-Chloro 2,5-DMA
41. 4-Chloroethcathinone
42. 4-Chlorofentanyl
43. 4-Chloroisobutyryl fentanyl
44. 4-Chloromethcathinone (4-CMC)
45. 4-Chloro-N-isopropylcathinone
46. 4-Chloropentedrone (cathinone)
47. 4-Ethylmethcathinone
48. 4-Fluoro amphetamine
49. 4-Fluoro methamphetamine
50. 4-Fluoro PVB
51. 4-Fluoro-alpha-PVP
52. 4-Fluorobuphedrone (cathinone)
53. 4-Fluorobutyryl fentanyl
54. 4-Fluorofentanyl
55. 4-Fluoromethcathinone (4-FMC)
56. 4-Fluoropentedrone (cathinone)
57. 4-MeO-alpha-PVP
58. 4-MeO-DMT
59. 4-MeO-PCP
60. 4-Methoxy PVB
61. 4-Methylaminorex
62. 4-Methylethcathinone (4-MEC)
63. 4-Methylpentedrone (cathinone)
64. 5-APB
65. 5-APDB
66. 5-Chloro AB-PINACA (cannabinoid)
67. 5-DBFPV
68. 5-EAPB
69. 5-Fluoro ABICA (cannabinoid)
70. 5-Fluoro AB-PINACA (cannabinoid)
71. 5-Fluoro ADBICA (cannabinoid)
72. 5-Fluoro AKB48 (cannabinoid)
73. 5-Fluoro AMB (cannabinoid)
74. 5-Fluoro MN-18 (cannabinoid)
75. 5-Fluoro NNEI (cannabinoid)
76. 5-Fluoro NPB-22 (cannabinoid)
77. 5-Fluoro PB-22 (cannabinoid)
78. 5-Fluoro SDB-006 (cannabinoid)
79. 5-IAI
80. 5-IT
81. 5-MAPB
82. 5-MeO-DALT
83. 5-MeO-DIPT
84. 6-APDB
85. 6-EAPB
86. 7-APDB
87. AB-001 (cannabinoid)
88. AB-CHMINACA (cannabinoid)
89. AB-FUBINACA (cannabinoid)
90. AB-PINACA (cannabinoid)
91. Acetyl fentanyl
92. Acrylfentanyl
93. ADB-FUBINACA (cannabinoid)
94. AH-7921
95. AKB48 (APINACA) (cannabinoid)
96. Alfentanil
97. alpha-Methyltryptamine (AMT)
98. alpha-PVP (cathinone)
99. AM-1235 (cannabinoid)
100. AM-1241 (cannabinoid)
101. AM-2201 (cannabinoid)
102. AM-2233 (cannabinoid)
103. AM-630 (cannabinoid)
104. AM-694 (cannabinoid)
105. Amphetamine
106. APICA (cannabinoid)
107. APP-CHMINACA (cannabinoid)
108. APP-PICA (cannabinoid)
109. BB-22 (cannabinoid)
110. bk-2C-B
111. Bromo-dragonFLY (phenethylamine)
112. Buphedrone (cathinone)
113. Buprenorphine
114. Butalbital
115. Butylone (cathinone)
116. Butyryl fentanyl
117. BZP
118. Carfentanil
119. Carisoprodol
120. Cathinone
121. Chloro amphetamine
122. Clonazepam
123. Clonazolam
124. Cocaine
125. Cocaine base
126. Cocaine HCl
127. Codeine
128. CP-47 497 (cannabinoid)
129. CUMYL-THPINACA (cannabinoid)
130. Cyclobenzaprine
131. Dextromethorphan (DXM)
132. Diazepam
133. Dibutylone (bk-DMBDB) (cathinone)
134. Diclazepam
135. Diethylcathinone
136. Dimethyl cathinone
137. Dimethyl methcathinone
138. Dimethylaminorex (DMAR)
139. Dimethylone (bk-MDDMA) (cathinone)
140. Dimethyltryptamine (DMT)
141. Diphenidine
142. Diphenylprolinol (D2PM)
143. EAM-2201 (cannabinoid)
144. Ethcathinone
145. Ethylone (bk-MDEA) (cathinone)
146. Ethylphenidate
147. Etizolam
148. Eutylone (bk-EBDB) (cathinone)
149. FDU-PB-22 (cannabinoid)
150. Fenethylline
151. Fentanyl
152. Flubromazepam
153. Flunitrazepam
154. FUB-AMB (cannabinoid)
155. FUB-PB-22 (cannabinoid)
156. Furanyl fentanyl
157. Gabapentin
158. GBL
159. GHB
160. Heroin
161. HU-210 (cannabinoid)
162. HU-211 (cannabinoid)
163. Hydromorphone
164. β-Hydroxythiofentanyl
165. Isobutyryl fentanyl
166. JWH-015 (cannabinoid)
167. JWH-018 (cannabinoid)
168. JWH-019 (cannabinoid)
169. JWH-020 (cannabinoid)
170. JWH-073 (cannabinoid)
171. JWH-081 (cannabinoid)
172. JWH-122 (cannabinoid)
173. JWH-200 (cannabinoid)
174. JWH-203 (cannabinoid)
175. JWH-210 (cannabinoid)
176. JWH-250 (cannabinoid)
177. JWH-412 (cannabinoid)
178. Ketamine
179. Lisdexamfetamine
180. MAB-CHMINACA (cannabinoid)
181. MAM-2201 (cannabinoid)
182. mCPP
183. MDA
184. MDAI
185. MDEA
186. MDMA
187. MDMB-CHMICA (cannabinoid)
188. MDMB-FUBINACA (cannabinoid)
189. MDPBP (cathinone)
190. MDPHP
191. MDPPP (cathinone)
192. MDPV (cathinone)
193. Mephedrone (cathinone)
194. Mephtetramine (MTTA)
195. Mescaline-NBOMe
196. Methadone
197. Methamphetamine
198. Methaqualone
199. Methcathinone
200. Methedrone (cathinone)
201. Methoxetamine (MXE)
202. Methoxphenidine (MXP)
203. Methylone (cathinone)
204. Methylphenidate
205. Mexedrone (cathinone)
206. MN-18 (cannabinoid)
207. MN-24 (NNEI) (cannabinoid)
208. MN-25 (cannabinoid)
209. Morphine
210. MPHP (cathinone)
211. Naphyrone (cathinone)
212. N-Ethylpentylone (cathinone)
213. Nimetazepam
214. Nitracaine
215. NPB-22 (cannabinoid)
216. NRG-3 (cathinone)
217. Oxazepam
218. Oxycodone
219. Oxymorphone
220. PB-22 (cannabinoid)
221. PCP
222. Pentedrone (cathinone)
223. Pentylone (cathinone)
224. Phenazepam
225. Phentermine
226. PMA
227. PMEA
228. PMMA
229. Pravadoline
230. PX-1 (cannabinoid)
231. PX-2 (cannabinoid)
232. RCS-4 (cannabinoid)
233. RCS-8 (cannabinoid)
234. STS-135
235. Sufentanil
236. Temazepam
237. TFMPP
238. THJ-2201 (cannabinoid)
239. Tramadol
240. U-47700
241. UR-144 (cannabinoid)
242. UR-144 analog (cannabinoid)
243. Valeryl fentanyl
244. W-18
245. XLR-11 (cannabinoid)
246. XLR-11 N-(4-pentenyl)
247. Zolpidem

ANNEX A: TRUNARC SUBSTANCE LIBRARY[8]

Type H Alarm

1. 25B-NBOMe
2. 25C-NBOMe
3. 25I-NBOMe
4. 2C-B (phenethylamine)
5. 2C-E (phenethylamine)
6. 2C-I (phenethylamine)
7. Alprazolam
8. Buprenorphine*#
9. Clonazepam*
10. Cocaine
11. Diazepam
12. Fentanyl Compound^†
13. Heroin
14. Hydromorphone*
15. Lorazepam*
16. MDMA*
17. Methamphetamine †
18. Oxycodone*
19. Oxymorphone*
20. Synthetic Cannabinoid+
21. U-47700

Notes:
* Some low dose pills require a Type H Kit for identification.
# Buprenorphine both tablet and strip.
+ A "Synthetic Cannabinoid" screen result encompasses the individual cannabinoids listed above.
^ Fentanyl Compound includes fentanyl and fentanyl analogs.
† Combined result

Clear

1. 2-Ethylamino- 1-phenylbutane
2. Antipyrine
3. Atropine
4. Baby powder
5. Baking soda
6. Benzocaine
7. Boric acid
8. Brucine
9. Caffeine
10. Calcium carbonate
11. Calcium stearate
12. Calcium sulfate
13. Cellulose
14. Chloroquine
15. Citric acid
16. Confectioner's sugar
17. Corn starch
18. Creatine
19. Dextrose
20. Diltiazem
21. Dimethyl aminoantipyrine
22. Dimethyl sulfone
23. Diphenhydramine (Benadryl)
24. Dipyrone
25. Epsom salt
26. Ethanol
27. Ethyl benzoate
28. Fructose
29. Glucose
30. Glutamine
31. Griseofulvin
32. Guaifenesin
33. Gypsum
34. High density polyethylene
35. Hydroxyzine
36. Inositol
37. Isopropyl benzylamine
38. Lactose
39. Levamisole (Tetramisole)
40. Lidocaine
41. Loratidine
42. Low density polyethylene
43. Magnesium stearate
44. Magnesium sulfate
45. Maltose
46. Mannitol
47. Methyl salicylate
48. Methylhexanamine (DMAA)
49. Minoxidil
50. Naloxone
51. Naproxen
52. Nicotinamide
53. Nicotine
54. Nicotinic acid
55. N-Methyl-phenethylamine
56. Noscapine
57. Papaverine
58. Phenacetin
59. Piracetam
60. Plaster of Paris
61. Poly(propylene glycol)
62. Polyethylene glycol
63. Polyethylene terephthalate
64. Polypropylene
65. Polyvinyl chloride
66. Procaine
67. Propyphenazone
68. Quinine
69. Saccharin
70. Silicon dioxide
71. Sodium sulfate
72. Sorbitol
73. Sucrose
74. Sugar
75. Tetracaine
76. Theophylline
77. Titanium oxide
78. Vitamin C

Precursor/Chemical

1. 1,4-Butanediol
2. 1-Phenethyl-4-piperidone (NPP)
3. Acetic acid
4. Acetic anhydride
5. Acetone
6. Acetyl bromide
7. Acetyl chloride
8. Ammonium chloride
9. Ammonium nitrate
10. Ammonium sulfate
11. Anthranilic acid
12. APAA
13. APAAN
14. Barium sulfate
15. Benzoic acid
16. BMK ethyl glycidate
17. BMK Glycidic acid
18. BMK Glycidic acid (sodium salt)
19. BMK methyl glycidate
20. Bromobenzene
21. Chloroephedrine/ Chloropseudoephedrine
22. Chloroform
23. Chlorophenyl cyclopentyl ketone
24. Chloropseudoephedrine
25. Cyclohexane
26. Cyclohexanone
27. Despropionyl fentanyl (ANPP)
28. Dichloromethane
29. Diethyl ether
30. Dihydrosafrole
31. Dimethylacetamide
32. Ethyl acetate
33. H-Phe-Cyclohexylamide
34. Hydroxylamine
35. Hydroxylimine
36. Hypophosphorous acid
37. Isopropanol
38. Isosafrole
39. Lead acetate
40. Methanol
41. Methyl ethyl ketone (MEK)
42. Methylamine HCl
43. N-Methylephedrine
44. Norephedrine
45. Palladium chloride
46. Phenethylamine
47. Phenyl-2-propanone (P2P, BMK)
48. Phenylacetic acid
49. Phenylnitropropene
50. Phosphoric acid
51. Piperidine
52. Piperonal
53. Piperonyl methyl ketone (PMK, MDP2P)
54. PMK (MDP2P) methyl glycidate
55. PMK Glycidic acid (sodium salt)
56. Potassium permanganate
57. Propyl acetate
58. Pseudoephedrine
59. Red phosphorus
60. Safrole
61. Sodium acetate
62. Sodium carbonate
63. Sulfuric acid
64. Toluene
65. White Fuel (camping)
66. Xylene

Warning

1. Acetaminophen (Paracetamol)
2. Aspirin
3. Ephedrine
4. Ibuprofen

Note: These substances have a strong Raman signal which can mask certain narcotics. Additional testing via an alternate method is recommended.

Friday, August 14, 2020
8:30 – 9:30 – Part 1
10:40 – 12:00 – Part 2

Case Law Update Part 1

(1.2 CLE)

Case Law Update Part 2

(1.6 CLE)

Judge Michael Svetlic, Mr. Joseph Cambiano & Judge Jeff Eastman

2020 Annual Case Law Update

Missouri Municipal and

Associate

Circuit Judges Association

DISCLAIMER: This document is not intended by either the Missouri Municipal or Associate Circuit Judges Association to serve as a legal opinion or to render legal advice. This case law update is provided by the Association merely as an educational and informational tool.

2020 Case Law Update

Presented by:

The Honorable Joe Cambiano
Prosecutor, Cleveland, Harrisonville, and Freeman,
Managing Partner for Rubins, Kase, Hager, and Cambiano P.C.;

and

The Honorable Michael J. Svetlic,
Municipal Judge, Pleasant Valley and Trimble

Grateful appreciation is extended to Mike Svetlic's Paralegal, Tracy Siehndel, who assisted in the compilation of these materials.

Missouri Municipal & Associate Circuit Judges Association Conference
Lodge of the Four Seasons
August 14, 2020

Table of Contents

I. SEARCH and SEIZURE

In a qualified immunity suit against law enforcement, Section 544.216 R.S.Mo. was found by the trial court to include a "wanted" entered into a computer system by law enforcement.

***Dwayne Furlow, et al. v. John Belmar, et al.*, __S.W.3d__**
US District Court Case No: 4:16CV254HEA (E.D. MO. 2018)

A cigarette pack discovered during a search of the Defendant's person qualified as an item immediately associated with his person, and furthermore, it was irrelevant that the officer searched the pack in a separate room 30 minutes after the Defendant was arrested.

***Cletus Greene v. State of Missouri*, __S.W.3d__(Mo. App 2019) SC96973**

In a cell phone search warrant case, the Court of Appeals held that the language in the search warrant 'black Samsung with black case" describes, sufficiently, the item to be search with the accompanying person in possession of same, without necessity of including the phone number of the cell phone that law enforcement sought to search.

***State of Missouri v. James Christopher Bales*, __S.W.3d__(Mo. App 2020) SD36197 (SC98376)**

Traffic stop, because of a stop sign violation allowed search of a motor vehicle, where a dashcam video revealed Defendant's voluntary and feely consenting to search of motor vehicle.

***State of Missouri v. Bryan F. Burns*, __S.W.3d__(Mo. App 20___) SD36155**

Defendant, pedestrian was stopped along the highway in a high crime area by a police officer in a vehicle flashing emergency lights. The subsequent search and confiscation of drugs was found to unreasonable and illegal because the stopping of the pedestrian, with emergency lights on a vehicle showed a "show of authority" constituting a restraint of the liberty of the Defendant.

***State of Missouri v. Derek L. Johnson*, 599 S.W.3d 196 (Mo. App 2020) WD82131**

Even though the trial court erred in not sustaining Defendant's Motion to Suppress, there was no evidence at the bench trial that the trial court relied on inadmissible evidence in making its findings.

***State of Missouri v. Harry Little*, __S.W.3d__(Mo. App. 2020) ED107404**

For the first time, the Missouri Supreme Court holds that a Defendant completely crossing the fog line with his motor vehicle was a violation of Section 304.015 R.S.Mo. and as a result, an officer had probable cause to stop the vehicle, and said stop did not constitute an unreasonable seizure .

> ***State of Missouri v. Anthony James Smith*, __S.W.3d__(Mo. App. 2020) SC97811**

II. CRIMINAL PROCEDURE

The trial court did not err denying the Defendant's repeated requests to represent himself when Defendant engaged in serious, obstructionist misconduct.

> ***State of Missouri v. Jeffrey Scott Kowalski*, 587 S.W.3d 411 (Mo. App. 2019) SD35734 & SD35752 consolidated**

The Sixth Amendment grants an accused the right to counsel, which can be waived, thus allowing the party to proceed pro se. Such requests must be timely, informed, voluntary and unequivocal.

> ***State v. Kowalski,* 587 S. W. 3d 709 (Mo. App. 2019)**

In an action for post conviction relief, Defendant's counsel was not rendering ineffective assistance of counsel to his client by pointing out to Defendant that because additional time was required to prepare for and participate in a trial, attorney's fees for representation on a criminal case resolved by a trial can exceed those in which a criminal case is resolved through a guilty plea before trial.

> ***Frank Peter Renick, Jr. v. State of Missouri*, 592 S.W. 3d 411 (Mo. App. 2020) SD36140**

Advising the party that he would likely receive probation and that a trial would be expensive is not ineffective assistance of counsel.

> ***Renick v. State of Missouri,* 592 S.W. 3d 411 (Mo. App. 2020)**

III. STATUTORY INTERPRETATION

Section 610.140 allows expungement of certain records. Its requirements and time limits must be met to qualify. Section 610 .140 allow certain offenses, violations, and infractions to be expunged. However, there are a list of ten categories of offensives, violations, and infractions ineligible for expungement. A Petitioner must meet the statutory criteria to be allowed expungement of the record.

> ***L.F. W. v. Missouri State Highway Patrol Criminal Records Repository, et al.,* 585 S.W. 3d 846 (Mo.App.2019)**

Sufficient evidence for the offense of resisting arrest can exist where the actions of the officer objectively lead to the belief that a criminal offense has occurred. In

the case of a felony resisting of arrest the case does not turn on whether the officer subjectively contemplated arresting the individual for a felony offense.

***State v. Shaw*, 592 S.W. 3d 354 (Mo. App. 2019)**

The Missouri Expungement statute, Section 610.122, and the exception statute, 610.140, make an expunged record a legal nullity unless the express statutory exception is met.

***T.V.N. v. Missouri State Highway Patrol Criminal Justice Information Services*, 588 S.W. 3d 245 (Mo. App. 2019)**

IV. SELF INCRIMINATION

The privilege against self-incrimination can be waived. If a party is seriously injured, they can still make a voluntary statement absent evidence that he or she did not understand the subject matter of the conversation as a result of the injuries.

***State v. Gray*, 591 S.W. 3d 65 (Mo. App. 2019)**

A party can make a judicial admission that concedes a proposition is true for purposes of criminal litigation. This admission can also be made by an attorney in open court during the trial which statement would be against the interest of his clients. The statement would be presumed true and the court can act on it accordingly. It is a substitute for evidence and it dispenses of proof of the fact.

***State v. Lindsey*, 597 S.W. 3d 240 (Mo. App 2019)**

V. EVIDENCE

A person with knowledge of the presence of a substance and nature of a substance has actual or constructive possession of the substance. Actual possession is within easy reach or convenient control of the substance. A person though not in actual possession who has power or the intention at any given time to exercise dominion or control is in constructive possession. Possession can also be soul or joint.

***State v. Barnett,* 595 S.W. 3d 315 (Mo. App. 2020)**

The admissibility of evidence of civil litigation comes down to an issue of relevance for purposes of admissibility. Relevance is a two-tiered approach: the evidence must be both logical and legal.

***State v. Christian*, 585 S. W. 3d 403 (Mo. App. 2019)**

Generally, statements against penal interest are not exceptions to the hearsay rule. However, they may be admitted in limited circumstances where due process is implicated and there's a strong reliability of the statement. This exception is very narrow.

***State v. Floyd,* 590 S.W. 3d 908 (Mo. App. 2019)**

The present- sense - impression exception to the hearsay rule make statements admissible that are simultaneous with the occurrence, describe the occurrence, and perceived by the Declarant with his or her own senses.

State v. Gyunashev, **592 S.W. 3d 836 (Mo. App. 2020)**

An expert is qualified by knowledge, skill, experience training or education. Missouri case law draws a line between generalized opinion testimony on a subject and opinion testimony that applies the general principle to the specific evidence in the crime before the jury. The former is allowed but not the latter.

State v. Loper, **ED 106525, 11/12/2019**

Security camera footage can be admitted under the "silent witness" theory. The footage acts as a proxy witness of the event it depicts and is admissible if the camera and security system used to capture the footage display indicia of reliability.

State v. Whittier, **591 S.W. 3d 19 (Mo. App. 2019)**

VI. SUPREME COURT AND FEDERAL CASES

A Defendant may be convicted of what would appear to be duplicating convictions on a State and Federal level because the Supreme Court permits, the "Separate Sovereigns" to prosecute for the same crime which is not an exception to the Double Jeopardy Clause.

Gamble v. United States, **139 S. Ct. 1960 (2019)**

Is the Fourth Amendment violated by an officer making an investigative stop of a motor vehicle suspecting that the registered owner is the one driving the vehicle, absent any information to the contrary?

Kansas v. Glover, **139 S. Ct. 1445 (2019)**

The exigent circumstances exception to the warrant requirement "almost always permits a blood test without a warrant" when a breath test is impossible, such as when the motorist is unconscious. Therefore, when a driver is unconscious, the general rule is that a warrant is not needed.

Mitchell v. Wisconsin, **139 S. Ct. 2525 (2019)**

Motor vehicle passenger was found to lack a reasonable expectation of privacy and therefore did not have standing to challenge a pretextual inventory search of a motor vehicle.

United States of America v. Dylan Anthony Davis, (8th Cir. No. 18-2975)
943 F.3d 1129 (2019)

Use of evidence in prosecution obtained as a result of a private search does not subject a conviction to a Fourth Amendment attack because private searches are not within the purview of the Fourth Amendment.

> ***United States of America v. Dennis M Suellentrop, Jr.,*** **(8th Cir. No 19-1002) 953 F.3d 1047 (2020)**

VII. JUDICIAL POTPOURRI

Indiana Judge who raised her middle finger at 2 men who yelled something from an SUV to her and 2 other judges received ethical complaints against her for her conduct.

> ***In Re: Judge Sabrina Bell, Crawford County District Court, Indiana***

Judge is suspended without pay after guilty plea in underwear case.

> ***In Re: Suspension of Judge Robert Cicale, New York Court of Appeals, September, 2019***

Judge faces ethics charges for reality TV show featuring courtroom domestic violence cases.

> ***In Re: Judge Carroll Kelly, 11th Judicial Circuit of Florida, Miami-Dade County, May 12, 2020***

Federal Judge reprimanded for, "very serious, long term, behavior involving employees and felon".

> ***In Re: Judge Carlos Murguia, 10th Circuit***

Officers said they smelled pot. The Judge called them liars.

> ***In Re: The Opinion of Judge April Newbauer, New York Supreme Court for the Bronx, July, 2019***

An elected Illinois Judge was removed from the bench on accusations that he lied about accidently firing a gun in his apartment, and retaliated against two court employees who complained about sexual harassment.

> ***In Re: The Removal of Judge Patrick J. O'Shea, Illinois Courts Commission, September 27, 2019 Order***

Lawyer accused of stealing estate money for wife's breast implants, and child support gets interim suspension.

> ***In Re: The Matter of Brian M. Wiggins, Dayton, Ohio, May 4, 2020***

CASE LAW SUMMARIES

I. SEARCH and SEIZURE

In a qualified immunity suit against law enforcement, Section 544.216 R.S.Mo. was found by the trial court to include a "wanted" entered into a computer system by law enforcement.

Dwayne Furlow, et al. v. John Belmar, et al.,
US District Court Case No: 4:16CV254HEA (E.D. MO. 2018)

Plaintiffs in this case sued a variety of law enforcement officers with the St. Louis County Police Department alleging violation of civil rights and other violations from arrests that took place based upon "wanteds" entered into the police department's computer system by law enforcement. Under Missouri law, a law enforcement officer "may arrest on view, and without a warrant, any person the officer sees violating, or who such officer has reasonable grounds to believe has violated any ordinance or law of this State, including a misdemeanor or infraction, over which such officer has jurisdiction." *Section 544.216 R.S.Mo*.

A "wanted" is entered into a computer system by law enforcement, identifying a person who is wanted for a crime but for who no warrant has been issued. Wanteds differ from warrants in that no judicial determination of probable cause is required to enter a wanted.

The procedure that was followed by the St. Louis County Police Department was that when an individuals name is run in the computer system and there is a wanted issued for that person, the computer will return the wanted to the officer running the search. The information viewable to the searching officer includes the name of the officer who issued the wanted and the crime for which the person is wanted. The wanted does not describe the probable cause on which it is based. If an officer encounters a person with a wanted issued against him or her, the officer is authorized by the Department policy to take that person into custody.

The Eastern District ruled that arrests by St. Louis County Officers, based on wanteds were valid because the wanteds entered by the officers were supported by probable cause. The Court noted that the Department adopted a policy that a wanted cannot be entered unless there is probable cause to arrest. The Court reasoned that a wanted based on probable cause that a subject committed some offense is sufficient to support a warrantless arrest for that offense, even though the wanted lacks a description of the circumstances and facts supporting probable cause.

So long as probable cause existed when the wanted was entered, the court found that it is not necessary that the officers be working as a team or be in close communication with one another. However, if the arresting officer doesn't communicate with the officer who entered the wanted, the arresting officer is taking a risk by assuming that probable cause to arrest exists.

An excellent analysis of this case and warrantless arrests in Missouri is set forth in "Developments in the Law Regarding Warrantless Arrests", Journal of the Missouri Bar, Vol. 75, no 6, written by, Brian Malone, setting forth key takeaways from Missouri Statutes and in this case, in which the collective knowledge doctrine will likely be deemphasized in favor

of an analysis of whether probable cause existed at the time a person was entered as a wanted.

A cigarette pack discovered during a search of the Defendant's person qualified as an item immediately associated with his person, and furthermore, it was irrelevant that the officer searched the pack in a separate room 30 minutes after the Defendant was arrested.

***Cletus Greene v. State of Missouri*, __S.W.3d__(Mo. App 2019) SC96973**

Defendant appealed the denial of his Motion for Post-Conviction Relief from his conviction of felony drug possession in which he argued trial counsel for Defendant was ineffective for failing to move to suppress evidence of illegal drugs seized from his person during a warrantless search. In this Case, the police encountered the Defendant in response to an anonymous tip regarding narcotics activity. The Defendant admitted to possessing marijuana which the police removed, along with a cigarette pack. The cigarette pack was search approximately 30 minutes later and at that time, the police discovered meth.

The Defendant argued that the search of the cigarette pack was unlawful because it was outside the area of his immediate control when searched. The Missouri Supreme Court, in its opinion, held that the search could be made legally at a later time when, for example, the accused arrives at the place of detention. The Court held:

> "Once the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence, on the other."

The search of the cigarette pack was found to be incident to the Defendant's arrest, which was supported by probable cause when the Defendant admitted to possessing marijuana. The judgment was affirmed by the Missouri Supreme Court.

In a cell phone search warrant case, the Court of Appeals held that the language in the search warrant "black Samsung with black case" describes, sufficiently, the item to be search with the accompanying person in possession of same, without necessity of including the phone number of the cell phone that law enforcement sought to search.

***State of Missouri v. James Christopher Bales*, __S.W.3d__(Mo. App 2020) SD36197 (SC98376)**

The State appealed a ruling from the trial court quashing a search warrant and suppressing evidence in the prosecution for first degree domestic assault and other crimes. The State claimed that the search warrant adequately described the item to be seized, and even if it did not, the good faith exception to exclusion should apply. In the instant case, the officers seized a cell phone that was described in the warrant as a "black Samsung with black case" located at an address in Pulaski County, Missouri. The item was seized after an

interview that took place between law enforcement and the Defendant, and Defendant's attorney. The Court of Appeals held that the above description was sufficient to seize the cell phone at the particular residence with reasonable effort and without a reasonable probability that other items of property would be mistakenly searched. The Court contrasted the facts of this case with *State v. Johnson*, 576 SW3d, 205, (Mo App WD 2019) where a search was conducted with a warrant at issue providing for the seizure of "all cell phones" located at Defendant's apartment. The Court in this case held that the description of the item to be seized was more specific than the one approved in *Johnson* over claims that the warrant was not supported by probable cause, was not sufficiently particular, was over broad, and was stale when the search of the phone was executed. Accordingly, the trial court's order quashing the search was reversed and the case was reinstated on the trial court's docket.

Traffic stop, because of a stop sign violation allowed search of a motor vehicle, where a dashcam video revealed Defendant's voluntary and feely consenting to search of motor vehicle.

***State of Missouri v. Bryan F. Burns*, __S.W.3d__(Mo. App 2020) SD36155**

Defendant filed a Motion to Suppress evidence seized in a warrantless search during a traffic stop which was sustained by the trial court and the state appealed thereafter. The State argued that the trial court erred in suppressing drugs seized from the vehicle because the defendant effectively consented to the search during an on going, valid traffic stop.

The traffic stop consisted of the Defendant's vehicle being stopped for failure to stop at a stop sign. A dashcam was on the officer's vehicle and the video showed that in fact, the officer asked the Defendant for permission to search and that the consent to search was freely given by the Defendant. Nevertheless, Defendant's counsel filed a Motion to Suppress and argued, 'we don't object to the stop. We don't object to the investigation, up to the point where he is given a breathalyzer test." Notwithstanding the dashcam video, the trial court sustained the Defendant's Motion to Suppress but gave no legal explanation as to why the Court did so. The Court of Appeals held that as a part of the process, the Court reviews de novo whether the officer's conduct violated the fourth Amendment. The Defendant in this case did not dispute the traffic stop's validity, and therefore credibility is not an issue where he freely consented to the search as revealed in the video. The Court of Appeals thereafter by a per curam opinion, reversed and remanded the case back to the trial court for further proceedings consistent with the opinion.

Defendant, pedestrian was stopped along the highway in a high crime area by a police officer in a vehicle flashing emergency lights. The subsequent search and confiscation of drugs was found to unreasonable and illegal because the stopping of the pedestrian, with emergency lights on a vehicle showed a "show of authority" constituting a restraint of the liberty of the Defendant.

***State of Missouri v. Derek L. Johnson*, __S.W.3d__(Mo. App 2020) WD82131**

Defendant and a companion were walking along I-70 drive in Columbia, Missouri in a location where there had previously been criminal activity. An officer noticed them with backpacks on and believed them to be suspicious, walking in that particular area of Columbia at 2:00 a.m. The officer did not see any illegal activity or have any suspicion that illegal activity was ensuing. After the police officer activated his emergency lights on his

vehicle, the Defendant was questioned for the presence of illegal drugs and the Defendant denied several times the presence of same. After a third time of questioning about drugs, the Defendant consented to a search of his backpack. A search of the backpack revealed the presence of meth and in addition, there was a bag of meth under the Defendant's hat. The Defendant was charged with possession of a controlled substance and he filed a Motion to Suppress evidence found on his person and in his backpack, and statements he made to the officer at the time of the arrest. Defendant, in the Motion to Suppress, argued that the drugs found on his person and backpack, and his statements regarding same were the subject of an illegal search and seizure because his stop was a detention because the officer made a "show of authority" by utilizing emergency lights on the police vehicle such that a reasonable person would not feel that they were free to leave.

The Court of Appeals held that Missouri Courts have previously cited an absence of emergency lights when finding that there was not a show of authority from police. In this case, however, The Court of Appeals found that the usage of emergency lights on his motor vehicle constituted a "show of authority" which, without other specific, articulable facts, supported a reasonable suspicion that the individuals were engaged in criminal activity. The Court implied that there was merely "rank speculation" about what could have been obtained in the backpack and a search of the person of the Defendant. Because the initial detention of the Defendant was unlawful, the evidence subsequently obtained as a result of that unlawful detention was found to be fruit of the poisonous tree and as a result was suppressed and the judgment of the trial court was reversed.

Even though the trial court erred in not sustaining Defendant's Motion to Suppress, there was no evidence at the bench trial that the trial court relied on inadmissible evidence in making its findings.

***State of Missouri v. Harry Little*, __S.W.3d__(Mo. App. 2020) ED107404**

Defendant was convicted in a bench trial of second degree murder and other felonies. Officers were dispatched to Defendant's residence in response to a call from Defendant reporting that he had found a dead woman in his backyard. Upon arriving, the officers saw the Defendant standing inside the gated backyard and the Defendant allowed the officers entry into the yard. The body was covered by a blanket that Defendant said he had covered it up with. Defendant also told the officers that he had overdosed the previous evening and could not recall what had happened! Defendant asked to go inside his residence because it was cold and the officers followed without objection by the Defendant. There the officers observed a blood stain and knife on the floor. Thereafter, the Defendant was taken to the police station, and during this time of interrogation, the officers searched and seized evidence from Defendant's residence. Defendant's interrogation began without formal Mirandizing, even though Defendant indicated, "when I woke up, somewhere, I don't know, I need a lawyer, I'm steady talking, saying I was a dope fiend, I was passed out." On Defendant's Motion to Dismiss, The Court of Appeals held that a reasonable police officer, when hearing the statement, "I need a lawyer, I'm steady talking" would have understood Defendant to be invoking his right to counsel. In this case, however, after a review of the entire record, The Court of Appeals found that any violation of Defendant's Fifth Amendment rights by the police did not cause prejudice at his bench trial because of the presumption that a trial court does not give weight to erroneously admitted evidence in a bench trial, "unless the trial court relied on the inadmissible evidence in making its findings."

Defendant also, in his Motion to Suppress, attacked the evidence seized inside Defendant's residence without his consent or without a search warrant. The Court of Appeals recited the general rule that warrantless searches and seizures inside a home are

presumptively unreasonable and unconstitutional. However, The Court of Appeals invoked the Inevitable Discovery Doctrine as an exception to the general rule of exclusion. Under the Inevitable Discovery Doctrine, evidence discovered through unconstitutional means is nevertheless admissible where the evidence would have been inevitably discovered by law enforcement. In this case, The Court of Appeals held that law enforcement could have easily obtained a search warrant and following obtaining same, the house would have been searched and the items indicating the guilt of the Defendant would have seized through the search warrant process. Because the Inevitable Discovery Doctrine applied, the challenged evidence was properly admissible and Defendant's conviction was affirmed.

For the first time, The Missouri Supreme Court holds that a Defendant completely crossing the fog line with his motor vehicle was a violation of Section 304.015 R.S.Mo. and as a result, an officer had probable cause to stop the vehicle, and said stop did not constitute an unreasonable seizure .

***State of Missouri v. Anthony James Smith*, __S.W.3d__(Mo. App. 2020) SC97811**

Defendant appealed his conviction of felony possession of a controlled substance based upon his argument that the traffic stop was unreasonable in that it was not based on Constitutionally sufficient reasonable suspicion and therefore the subsequent discovery and seizure were "fruits of the poisonous tree' and should be suppressed. He argued that his motor vehicle "merely touching or crossing the fog line does not give reasonable suspicion that any crime or traffic offense has occurred." The State, on the other hand, contended that crossing the fog line and driving on the shoulder is a violation of the motor vehicle operating restrictions set forth in Section 304.015 R.S.Mo.

The Missouri Supreme Court reviewed previous appellate opinions that considered the arguments of Defendant. Although the Court found that it was not bound by those Court of Appeals decisions, the Court did find that Defendant violated Section 304.015.2 providing that "Upon all public roads or highways of sufficient width a vehicle shall be driven upon the right half of the roadway". The Court held that operating and directing the course of a vehicle on the shoulder by allowing a moving vehicle to leave the roadway, including briefly crossing the fog line, is a violation of the above statute, giving to the officer probable cause to stop the Defendant's vehicle, and the stop did not constitute an unreasonable seizure.

An excellent dissenting opinion was made by Judge Laura Denvir Stith, in which Judge Stith argued that the Defendant's brief overcorrection onto or over the fog line was not a traffic violation. The dissent argues that a momentary, de minimis touching of or just over the fog line does not constitute failing to drive on the right side of the road and does not provide probable cause of a traffic violation sufficient to support a traffic stop.

II. CRIMINAL PROCEDURE

The trial court did not err denying the Defendant's repeated requests to represent himself when Defendant engaged in serious, obstructionist misconduct.

***State of Missouri v. Jeffrey Scott Kowalski*, 587 S.W.3d 411 (Mo. App. 2019) SD35734 & SD35752 consolidated**

Defendant was convicted of felony unlawful merchandising practices act and other counts of misdemeanor fraud. He requested, and for a period of time, was allowed to represent

himself without counsel. The trial court, however, revoked Defendant's bond and appointed counsel to represent him due to inappropriate pretrial conduct Defendant engaged in while acting on hi won behalf. The issue in the appeal is whether the trial court abused its discretion in ruling that Defendant had forfeited his right to represent himself due to those behaviors.

Here, the trial court revoked Defendant's right to represent himself after Defendant had engaged in the following conduct:

1. Paying the trial judge's personal property taxes, apparently in an attempt to create a conflict of interest and cast doubt upon the legitimacy of the proceedings.

2. Engaging in inappropriate communications with the victim's daughters.

3. Pulling what Defendant described as various "pranks" on the trial court, filing a pleading in which he claimed to speak only Spanish and asked that a Spanish interpreter be provided to him. Defendant later admitted he had filed the pleading just because, I like messing with you."

4. Announcing his intention to call the trial judge's wife as a witness at trial.

5. Filing a pleading wherein he had falsely claimed that the trial judge had a conflict of interest in the case because he had received income from Defendant's corporation.

After the trial court had revoked the Defendant's right to self-representation, the court appointed counsel and ordered a mental evaluation of the Defendant which indicated that he was competent to stand trial.

Defendant argued that his conduct differed from cases wherein appointed counsel was ordered over protests of a Defendant in that, once the trial court informed him that his behavior was disruptive and constituted an attempt to manipulate the judicial process, Defendant conformed his behavior to the appropriate standards. The Court of Appeals held that even assuming that to be true, the trial courts could still reasonable conclude that Defendant's obstructionist behavior was as extreme and disruptive as that exhibited by Defendant's in other cases wherein self-representation was denied and, "there was good cause to believe that Defendant would continue to disrupt the trial" if he were again allowed to proceed without counsel. As a result, Defendant's conviction was affirmed.

The Sixth Amendment grants an accused the right to counsel, which can be waived, thus allowing the party to proceed pro se. Such requests must be timely, informed, voluntary and unequivocal.

State v. Kowalski, 587 S. W. 3d 709 (Mo. App. 2019)

Kowalski was convicted of felony unlawful merchandising practices, deceptive business practices, misdemeanor identity theft and misdemeanor attempted stealing. His claim was he was improperly denied the right to represent himself. He was involved in a scheme sending individual's letters as IRS forms suggesting parties have not paid taxes on certain income and they should give their Social Security and other information to the defendant. He claimed all of this was a misguided prank.

At one point in the proceedings, defendant requested to represent himself, which was granted. Subsequently the trial court revoked his defendant's bond and appointed him counsel due to inappropriate pretrial conduct. Defendant had engaged in conduct including paying the trial judge's personal property tax in attempt to create a conflict of interest, engaging in inappropriate communication with witnesses' family members including sending a gift to one party's daughter claiming it was from Attorney General Josh Hawley. Other pranks included claiming he spoke only Spanish, announcing his intention to call the judge's wife as a witness and claiming the judge received income from a corporation that was part of the criminal charges. Based on this behavior the judge revoked defendant's right to proceed as his own counsel despite the fact that a mental evaluation had concluded he was competent to stand trial and did not suffer from a mental disease or defect.

The Sixth Amendment grants the right to counsel and the related right to waive counsel. However, the government's interest in ensuring the integrity and efficiency of a trial at times outweighs the defendant's interest in acting as his or her own lawyer.

A party can forfeit his or her right to self-representation by impugning his lawyers, ranting to the court, using obscenities, going on tirades and other acts that actions that would impede the judicial proceedings. In this case that trial court could have reasonably concluded the defendant's obstructionist behavior was extreme and disruptive and consequently there was good cause to believe the defendant would continue to disrupt the trial if he were allowed to proceed without counsel and represent himself.

Affirmed

In an action for post conviction relief, Defendant's counsel was not rendering ineffective assistance of counsel to his client by pointing out to Defendant that because additional time was required to prepare for and participate in a trial, attorney's fees for representation on a criminal case resolved by a trial can exceed those in which a criminal case is resolved through a guilty plea before trial.

***Frank Peter Renick, Jr. v. State of Missouri*, 592 S.W. 3d 411 (Mo. App. 2020) SD36140**

Defendant was convicted of three counts of sexual offenses and moved, pursuant to Supreme Court Rule 24.035, for post conviction relief. The motion court entered a judgment denying the motion of the Defendant. Defendant brought 2 points for appeal. First, he claimed that the motion court clearly erred when it denied his motion because plea counsel was ineffective, "for leading him to believe he would receive a sentence of probation and that a trial would be too costly…", and secondly, that the motion court clearly erred because plea counsel was ineffective for failing to explain to Defendant the purpose of a Sentencing Assessment Report and to present medical records.

The opinion of the Court of Appeals primarily targeted the first allegation that Defendant plead guilty only because, "he would have to pay a great deal of money for trial."

The Court of Appeals held that there was no evidence in the record that this was an incorrect or inaccurate statement or that plea counsel's performance in making the statement to Defendant was deficient or improper in any respect. The Court of Appeals further indicated that plea counsel merely pointed out to Movant the rather obvious fact, that because of the additional time required to prepare for and participate in a trial,

attorney's fees for representation on a criminal case resolved by a trial can exceed those in which a criminal case is resolved through a guilty plea before trial. Defendant, on the other hand tried to persuade the Court of Appeals that his plea of guilty was only because of a lack of money and that Defendant's counsel would not proceed without having more money. Clearly, it is important in every day proactive to make sure that a Defendant does not base his plea of guilty on any representation by his attorney that he is pleading guilty merely because he does not have sufficient money for trial.

Advising the party that he would likely receive probation and that a trial would be expensive is not ineffective assistance of counsel.

Renick v. State of Missouri, 592 S.W. 3d 411 (Mo. App. 2020)

Renick entered into a plea agreement on one count of statutory sodomy and two counts of child molestation. In accordance with the agreements he was sentenced to two concurring 10-year terms. He filed a motion under amended rule 24.035 for post-conviction relief claiming ineffective assistance of counsel, which was denied. This appeal followed. On appeal he claims that the court erred in denying his motions because his counsel was ineffective in leading him to believe he would receive a sentence of probation and that the trial would be too costly plus failing to explain the purpose of the Sentencing Assessment Report (S.A.R).

For an ineffective assistance of counsel claim a movant must demonstrate by a preponderance of the evidence counsel failed to exercise a level of skill and diligence a reasonably competent trial counsel would in a similar situation. A movant must also establish prejudice.

In this case during the plea hearing the movant clearly stated he committed the felonies as charged, was told of the range a punishment for each case by the court, stated he understood same, and further stated that he understood he did not have to plead guilty and no promises were made or coercion made toward him to induce the guilty plea. He also understood that he waived certain constitutional rights by entering a guilty plea. However, on appeal, he claimed that counsel affirmatively informed him that he would receive probation and also told him he would have to pay a large amount of money for trial and that he should plead guilty. However, counsel testified that he never advised client that he would receive probation but pointed out to him there would be additional time required to prepare for and participate in a trial and attorney's fees for same would exceed those if the case or resolved by a guilty plea. There is no evidence that these statements were inaccurate, or deficient or improper in any respect. The trial court was entitled to assess the credibility and believe the lawyer's testimony. Regarding the Sentencing Assessment Report, trial court also testified that he explained the purpose of the report to movant and again the trial court was entitled to assess the credibility of and defer to the testimony of trial counsel. The second claim that counsel did not present certain medical records to the court was not preserved by movant on appeal. No evidence was produced as to the contents of the evidence.

Judgment Affirmed

III. STATUTORY INTERPRETATION

Section 610.140 allows expungement of certain records. Its requirements and time limits must be met to qualify. Section 610 .140 allow certain offenses, violations, and infractions to be expunged. However, there are a list of ten

categories of offensives, violations, and infractions ineligible for expungement. A Petitioner must meet the statutory criteria to be allowed expungement of the record.

L.F. W. v. Missouri State Highway Patrol Criminal Records Repository, et al., 585 S.W. 3d 846 (Mo.App.2019)

The State challenged three judgments expunging three criminal records of L.F.W., Jr. (L.W.) claiming he was ineligible for expungement because his arrest violated a state law regulating the operation of a vehicle when he had been issued a commercial driver's license and the petitions for expungement were filed prematurely.

He was charged with three violations: failing to register a non-resident motor vehicle, operating a commercial vehicle without a seatbelt, and operating as an interstate motor fuel user without being licensed as such. Ultimately the first case was dismissed and the second and third were amended to a simple defective seatbelt charge and defective equipment infraction. In February 2018 he filed three expungement petitions regarding all three charges. The trial court took the case on the verified petition and orally granted the expungement on all three cases. This appeal followed. On appeal the State contends that L.W. was not eligible to have his records expunged because he had been issued a CDL and therefore not eligible, and the petitions were filed prematurely.

Section 610.140 allows a party found guilty of offensives, violations, or infractions to seek an order from the court expunging the record. However not all categories of offenses are eligible for expungement and in fact there is a list of ten exceptions. Among those is that in subsection (10) which provides that any state law or county municipal ordinance regulating operation of motor vehicles when committed by a person issued a CDL is ineligible. The court therefore had to look to issues of statutory interpretation to see how these individual violations applied with regard to the exception of Section 641.140.

The expungement statue allows the expungement of records related to an arrest for an eligible offense, violation or infraction three years from the date of arrest and if the petitioner has not been charged with any misdemeanor or felony offense.

The statute refers to an eligible offensive, violation or infraction and does not permit the expungement of arrest records related to same. Since the purported violation in the first count related to an arrest record and he had been issued a CDL L.W. was not eligible for expungement regarding his first case with regard to the dismissed case. Regarding case two and three as part of his affidavit L.W. affirmed that it had been at least three years since he had any misdemeanor, infraction or ordinance violation and seven years for any felony offense. This is consistent with Section 610.140. The expungement is warranted as long as the criteria as listed in the statute is otherwise satisfied and the person meets all the criteria laid out in the statue for expungement.

The three year waiting period described in Section 610.140 is necessary and required prerequisite for expungement.

In this case the expungement of criminal records of case two and three were well before the three years had passed for the earliest possible date and disposition of cases. Appellant's cases two and three were filed prematurely.

Sufficient evidence for the offense of resisting arrest can exist where the actions of the officer objectively lead to the belief that a criminal offense has occurred. In the case of a felony resisting of arrest the case does not turn on whether the officer subjectively contemplated arresting the individual for a felony offense.

State v. Shaw, 592 S.W. 3d 354 (Mo. App. 2019)

Shaw was convicted on one count of first-degree assault and one count of felony resisting arrest. He got into a dispute with an individual outside of a church subsequently attacking a parishioner. The police responded and when they engaged Shaw, he began throwing punches. He was subdued and placed under arrest but remained combative throughout the arrest procedures. Shaw contended that the court erred overruling his motion for acquittal on the felony resisting arrest because there was insufficient evidence establishing the trooper subjectively contemplated arresting Shaw for a felony offense.

The resisting arrest statute provides that a person commits the offense of resisting arrest if he knew or reasonable should have known a law enforcement officer was making an arrest, resisted arrest by using or threatening violence or physical force or fleeing and did so for the purpose of preventing the officer from completing the arrest.

The question becomes what it means to resist an arrest "for" a felony. The court looked at the definition of "for" in this context as an attempt to make an arrest because of "or" on "account of" an offense constituting a felony as a matter of law.

Section 575.150. 5 (1) requires the State to establish to the fact finder that Defendant resisted an officer's attempt to effectuate an arrest which the fact finder determines would have constituted a felony as a matter of law.

Attempting to assault a law enforcement officer, as in this case, constitutes a felony. If it does then the resisting arrest is a felony regardless of whether it could constitute a misdemeanor.

Significantly in this case the Supreme Court overruled prior cases to the extent they hold the State must present evidence of an arresting officer's subjective "intent" to arrest a defendant for a felony to support a conviction of felony resisting or interfering with an arrest. The statutory language does not necessitate such proof.

Affirmed

The Missouri Expungement statute, Section 610.122, and the exception statute, 610.140, make an expunged record a legal nullity unless the express statutory exception is met.

T.V.N. v. Missouri State Highway Patrol Criminal Justice Information Services, 588 S.W. 3d 245 (Mo. App. 2019)

The Missouri State Highway Patrol Criminal Justice Information Services (Central Repository) appealed a judgment expunging 2016 arrest records of respondent who had a 2011 speeding ticket conviction claiming he was statutorily ineligible for expungement of the record. In 2018 Petitioner sought expungement of a leaving the scene of an accident arrest record from 2016. He was arrested but the charges were never filed in the matter. However, he acknowledged he was convicted of a speeding charge in 2011 which was expunged. The court entered a judgment expunging the record.

On appeal Respondent first argued that the Central Repository was not aggrieved by the dismissal and therefore had no standing to proceed with the appeal.

Standing requires a party have a personal stake arising from a threatened or actual injury. A party must have a legally protectable interest. A party must demonstrate a personal interest aggrieved from an infringement of legal rights. Since the Central Repository is responsible for compiling and disseminating complete and accurate criminal history records the court held the Repository has an interest as in seeing the criminal history record information is maintained completely and accurately. Accordingly, the Appellate Court held that the Repository did meet the eligibility requirement and, in fact, is a required party in an action to expunge an arrest record.

The Repository's single point on appeal was that the court committed error when it expunged the record because the statute requires that the individual have no prior subsequent misdemeanor or felony and Respondent was ineligible to expunge the 2016 arrest record because of the 2011 misdemeanor speeding conviction.

Section 610.122.2 provides an arrest record shall be eligible for expungement if the subject has no prior or subsequent misdemeanor or felony convictions. Respondent asserts that at the time he filed his petition to expunge the 2016 arrest he no longer had a prior conviction because it had been expunged.

Section 610.140.8 provides an order of expungement should not limit any of the Petitioner's rights that were restricted as a collateral consequence of the person's criminal records and such rights should be restored to the status he/she occupied prior to the arrest, pleas, trials, or convictions as if the events had never taken place.

As a result, when Respondent filed his petition to expunge his 2016 arrest, he effectively did not have a prior misdemeanor or felony conviction. While the Repository tried to argue that the expungement of the 2011 conviction merely limited the public access to the record and the conviction remained a conviction, the plain language of the statue states that the individual's status is restored to that occupied prior to the arrest. While it is true that expunged records can be used for limited purposes by law enforcement to prevent a person from avoiding enhancement of charges or sentences, that is distinguishable from petitioner's right to be relieved of the collateral consequences of an earlier conviction by having previously limited rights restored. Consequently, the misdemeanor speeding conviction once expunged resulted in Respondent no longer having a prior conviction.

Affirmed

IV. SELF INCRIMINATION

The privilege against self-incrimination can be waived. If a party is seriously injured, they can still make a voluntary statement absent evidence that he or she did not understand the subject matter of the conversation as a result of the injuries.

State v. Gray, 591 S.W. 3d 65 (Mo. App. 2019)

Gray was convicted of first-degree involuntary manslaughter and second-degree assault. He was in a vehicle with a group of people that lost control and struck a curb rolling over. When the police arrived, he was unconscious and bleeding outside the van. One of the parties informed the police when they arrived at the scene that the defendant had been driving. However, at the jail there were conflicting reports about who was driving. At the police station defendant told one of the officers that he thought he might have been driving the van. He told another officer specifically that he was driving. At trial he disputed that there was evidence of him driving the van and sought to suppress the statements made to the police. On appeal defendant contended the trial court erred in allowing the statements he made because he had a significant cognitive impairment for his traumatic brain injury, and therefore did not knowingly and intelligently waive his Fifth Amendment right to be free from self-incrimination.

There is no prohibition against a seriously injured suspect making a voluntary statement or confession unless there's evidence indicating the party did not fully understand the subject matter of the conversation. The party must demonstrate his injuries were so significant to overcome the will to resist the questioning to justify the suppression of statements made during the questioning. The privilege against self-incrimination can be waived if made voluntarily, knowingly, and intelligently.

Evidence here did not establish defendant was injured to the extent his will to resist questioning was overcome. When requested to speak to the police about the accident he voluntarily provided the information. The Appellate Court did not error in denying defendants motion to suppress his statements to the officer.
Point Denied

A party can make a judicial admission that concedes a proposition is true for purposes of criminal litigation. This admission can also be made by an attorney in open court during the trial which statement would be against the interest of his clients. The statement would be presumed true and the court can act on it accordingly. It is a substitute for evidence and it dispenses of proof of the fact.

***State v. Lindsey*, 597 S.W. 3d 240 (Mo. App 2019)**

Lindsey appealed his conviction for murder and unlawful use of a weapon and tampering with physical evidence. He alleged there was insufficient evidence upon which a jury should have convicted him of felony tampering with physical evidence because there was no evidence he actually impaired or obstructed the prosecution.

Lindsey was listening to music and drinking with a group of people. The victim tried to purchase marijuana from him. They got into an argument which escalated, and ultimately Lindsey shot him three times. Lindsey fled the house, disposing of his cell phone by throwing it out the window, and throwing his clothing and gun in into the Missouri river. In the course of the trial Lindsey testified that he felt "very guilty" for tampering with evidence.

Found guilty with Tampering with evidence on appeal Lindsey contended that while he did tamper with physical evidence there was no evidence that it actually impaired or obstructed the prosecution of the charge.

The obstruction issue did not arise here because Lindsey waived the sufficiency of the evidence and the claim by confessing to the charge of tampering with physical evidence at trial.

In addition, Lindsey's counsel in closing argument conceded that he had told the jury from the stand that he was guilty of the charge.

A judicial admission is an act done in the course of judicial proceedings. It concedes for the purpose of litigation that a certain proposition is true. When a defendant makes a voluntarily judicial admission of fact before the jury it is a substitute of evidence and dispenses with proof of the actual fact. The admission is conclusive on him. An admission made by an attorney in open court during trial against the interest of his client is presumed to be true and courts can act on such admission accordingly.

The fact that Lindsey did not specifically admit to the element of actual impairment or obstruction is not dispositive because he admitted to the crime of felony tampering with physical evidence itself. His counsel as well admitted to the guilt of the count as charged by the state. This included the admission of all the specific elements. Nor was there any evidence here that some inadmissible evidence had been admitted that led to Lindsey's testimony. In other words, he was not compelled to admit his guilt.

Appeal denied.

V. EVIDENCE

A person with knowledge of the presence of a substance and nature of a substance has actual or constructive possession of the substance. Actual possession is within easy reach or convenient control of the substance. A person though not in actual possession who has power or the intention at any given time to exercise dominion or control is in constructive possession. Possession can also be soul or joint.

State v. Barnett, 595 S.W. 3d 315 (Mo. App. 2020)

Barnett appealed his judgment and sentence for possession of meth and marijuana and unlawful use of a drug paraphernalia. He contended the state failed to show the required circumstances to prove construction possession of the items. Barnett was the front seat passenger of the vehicle pulled over by the police. His sister was sitting directly behind him in the rear passenger seat. During the course of the search the police found meth and marijuana under a wash cloth behind the center console on the back seat floor board. There was also a floral make up bag containing a digital scale, plastic bags, and a measuring spoon. Notebooks were found that contained the defendant's first name. The state tried to argue that the jury could draw an inference that there was a debt owed for drugs. Further evidence offered by the police officer included that the defendant was nervous and was looking at the other parties in the vehicle during the stop and was also leaning to hear the conversation between the officer and one of the other parties. During the course of the trial defendant continued to renew objections regarding the notebooks seized from his sister's purse that were offered and evidence of drug ledgers with defendant's first name on them. However, there was no evidence defendant was aware the ledgers were in his sister's purse before they were seized.
A jury instruction was given explaining to the jury that a person would be responsible for the conduct of another person if the party acted with the other party with a common purpose. Instructions were also given regarding requirements for finding a party possessed contraband, and was aware of its nature and presence. Defendant was found guilty and this appeal ensued.

A person with knowledge of the presence of a substance has actual or constructive possession of the substance. Actual possession is a substance within easy reach and convenient control. A party is not in actual possession but who has the power and intention to exercise dominion or control over the substance either directly or through another person is in constructive possession, which can be solo or joint.

In this case the court found that the defendant was nervous but with nervousness there must be evidence of an additional incriminating fact before a permissible inference can be drawn that the defendant had knowledge or control over the drugs.

Incriminating circumstances for purpose of constructive possession can include such things as nervousness, drugs found in plain view, large quality or a monetary value of drugs, an odor of drugs, personal belongings that are mingling with drugs, ownership or control of a vehicle, statements made by the accused, false statements made by the accused or attempts to flee.

Nervousness during the search when combined with access to the contraband is insufficient to support an inference of knowledge in control.

There is no evidence here that defendant knew about the drug ledgers in his sister's purse, evidence to show participation in placement or concealment of the controlled substances, and no connection to the drug or digital skills associated with them.

The court also rejected that there was compliance liability as to defendant stating that the state showed no evidence that the defendant knew the contraband was in the vehicle or he promoted the underlying crime charged. Accordingly, the judgment of conviction and sentence were reversed and defendant was discharged.

The admissibility of evidence of civil litigation comes down to an issue of relevance for purposes of admissibility. Relevance is a two-tiered approach: the evidence must be both logical and legal.

State v. Christian, 585 S. W. 3d 403 (Mo. App. 2019)

Defendant was convicted of felony forgery involving a Warranty Deed. He contended there was an error in allowing testimony about a civil suit to recover the property. Defendant and his brother had owned real estate with an $80,000 dollar mortgage. One of the other brothers bought the other parties share. Shortly before the defendant brought a warranty deed to the Recorder's office conveying the rights of the brothers who had bought the other parties share to defendant. When the brother did not receive notification of property taxes, he went to the Recorders office which showed he was no longer the owner of the property. At that point he went to the police. A handwritten comparison of the deed showed it did not belong to the brother. A forensic consultant presented evidence reflecting that their handwriting on the deed was that of the defendant. Sworn testimony of the defendant was admitted that showed he claimed he purchased the property at a tax sale.

Defendant on appeal challenged testimony from the property owner that he had to hire an attorney to represent him in a civil suit to restore the title to the property. Because the matter was not objected to it was reviewed by the Appellant Court as an issue of plain error. Defendant contended that the evidence was collateral, irrelevant, and inadmissible.

Evidence must be relevant to be admissible. Relevance is two tiered: both logical and legal. Evidence is logically relevant if it tends to make the existence of material fact more or less probable. Logically relevant evidence must be legally relevant. Legal evidence weighs the appropriate value of the evidence against its costs.

Factors such as unfair prejudice, confusion of the issues, was misleading the jury, waste of time or the cumulativeness are weighed. In this matter the Appellate Court felt the steps that Mr. King, the owner of the property, had taken to restore the title to the property were relevant and admissible to show defendant's motive and intent and purpose to defraud. His expenses and the fact that he hired an attorney were also logical and legally relevant as it corroborated the owner's testimony that he was the rightful owner of the property. Accordingly, the appropriate value outweighed any prejudicial impact. The evidence is admissible to show the owners claim he was the rightful owner and to support the state's theory that's defendant forged the deed. Evidence concerning the civil lawsuit was relevant and admissible to explain to the jury what happened after defendant recorded the deed. Here the testimony was about a civil suit and did not involve prior criminal acts. It directly involved the circumstances of the charge of forgery. **Affirmed**

Generally, statements against penal interest are not exceptions to the hearsay rule. However, they may be admitted in limited circumstances where due process is implicated and there's a strong reliability of the statement. This exception is very narrow.

State v. Floyd, 590 S.W. 3d 908 (Mo. App. 2019)

Floyd appealed his conviction of possession of a controlled substance and tampering with evidence. He was found guilty but on appeal claimed abuse of discretion by the trial court in excluding testimony from a witness who claimed another person had told her that the drugs at the issue in the case belonged to another person rather than defendant.

Police entered a house on a warrant. On entering they found defendant walking out of the bathroom. Inside the toilet in the bathroom the police found a laundry detergent in a torn plastic bag. Searching further inside the toilet trap they found a large bag of methamphetamines and a broken pipe. Defendant claimed he had just awakened and used the bathroom and then later claimed he hadn't used it at all. He was charged with possession of a controlled substance and tampering with physical evidence.

At trial the court rejected testimony from a party who said they spoke to the individual "Cody" who stated that the drugs located by the officer were his and the defendant had nothing to do with them. Defendant sought admission of the evidence on the theory that they were against Cody's penal interest and the exclusion deprived defendant of his due process right to present a defense.

Missouri courts have ruled statements against penal interest are not a valid exception to the hearsay rule unless due process is implicated and circumstances strongly indicate reliability of the statement. The narrow exception only applies if the Declarant is unavailable as a witness, there's a substantial indicia of reliability, and the declaration would exonerate the defendant.

In this case the other party's claim of ownership of the drugs would not have exonerated that defendant because ownership is not an element of the crime of possession of a controlled substance. There is substantial circumstantial evidence that defendant had

constructive possession of the methamphetamines. He was the only person walking out of the bathroom, the toilet was still running, there was an indication that detergent had just been poured into the commode, and there was a torn plastic bag in the toilet with the drugs. Point denied. **Judgment Affirmed**

The present- sense - impression exception to the hearsay rule make statements admissible that are simultaneous with the occurrence, describe the occurrence, and perceived by the Declarant with his or her own senses.

State v. Gyunashev, 592 S.W. 3d 836 (Mo. App. 2020)

Defendant appealed a judgment of domestic assault. He claimed the court abused its discretion admitting into evidence recordings of 911 calls because they contained inadmissible hearsay.

A dispatcher received a call from a young boy, later identified as defendant's son, who told the dispatcher that his father was beating the victim, his mother. He told the dispatcher "please hurry", sounded shaken up, and was nervous and scared. A second call followed where the son requested an ambulance again saying his father was beating his mother, and she was bleeding. According to the dispatcher he sounded "panicked "and "scared".

Defendant was subsequently arrested. Central to the proof against defendant, besides testimony from the victim and admissions of the defendant, was the 911 call, which was admitted into evidence. It was objected to by the defendant as hearsay.

The present – sense – impression exception renders hearsay statements admissible where they were made simultaneously or almost simultaneously with the occurrence, it describes the occurrence, and the Declarant perceives the occurrence with their own senses.

This case's simultaneity element is met because the assault was ongoing when both calls were made as was the second element as the son described the occurrence. The third element was met by defendant's own admission that the son was witness to it, so all three elements were present.

The state also argued the evidence was admissible under the excited-utterance exception. It applies to statements made in response to a startling or unusual circumstance.
The factors to consider in the excited-utterance exception are the time in between the events in the declaration, whether the declaration is in response to a question, whether a declaration is self-serving, and the Declarant's physical condition.

It applies here as the son made the statement simultaneously with the assault; they were initiated by the son; they were not self-serving in that the son was described as "very nervous" and "scared".

Accordingly, the exceptions to the hearsay rule applied and the statements were admissible. Point denied. **Affirmed**

An expert is qualified by knowledge, skill, experience training or education. Missouri case law draws a line between generalized opinion testimony on a subject and opinion testimony that applies the general principle to the specific evidence in the crime before the jury. The former is allowed but not the latter.

State v. Loper, ED 106525, 11/12/2019

Expert testimony must be within the competence of the expert testifying and not invade the province of the jury. Expert testimony that comments on guilt or innocence or directly on a witness's credibility invades the province of the jury while testimony as to victim behavior is admissible.

Loper sought reversal of his conviction of first-degree assault and convictions for armed criminal action and victim tampering. According to the evidence Loper had attempted to rape the victim while strangling her and then strangling her with the telephone cord and attempting to cut her wrists with a knife. His defense claimed the victim's injury was self-inflicted. The basis of the prosecution's evidence was essentially the victim's account of what occurred. The state introduced opinion evidence the crimes were in the nature of domestic violence. A detective was called to give her opinion regarding the characteristics of domestic violence and how there manifested in these particular crimes. The detective testified based on her experience in training and handling thousands of cases that domestic violence is about power and control, and there was evidence of power and control in this case. It also called an expert on the behavior on domestic violence to testify regarding the nature of the injuries. This included testimony that while the injury could have been self-inflicted it likely was not. A sexual assault nurse testified that the pattern of injury on the neck of the victim was consistent with strangulation with a ligature or cord. Defendant was found guilty.

A trial court's ruling on evidence is upheld unless it is an abuse of discretion, that is, if it offends the logic or circumstance or is so arbitrary and unreasonable it shocks a sense of justice. Furthermore, this must be shown to the extent that it affects the outcome of the trial.

Missouri case law allows generalized expert opinion testing on subjects about which a jury may be unfamiliar to give assistance to understand. However, opinion testimony that applies the general principle to the specific evidence and crimes before the jury is impermissible as it is a comment on guilt or innocence, the credibility of the witness or otherwise invades the province of the jury.

In this case the court found that the trial court abused its discretion by allowing the opinion and testimony of the detective as an expert on Loper's guilt of the charge of domestic violence and vouching for the victim's testimony and credibility. Opinion testimony regarding behavior of abuse victims, however, is not within the common jurors experience and provided helpful information. It was therefore admissible.

Affirmed in part and reversed and remanded in part.

Security camera footage can be admitted under the "silent witness" theory. The footage acts as a proxy witness of the event it depicts and is admissible if the camera and security system used to capture the footage display indicia of reliability.

***State v. Whittier, 591 S.W. 3d 19 (Mo. App. 2019*)**

Defendant was convicted of murder. A person in the apartment where the murder took place testified that he heard the defendant yelling at the victim followed by gun shots. The witness, brother of the deceased, testified what he had seen. He also told the police at the scene that there was also a restraining order against the defendant with respect to the

victim, and defendant was the person heard yelling before he heard the shots. Police accessed a security camera footage which depicted a male subject pacing around the apartment complex before the shooting. Based on additional information there was circumstantial evidence that the person seen pacing in the video, stalking the area around the victim's window, was the defendant.

A vehicle connected to the defendant was located outside a residence where defendant was staying. Inside the residence police found a box with defendant's belongings, including his driver's license. In a closet in the room the police found a revolver with five spent shell casings. However, it could not be conclusively established that the bullets missing from the gun were the ones used to kill the victim.

Among the number of things defendant contested on appeal was the admission of the security camera footage contending that it lacked a proper foundation. This was because defendant contended that the officer could not testify from his personal knowledge whether the footage depicted a fair and accurate representation of what occurred.

Surveillance footage has been admitted under the so called "silent witness" theory. Under this theory routine security camera footage is admissible of events that occurred even without a witness to verify its accuracy from firsthand knowledge if it contains sufficient indicia of reliability. Factors looked at to establish reliability including whether the system was working properly at the time of the event depicted, the historic reliability of the system to be sure it wasn't tampered with by third parties, and whether when presented at trial it's a fair and accurate portrayal of the recording in its original form.

There was sufficient evidence here that the camera was working properly as the officer testified, he was familiar with the system, had utilized it in the past, and utilized it in the instant case without any indication of malfunction. The officer also testified that he accessed the feed from the camera near the time of the shooting and the copy received matched his initial observation of the feed. While the state's evidence lacked the foundation with respect to whether the system was protected from third party tampering, the court felt that this did not rise to plain error on the part of the trial court because the defendant did not argue the video footage might have been tampered with or was available to be tampered with. The burden was on defendant to consequently show prejudice and without same that manifest injustice occurred.

Based on the unrestricted admission of the footage, and assurances that the system was historically reliable with protection from third party tampering, the court found no manifest injustice in this matter. **Affirmed**

VI. SUPREME COURT AND FEDERAL CASES

A Defendant may be convicted of what would appear to be duplicating convictions on a State and Federal level because the Supreme Court permits, the "Separate Sovereigns" to prosecute for the same crime which is not an exception to the Double Jeopardy Clause.

***Gamble v. United States,* 139 S. Ct. 1960 (2019)**

Defendant was convicted of being a felon in possession of a firearm in Alabama. Defendant was also convicted of being a felon in possession of a firearm with the same facts, in Federal Court! Because of the additional conviction, defendant argues he must spend three additional years of his life incarcerated. Defendant argued that the Double Jeopardy Clause of the Fifth Amendment prohibits duplicative convictions and that the existing Supreme Court exception to Double Jeopardy, the Separate Sovereign Rule, should be overruled.

Defendant argues that the "Separate Sovereign" exception is unconstitutional and is plainly inconsistent with the text and original meaning of the Fifth Amendment. Furthermore, the exception is outdated in light of a vastly expanded system of federal criminal law. Two Supreme Court Justices, Ginsburg and Thomas, called for "fresh examination" of the "Separate Sovereign" exception in 2016; now, in a case which the Court deemed ripe for consideration of the abolish of the exception, the question is whether the Supreme Court should overrule the "Separate Sovereign" exception to the Double Jeopardy Clause.

The United States Supreme Court held, in its June, 2019 opinion that the Double Jeopardy Clause of the Fifth Amendment means that those acquitted or convicted of a particular "offence" cannot be tried a second time for the same "offence" but what does the Clause mean by an "offence"? The Court held that under a long series of cases, a crime under one sovereign's laws is not the "same offence" as a crime under the laws of another sovereign. The historical evidence assembled by Defendant in this case was found to be feeble; pointing the other way are the clauses texts, other historical evidence, and one hundred seventy years of precedent.

Is the Fourth Amendment violated by an officer making an investigative stop of a motor vehicle suspecting that the registered owner is the one driving the vehicle, absent any information to the contrary?

***Kansas v. Glover,* 139 S. Ct. 1445 (2019)**

A Kansas police officer was on a routine patrol and ran a registration check on a pick-up truck with a Kansas license plate. The Department of Revenue indicated the truck was registered to the Defendant whose driver's license had been revoked. Subsequently the officer stopped the truck to investigate whether the driver had a valid driver's license because he assumed the registered owner of the truck was also the driver. There was no traffic infraction and no identity of the driver to assist the officer in deciding whether or not to stop the vehicle. Defendant was in fact the driver and was charged with driving while revoked. Defendant moved to suppress the evidence claiming the evidence violated the Fourth Amendment, as set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). In the Motion to Suppress, the trial court sustained it based only on the Judge's anecdotal personal experience that it's not reasonable for an officer to infer that the registered owner of a vehicle is the driver of the vehicle.

The trial court held that an officer lacks reasonable suspicion to stop a vehicle if it is based on the officer's suspicion that the registered owner is driving the vehicle unless the officer has "more evidence" that the owner actually is the driver.

Kansas appealed the decision of the trial court contending that twelve other Supreme Courts and other Courts of Appeal and Federal Circuit Courts provide that the stop was lawful and that the ruling defied common sense about judgments and inferences that law

enforcement officers make every day. The decision is anticipated to be reached by the U.S. Supreme Court in June, 2020.

The exigent circumstances exception to the warrant requirement "almost always permits a blood test without a warrant" when a breath test is impossible, such as when the motorist is unconscious. Therefore, when a driver is unconscious, the general rule is that a warrant is not needed.

***Mitchell v. Wisconsin,* 139 S. Ct. 2525 (2019)**

Mitchell was arrested after he was driving a mini-van and was reported by a witness to have seen erratic driving. The police stopped him; he did field sobriety tests and blew a .24 blood alcohol concentration on a preliminary breath test. Breath test results, however, cannot be used as evidence at trial in Wisconsin. After being taken to jail, Mitchell passed out frequently so the officers took him to a hospital. At the hospital, he was totally unconscious and could not be awakened. An officer ordered a blood draw that later showed a .22 B.A.C. Mitchell argued the blood draw was illegal and moved to suppress the evidence. He lost, even though the officer admitted he didn't try to get a warrant. He was convicted of his seventh DWI and sentenced to three years in prison and appealed. Defendant argued to overturn the decision in *Missouri v. McNeely*, which held in 2012 that police may not draw blood from a suspected drunk driver without his or her consent case-specific exigent circumstances, or a search warrant signed by a judge. Wisconsin argued that the Court should now find that the dissipation of alcohol and drugs in a suspect's blood stream should, per se, be considered an exigent circumstance to allow a blood draw without a warrant. The State also argued a search warrant is too inconvenient and urged the Court to overturn its own recent rulings that generally require warrants if a driver won't or can't consent to a blood draw.

The ACLU filed its brief indicating that no consent is valid unless it is voluntary, limited, and revocable. Drivers arrested for DWI can revoke their "implied consent" to the tests if they are conscious and suffer the civil evidentiary consequences.

The United States Supreme Court held that when a driver is unconscious, the general rule is that a warrant is not needed. However, the general rule might not apply in certain circumstances:

When police have probable cause to believe a person has committed a drunk driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver's B.A.C. without offending the Fourth Amendment. The interesting decent by Justice Gorsush, argued that the case was taken by the U.S. Supreme Court originally to decide whether Wisconsin drivers impliedly consented to blood alcohol tests thanks to a State statute. The Court in this case he argued declined to answer the question presented and instead upheld Wisconsin's law on an entirely different ground; citing the exigent circumstances doctrine.

Motor vehicle passenger was found to lack a reasonable expectation of privacy and therefore did not have standing to challenge a pretextual inventory search of a motor vehicle.

***United States of America v. Dylan Anthony Davis*, (8th Cir., No. 18-2975)**

943 F.3d 1129 (2019)

Defendant filed a Motion to Suppress evidence found inside a car that he was a passenger in and the trial court sustained the motion finding the Defendant was detained without reasonable suspicion before an unlawful pretextual inventory. The subject vehicle was initially stopped for exceeding the posted speed limit and upon contact with officers, both the Defendant and the driver had indicated that the vehicle was a rental vehicle. In a search of the vehicle, with the consent of the driver, the arresting officer saw several small baggies in the driver's backpack along with a loaded weapon which was in violation of Iowa law at that time. A further search of the vehicle uncovered several ounces of illegal narcotics and paraphernalia. The government appealed the trial court's sustaining the Motion to Suppress and the appeal was taken to the Eighth Circuit. The Court of Appeals held that only those with a reasonable expectation of privacy in the place search may bring a Fourth Amendment challenge. A passenger who asserts "neither a property nor a possessory interest" in a vehicle lacks a reasonable expectation of privacy in that vehicle. Even where a search is unlawful, a passenger without such an interest in the vehicle normally cannot challenge its search or suppress resulting evidence. In addition, the Eighth Circuit found a combination of nervous behavior and suspicious travel plans created a reasonable suspicion justifying an extension of the traffic stop, along with the occupants' suspicious movements creating a reasonable suspicion of criminality in the case. The court found that because the officer acted on a reasonable suspicion to extend the traffic stop, the Defendant passenger was not unreasonably seized in violation of the Fourth Amendment. As a result, the Defendant was without standing to challenge the pretextual inventory search, a finding which was not appealed by the U.S. Government following the motion originally being sustained by the trial court.

Use of evidence in prosecution obtained as a result of a private search does not subject a conviction to a Fourth Amendment attack because private searches are not within the purview of the Fourth Amendment.

United States of America v. Dennis M Suellentrop, Jr., (8th Cir., No 19-1002)
953 F.3d 1047 (2020)

Defendant was sentenced to 120 years in prison for possession of child pornography. Defendant filed a Motion to Suppress based upon the government's use of a video obtained from his cell phone as a result of a friend getting "nosey" and looking through the contents of Defendant's phone. As a result of the friend seeing pornographic images a search was initiated, after obtaining a warrant, for images and video on the cell phone. The trial court held, which was affirmed by the Eighth Circuit, that the Fourth Amendment does not extend to private searches that are neither instigated by, nor performed on behalf of, a governmental entity. In this case, the court found that the friend had "acted entirely on his own when he search Defendant's cell phone, not acting at the government's request or even with knowledge and approval of government agents. The court found that "when the government reexamines materials following a private search, the government may intrude on individuals' privacy expectations without violating the Fourth Amendment, provided the government intrusion goes no further than the private search.

VII. JUDICIAL POTPOURRI

Indiana Judge who raised her middle finger at 2 men who yelled something from an SUV to her and 2 other judges received ethical complaints against her for her conduct.

In Re: Judge Sabrina Bell, Crawford County District Court, Indiana

Three Judges, including Judge Bell, were in Indianapolis for a Judicial Conference and had visited several bars before going to a White Castle restaurant in the early hours of May 1, 2019. According to the ethics complaints against all three Judges, two men parked their SUV after Judge Bell gave them the finger. A "heated verbal altercation" began with "all participants yelling, with profanity and making dismissive, mocking, or insolent gestures toward the other group," according to ethics complaint. A fight between two of the judges arose with the occupants of the SUV, which ended when one of the vehicle occupants pulled a gun out and shot one of the Judges in the stomach, firing two more shots against the other Judge in the chest, according to the complaint. Judge Bell told the police at the scene that she felt like the fight was all her fault, although she later told police in recorded statements that she didn't know what sparked the confrontation.

All three Judges are accused of failing to act in a manner that promotes public confidence in the judiciary and engaging in extrajudicial activity that undermines a Judge's integrity.

Judge is suspended without pay after guilty plea in underwear case.

In Re: Suspension of Judge Robert Cicale, New York Court of Appeals, September, 2019

Judge Robert Cicale pleaded guilty to second degree attempted burglary for trying to steal a woman's underwear. He was accused of trying to enter the home of an intern who worked for him when he was town attorney. The woman reported hearing a noise and seeing a man running off, according to prior coverage by The Associated Press.

Police said they found Cicale on the street carrying several pairs of the woman's soiled undergarments. He told the police that he had taken the underwear on a previous occasion and he went to the house to take underwear again. The Suffolk County Judge pleaded guilty to the stealing charge and The New York Court of Appeals sustained a preliminary order suspending the Judge for an indeterminate period of time without pay.

Judge faces ethics charges for reality TV show featuring courtroom domestic violence cases.

In Re: Judge Carroll Kelly, 11th Judicial Circuit of Florida, Miami-Dade County, May 12, 2020

A Judge in Miami-Dade County, Florida is facing ethics charges for allowing the producers of a reality TV show to film actual domestic violence cases in her courtroom. Judge Kelly is the accused Judge for violating several ethical regulations in connection with a syndicated show called "Protection Court". Cases featured on the show included a man who claimed that his girlfriend attacked him with mace, a woman allegedly attacked by her mother, a man who allegedly stalked his ex-girlfriend, and a man accused of threatening to kill his brother and niece.

According to the Florida Judicial Qualifications Commission complaint, Judge Kelly "lent the prestige" of her judicial office "to advance the private interests" of herself and others. Among other things, Judge Kelly gave litigants minimal notice that they would be asked to sign waivers in which they agreed not to sue for defamation and other torts. Litigants were presented with a release shortly before entering the courtroom. Even litigants who didn't agree to appear in the show were still filmed. Litigants that did sign the

release agreed to pay attorney's fees and costs incurred by the show's producer for any claims brought despite the release.

The Commission claimed that Judge Kelly made misleading statements to her Chief Judge, that she had obtained assurances that participating in the show would not violate judicial ethics rules. Judge Kelly was also accused of misrepresenting her authority to stop production of the show by telling the investigative panel that she had "final approval of anything" in connection with the show. The most recent opinion by The Florida Supreme Court's Judicial Advisory Committee said no judicial cannons specifically addressed the topic of whether Judges may permit court cases to be filmed and televised on a weekly basis. As a result, Judge Kelly argued that she acted under appropriate discretion. The case is apparently still pending.

Federal Judge reprimanded for, "very serious, long term, behavior involving employees and felon".

In Re: Judge Carlos Murguia, 10th Circuit

The Judicial Council of the 10th Circuit publically reprimanded a U.S. District Judge, Carlos Murguia, of Kansas City, Kansas, for the following misconduct:

> 1. Giving "preferential treatment and unwanted attention to female employees of the judiciary in the form of sexually suggestive comments, inappropriate text messages, and excessive, nonwork related contact, much of which occurred after work hours and often late at night."
>
> 2. Having a years-long relationship with a felon, convicted of State Court crimes, who was using drugs and on probation. The felon is now back in prison for probation violations.
>
> 3. Being habitually late for court proceedings and meeting for years, partly because of regularly scheduled lunchtime basketball games. The Judge's tardiness often required attorneys, parties, and juries to wait, sometimes making attorneys late for proceedings in other courtrooms.

The Judicial Council also found that when the Judge was first confronted with the allegations, he did not fully disclosed the extent of his conduct and he tended to admit to allegations only when confronted with supporting documentary evidence. Additionally, the Council found that his apologies appeared more tied to his regret that his actions were brought to light than an awareness of, and regret for, the harm he caused to the individuals involved and the integrity of his office.

Since the public reprimand was issued by the judicial Council, Judge Murguia has resigned from the bench.

Officers said they smelled pot. The Judge called them liars.

In Re: The Opinion of Judge April Newbauer, New York Supreme Court for the Bronx, July, 2019

Judge April Newbauer of the New York Supreme Court for the borough of the Bronx wrote a scathing opinion in July 2019 in a case in which officers claimed to have smelled marijuana as a basis for a search of a vehicle contents. The Court noted that the officers claimed to smell marijuana so often that it stains credulity, and she called on Judges across the state of New York to stop letting police officers get away with lying about it.

"The time has come to reject the canard of marijuana emanating from nearly every vehicle subject to a traffic stop, "Judge April Newbauer wrote in a decision in a case involving a gun the police discovered in a car they had searched after claiming to have smelled marijuana. The Court added; "so ubiquitous has police testimony about of odors from cars become that it should be subject to heightened level of scrutiny if it is to supply the grounds for a search".

In recent years, at least five other judges have concluded in individual cases that officers likely lied about smelling marijuana to justify searches that turned up an unlicensed firearm, according to court documents. These Judges came to doubt the police testimony for a range of reasons, such as discrepancies within an officer's account or among officers, according to a review of the five decisions. These Judges have generally questioned only the credibility of individual officers in individual cases. Judge Newbauer's claim is much broader: that there is wide spread lying.

An elected Illinois Judge was removed from the bench on accusations that he lied about accidently firing a gun in his apartment, and retaliated against two court employees who complained about sexual harassment.

In Re: The Removal of Judge Patrick J. O'Shea, Illinois Courts Commission, September 27, 2019 Order

The Illinois Courts Commission removed DuPage County District Judge, Patrick O'Shea in September, 2019 based upon the following findings regarding the incidents set forth herein:

> 1. Gun incident. The Judge was found to have made false and misleading statements to detectives who investigated after the Judge's neighbors reported finding a bullet in their apartment in 2017. Detectives said the Judge told them that the holes in the wall were caused by a screwdriver and nail gun. When the detectives informed the Judge that a bullet had been found in the neighboring apartment, the Judge told them that his son must have fired the gun. After further questioning, the judge admitted accidently firing the gun. The Commission therefore found the Judge's testimony being, "inconsistent and untruthful."
>
> 2. Sexual harassment complain and retaliation. The Commission found that a clerk, assigned to the Judge's courtroom, indicated he had made her feel uncomfortable several times, including on one occasion leaning over her shoulder a little too closely. In another instance the Judge told her that if she worked for him, he would "let her do whatever she wanted." At another time, the clerk came in late after taking her daughter to school, and according to

the clerk, the Judge said, "you wore that to drop your daughter off at school?" Then he allegedly said, "you should wear that every day." The clerk asked her supervisor to remove her from the Judge's courtroom and after her removal the Judge filed a complaint alleging poor performance by the clerk. The Commission found that the complaint was merely retaliation. Again, the Commission found that the Judge's testimony was untruthful and unbelievable.

3. Unwelcome comments to a judicial assistant and judge. A judicial assistant to another judge testified that Judge O'Shea would walk passed her desk when she was on her computer and ask whether she was buying lingerie. In another case, the Judge asked whether the assistant and judge we in the judge's chambers "hugging and kissing". The judicial assistant filed a complaint and thereafter, Judge O'Shea complained to the judicial assistant's supervisor, saying that he was concerned that her tattoos were "gang related." The judicial assistant was given a verbal reprimand in hopes that she would satisfy the Judge. The Commission found:

i) The Judge used his position of power as a Judge to file complaints against employees.

ii) Expressed concern that the Judge has not acknowledged an real wrong doing regarding any of the allegations.

The Judge was removed from office.

Lawyer accused of stealing estate money for wife's breast implants, and child support gets interim suspension.

In Re: The Matter of Brian M. Wiggins, Dayton, Ohio, May 4, 2020

An Ohio lawyer has been placed on interim suspension after he was accused of stealing millions of dollars from a number of estates and trusts, including an estate that was intended to benefit the St. Jude Children's Research hospital. Mr. Wiggins was accused of spending stolen money on his wife's breast implants, child support, a house, a boat, a Mercedes, ATM withdrawals at casinos, and two women who accompanied him to Las Vegas. At least one of the two women was an adult dancer.

The Ohio Supreme Court entered a suspension order with six ethics investigations, including two connected to criminal charges against Mr. Wiggins in a March superseding indictment according to the disciplinary counsel. The indictment charged Wiggins with 55 counts that included identity fraud, theft, money laundering, cocaine possession, and tampering with records.

A review of Interest on Lawyer Trust Accounts records indicates that Wiggins' wrongdoing could be more extensive.

"Trying to determine the full extent of Wiggins' misconduct has been like trying to put together a large, complicated jigsaw puzzle," the Commission memorandum said. "Although disciplinary counsel has completed some of the puzzle, there are many, many missing pieces representing Respondent's continuing and not-yet-discovered misconduct."

2020 Annual Courts Conference

THE MIKE AND JOE SHOW!

(a/k/a: Case Law Updates)

1

SEARCH and SEIZURE

2

SEARCH and SEIZURE

Furlow, et al v. Belmar, et al

U.S District Court Case No. 4:16 CV254HEA

(E.D. MO. 2018)

A "Wanted" is distinguishable from a "Warrant" but can be a basis for an arrest with probable cause or in view of an officer.

3

SEARCH and SEIZURE

Cletus Greene v. State of MO,

__S.W.3d__ (Mo. App 2019) SC96973

Search of Personal Property of an Arrestee may be made without a warrant even with substantial lapse of time between the arrest and processing.

4

SEARCH and SEIZURE

***State of MO v. James Christopher Bales*,**
__S.W.3d__ (Mo. App. 2020) SD36197 (SC98376)

A Search Warrant must adequately describe the item to be seized to avoid other property mistakenly searched.

See also *State v. Johnson*,
576 SW3d 205 (Mo. App. 2019)

5

SEARCH and SEIZURE

***State of MO v. Bryan F. Burns*,**
__S.W.3d__(Mo. App. 2020) SD36155

Traffic Stop search was upheld where defendant's consent was freely given.

6

SEARCH and SEIZURE

State of MO v. Derek L. Johnson,
__S.W.3d__(Mo. App. 2020) WD82131

Police Car Emergency Lights held to be a "Show of Authority" which would imply that to a reasonable person he was not free to leave.

7

SEARCH and SEIZURE

State of MO. v. Harry Little,
__S.W.3d__(Mo. App. 2020) ED107404

"Inevitable Discovery Doctrine"

allows admissibility of inadmissible evidence where the evidence would have been "inevitably" discovered by law enforcement.

8

SEARCH and SEIZURE

***State of MO. v. Anthony James Smith*,**
__S.W.3d__(Mo. App. 2020) SC97811

"Fog Line" violation now held by Missouri Supreme Court to justify a traffic stop and subsequent seizure.

9

CRIMINAL PROCEDURE

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CRIMINAL PROCEDURE

State of MO. v. Jeffrey Scott Kowalski,

587 S.W.3d 411 (Mo. App. 2019) SD35734 & SD35752 consolidated

Sixth Amendment right to counsel
- Can be waived-self representation
  - knowing and intelligent

Exception to knowing waiver
- insuring integrity and trial efficiency
- actions impeding judicial proceedings
  - ranting, obscenities, tirades, disruptive and abusive actions.

11

CRIMINAL PROCEDURE

State of MO. v. Jeffrey Scott Kowalski,

587 S.W.3d 411 (Mo. App. 2019) SD35734 & SD35752 consolidated

A Judge may forfeit a defendant's right to self representation where a Defendant engages in "serious, obstructional misconduct."

12

OBSTRUCTIONAL MISCONDUCT

1. Paying the Judge's property taxes.
2. Communicating with the victim's daughter.
3. Pulling "pranks" on the trial court.
4. Announcing that the Judge's wife will be called as a Defense Witness.
5. Alleging the Judge receives income from Defendant's corporation.

13

CRIMINAL PROCEDURE

Frank Peter Renick, Jr. v. State of MO.

592 S.W. 3d 411 (Mo. App. 2020) SD36140

Ineffective assistance of counsel

- Standard- Preponderance of the evidence

- Proof

- failed to exercise reasonably competent trial counsel's skill

-Evaluation

- look to accuracy of acts and statements of counsel

14

CRIMINAL PROCEDURE

Frank Peter Renick, Jr. v. State of MO.

592 S.W. 3d 411 (Mo. App. 2020) SD36140

Attorney's Fees for trial can be greater than for a plea, and not merely indicative that a defendant is pleading guilty merely because he doesn't have sufficient money for trial.

15

STATUTORY INTERPRETATION

16

STATUTORY INTERPRETATION

L.F. W. v. Missouri State Highway Patrol,
585 S.W. 3d 846 (Mo.App.2019)

Expungement Statute- *§ 610.140*

- *must be eligible offense violation or infraction*

- *3 year requirement*

- *no charged misdemeanor/felony offense within 3 years*

17

STATUTORY INTERPRETATION

State v. Shaw,

592 S.W. 3d 354 (Mo. App. 2019)

Resisting Arrest

-knew or should have known making arrest

-Resisted to prevent arrest
- *-violence*
- *-physical force*
- *-fleeing*

Felony resisting

-not subjective

-if offense is or could constitute a felony
- *-trier of fact determination*

18

STATUTORY INTERPRETATION

T.V.N. v. Missouri State Highway Patrol,
588 S.W. 3d 245 (Mo. App. 2019)

MSHP Criminal Justice Information Services (Central Repository)

-Expungement - necessary party

-compiling and disseminating criminal history

-interest in accuracy of information

-Expungement

-restore to prior status as if event never took place

-expunged records do not count as prior convictions

19

SELF INCRIMINATION

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SELF INCRIMINATION

State v. Gray

591 S.W.3d 65 (Mo. App. 2019)

Privilege against Self Incrimination

-Can be waived

-must be voluntary

Voluntary

-understand nature of conversation

-not mitigated by physical injuries

-injury overcoming will to resist

21

SELF INCRIMINATION

State v. Lindsey

597 S.W.3d 240 (Mo. App. 2019)

Judicial Admission

-in course of judicial proceedings

-defendant or counsel

-voluntary admission before jury

-against interests

Effect

-substitute for evidence

-dispense with proof of facts

-conclusive on defendant

22

EVIDENCE

23

EVIDENCE

State v. Barnett

595 S.W.3d 315 (Mo. App. 2020)

Possession of a controlled substance

-actual or constructive

Actual

-within easy reach or control

Constructive

-power/intention to exercise dominion

-solo/joint

24

-nervousness/access not enough

Incriminating circumstance

-plain view, mingling with personal belongings, ownership/control of vehicle or property, statements, false statements

25

EVIDENCE

State v. Christian

585 S.W.3d 403 (Mo. App. 2019)

Admissibility of evidence

-Logically and legally relevant

Logically relevant

-existence of fact more or less probable

Legally relevant

-value verses cost

26

Evidence of civil litigation in criminal matter

-goes toward motive or intent

-not prejudicial

27

EVIDENCE

State v. Floyd

590 S.W.3d 908 (Mo. App. 2019)

Statement against penal interests

-exception to hearsay rule

-narrow

Test

-declarant unavailable

-indicia of reliability

-relates directly to specific charge

-exonerates defendant

28

EVIDENCE

State v. Gyunashev

592 S.W.3d 836 (Mo. App. 2020)

Exception to hearsay rule

-present – sense - impression

-excited utterance

Prevent - sense - impression

-Statement made near or simultaneous with occurrence

-describes occurrence

-perceived with declarent's own senses

29

Excited utterance factors

-time between event and declaration

-in response to a question

-self-serving

-physical condition

30

EVIDENCE

State v. Loper

ED106525 11/12/2019

Expert testimony

-Information with which jury is unfamiliar

-to aid to understand

Restrictions

-general principles to specific evidence

-not admissible

-Comments on guilt or innocence

-credibility of witness

-invades province of jury

EVIDENCE

State v. Whittier

591 S.W.3d 19 (Mo. App 2019)

Security Cameras

-"silent witness" theory

-admissible without first hand knowledge

Reliability- Factors

-System working properly at time

-Historic reliability

-no third party tampering

-Fair and accurate portrayal

-original form

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U.S. SUPREME COURT and FEDERAL CASES

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U.S. SUPREME COURT & FEDERAL CASES

Gamble v. United States

139 S. Ct. 1960 (2019)

The "Separate Sovereign" Rule allows duplicate convictions of the same crime, without violating the Double Jeopardy Clause

35

U.S. SUPREME COURT & FEDERAL CASES

Kansas v. Glover

139 S. Ct. 1445 (2019)

When an officer lacks information negating an inference that the owner is the driver, and investigative stop, after determining the vehicle owner is revoked, does not violate the 4th Amendment.

36

U.S. SUPREME COURT & FEDERAL CASES

Mitchell v. Wisconsin

139 S. Ct. 2525 (2019)

Blood test without a Warrant is permitted when a breath test is impossible, (e.g. driver is unconscious)

37

U.S. SUPREME COURT & FEDERAL CASES

U.S. v. Dylan Davis

943 F3d 1129, (2019)

8th Circuit, No. 18-2974

Passenger in a car does not have a reasonable expectation of privacy. Therefore, he has no standing to challenge a pretextual inventory search.

38

U.S. SUPREME COURT & FEDERAL CASES

U.S. v. Dennis M. Suellentrop

943 F3d, 1047, (2020)

8th Circuit, No. 19-1002

Private search of cell phone does not violate the 4th Amendment.

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JUDICIAL POTPOURRI

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JUDICIAL POTPOURRI
(not in materials)

Fowler v. Missouri Sheriff's Retirment Assoiation

(S.C.98484)

Collection of $3.00 surcharge does not violate the "open courts" provision of the Missouri Constitution.

41

JUDICIAL POTPOURRI

In Re: Judge Sabrina Bell,

Indiana District Court

Raising middle finger at persons, resulting in a fist fight between judges and others does not promote public confidence in the integrity of the judiciary.

Canon 1. 2-1.1

42

JUDICIAL POTPOURRI

In Re: Suspnsion of Judge Robert Cicale,

New York Court of Appeals, 2019

Judge was suspended without pay for pleading guilty for trying to steal a woman's underwear.

Canon 1. 2-3.1 A Judge shall not participate in activities that would demean the judicial office.

JUDICIAL POTPOURRI

In Re: Judge Carroll Kelly,

Florida 11th Judicial Circuit

A Judge should not allow producers of a reality TV show to film actual domestic violence cases in her courtroom (pending).

Canon 1. 2-1.3 A Judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge, or others, or allow others to do so.

JUDICIAL POTPOURRI

In Re: Judge Carlos Muguia

U.S. District Court for Kansas, 10th Circuit

Public reprimand given to Judge for giving "preferential treatment and unwanted attention to female employee…"

45

JUDICIAL POTPOURRI

In Re: The Removal of Judge Patrick O'Shea

Illinois, Dupage County, 2019

A Judge cannot lie to law enforcement, nor retaliate against persons cooperating in a judicial investigation

Canon 1. 2-2.16 A Judge shall not retaliate, directly or indirectly against a person suspected to have assisted with an investigation of a judge

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JUDICIAL POTPOURRI

In Re: The Matter of Brian Wiggins

Ohio Supreme Court, 2020

Ohio attorney suspended for stealing "millions of dollars" from estates and trusts, and spending the money on child support, a house, a boat, a Mercedes, gambling trips, breast implants, and adult dancers.

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Friday, August 14, 2020
9:30 – 10:30 – Virtual – Zoom Webinar

Purposes and Responsibilities of Courts

(1.2 CLE – Judicial Ethics)

Dr. Anthony "Tony" Simones, Director of Citizenship Education, MO Bar

Summary

Judges will explore the purposes and responsibilities of courts as identified by the National Association of Court Management and the vital role they play in achieving these purposes and fulfilling these responsibilities.

Bio

Dr. Simones has served for twenty-five years as a Professor of Constitutional Law and American Government in the university setting; Seven years as Manager of Judicial Education for the Office of State Courts Administrator and he is on the Board of Directors, and past President, of the National Association of State Judicial Educators.

PLEDGE OF FAIRNESS

The fundamental mission of the Alaska Court System is to provide a fair and impartial forum for the resolution of disputes according to the rule of law. Fairness includes the opportunity to be heard, the chance to have the court process explained, and the right to be treated with respect. The judges and staff of the Alaska Court System therefore make the following pledge to each litigant, defendant, victim, witness, juror, and person involved in a court proceeding:

We will LISTEN to you

We will respond to your QUESTIONS about court procedure

We will treat you with RESPECT

공정한 재판을 위한 서약

알래스카 법원의 기본임무는 법치주의에 의거하여 분쟁의 해결을 위해 공명정대한 재판을 제공하는 것입니다. 공정하다 함은 말할 수 있는 기회, 법정절차에 대해 설명을 들을 기회, 그리고 정중한 대우를 받을 권리를 포함합니다. 그러므로 알래스카 법원의 판사들과 모든 직원들은 각각의 소송당사자, 피고, 피해자, 증인, 배심원 그리고 법정절차에 관련된 모든 사람들에게 아래와 같이 서약합니다.

우리가 당신의 이야기를 듣겠습니다.

우리는 법정절차에 대한 당신의 질문에 대답하겠습니다.

우리는 당신을 정중히 대하겠습니다.

COMPROMISO DE JUSTICIA

La misión fundamental del Sistema Judicial de Alaska es proporcionar un foro justo e imparcial para la resolución de litigios de acuerdo con el estado de derecho. La justicia incluye la ocasión de ser oído, la oportunidad de que el proceso judicial le sea explicado y el derecho a ser tratado con respeto. Por consiguiente, los jueces y el personal del Sistema Judicial de Alaska hacen el siguiente compromiso a cada litigante, acusado, victima, testigo, miembro del jurado y a toda persona involucrada en un proceso judicial:

Le ESCUCHAREMOS

Responderemos a sus PREGUNTAS acerca del procedimiento judicial

Le trataremos con RESPETO

AKGUIN PICUILRIA ALLAKAKNGAUNRITLLERKAMEK

Alaskam qanercetarviim calvian ciumugta piavciluni ayukluki cali quyugcivigmek cali calivigmek tuani yum ayukucia wall' kitucia allakaukevkenaku caliaknaluku maligtakuluki alerkutet. Ukugrut, niicimallerkak, nallunaigiluteng aperturluku qanercetagviim caliara, cali piyunarkucik aulukllerka yuk qircikluku. Cukcistai cali calistai Alaska Court System-ak wanirpak pikiurtuq makunun: yuk qanercetagvigkun akiligcetarilyagamek elagautelria, qanercetarumalria, pinerllugcimalria, tangvagtet, kanginaurteni elagautelria, cali yuk elagautelria qanercetagvgkun caliamii:

Wanguta NIICUGNICIKAMTEREN

APKAURUTETEN kiucikaput tunginun qanercetagviim caliyagai

TAKAKLLUTEN aulukcikamerten

Cog Lus Kev Ncaj Ncees

Lub hom phiaj ntawm Alaska Court System yog los nrhiav thiab pub txoj kev ncaj ncees rau ntawm kev sib daws teeb meem raws li txoj kev cai tswj hwm. Txoj kev ncaj ncees muaj lub hwj tsam rau koj los hais kom sawv daws hnov, muaj lub caij nyoog rau tsev txiv txim plaub los piav txog kev plaub ntug, thiab muaj txoj cai kom ib tug sai ib tug rau txoj kev sam xeeb. Tus kws txiav txim plaub thiab cov neeg khiav hauj lwm rau ntawm Alaska Court System cog lus rau txhua tus neeg uas raug foob, txhua tus neeg raug tsim txom, txhua tus neeg ua pov thawj, cov neeg pab tus kws txiav txim plaub, thiab txhua tus neeg uas muaj feem cuam rau ib roog plaub twg tias:

Peb yuav ua zoo mloog koj

Peb yuav teb koj cov lus nug txog kev ua plaub ntug

Peb yuav saib koj rau txoj kev sam xeeb

Обещание справедливого отношения

В соответствии с правилом закона, основной задачей Судебной Системы штата Аляски является обеспечение справедливого и беспристрастного отношения во время разрешения споров. Справедливое отношение включает в себя возможность быть услышанным, возможность получения разъяснения судебного процесса и право уважительного отношения. Судьи и работники Судебной Системы штата Аляски обещают справедливое отношение к каждой стороне судебного процесса: подсудимому, пострадавшему, свидетелю, присяжному заседателю и лицу вовлечённыму в судебный процесс:

Мы ВЫСЛУШАЕМ Вас

Мы ответим на Ваши ВОПРОСЫ по поводу судебного процесса

Мы отнесемся к Вам с УВАЖЕНИЕМ

Pangako ng Pagkamakatarungan

Ang napakahalagang misyon ng Alaska Court System ay magbigay ng makatarungan at walang kinikilingang husgado para sa pagpapasya ng mga pagtatalo alinsunod sa patakaran ng batas. Kabilang sa pagkamakatarungan ay ang oportunidad na mapakinggan, ang pagkakataong pagpaliwanagan sa proseso ng hukuman at ang karapatang taratuhin nang may paggalang. Dahil dito ang mga hukom o huwes at mga kawani ng Alaska Court System ay lumikha ng pangako sa bawat litigante, biktima, saksi, hurado, at ang taong sangkot sa isang paglilitis ng hukuman.

Makikinig kami sa inyo

Sasagutin namin ang inyong mga tanong tungkol sa pamamaraan ng hukuman.

Pakikitunguhan namin kayo nang may paggalang.

The translations above represent the six languages other than English most commonly requested by persons of limited English proficiency accessing court services: Hmong, Korean, Russian, Spanish, Tagalog, and Yupik.

PROCEDURAL FAIRNESS/PROCEDURAL JUSTICE

A BENCH CARD FOR TRIAL JUDGES

WHAT IS PROCEDURAL FAIRNESS OR PROCEDURAL JUSTICE?

When we speak of **Procedural Fairness** or **Procedural Justice** (two terms for the same concept), we refer to the perceived fairness of court proceedings. Those who come in contact with the court form perceptions of fairness from the proceedings, from the surroundings, and from the treatment people get.

Research has shown that higher perceptions of procedural fairness lead to better acceptance of court decisions, a more positive view of individual courts and the justice system, and greater compliance with court orders.

Researchers sometimes identify the elements of procedural fairness differently, but these are the ones most commonly noted:

VOICE: the ability of litigants to participate in the case by expressing their own viewpoints.
NEUTRALITY: the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made.
RESPECT: that individuals were treated with courtesy and respect, which includes respect for people's rights.
TRUST: that decision makers are perceived as sincere and caring, trying to do the right thing.
UNDERSTANDING: that court participants are able to understand court procedures, court decisions, and how decisions are made.
HELPFULNESS: that litigants perceive court actors as interested in their personal situation to the extent that the law allows.

MEASURING FAIRNESS

"Measurements . . . define what we mean by performance."
—Peter Drucker

There are tools to help you measure fairness in your court. You can then see if you can improve over time.

The Center for Court Innovation has *Measuring Perceptions of Fairness: An Evaluation Toolkit*, available at http://goo.gl/TVu42A.

The National Center for State Courts has its CourTools, which includes an Access and Fairness survey in both English and Spanish, available at www.courtools.org.

The Utah Judicial Performance Evaluation Commission has a Courtroom Observation Report, which can be used by courtroom observers to give qualitative feedback, available at http://goo.gl/1bWAVk.

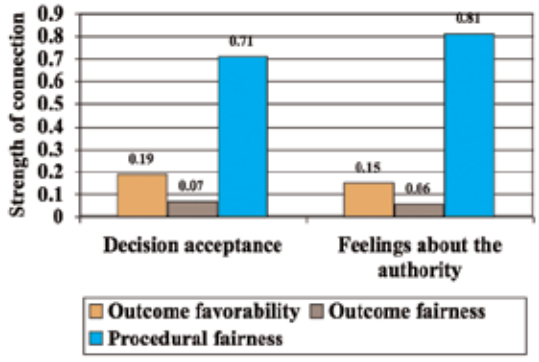
KEEP IN MIND:

- This may be the most important contact with the court system the parties will ever have.
- Filling out forms on the bench may be important, but eye contact and engagement with the parties are critical.
- Trust is not a given. But it can be gained in each hearing through adherence to procedural-fairness principles.
- People make assumptions when they lack knowledge. Explain things.
- Listening is a key skill. Decision acceptance is greater if it's clear you listened—note their key points when ruling.
- Like others, judges can be affected by perceptions, assumptions, and stereotypes—in other words, implicit biases. Be aware.

WHY IS IT IMPORTANT?

Several rigorous evaluations have shown that both acceptance of court decisions and overall approval of the court system are much more closely connected to perceptions of procedural fairness than to outcome favorability (Did I win?) or outcome fairness (Did the right party win?). Studies also show increased compliance with court orders when participants experience procedural fairness.

WHY DO PEOPLE ACCEPT COURT DECISIONS?



Source: Survey of court users in Oakland and Los Angeles, California, reported generally in TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW (2002).

FOR MORE INFORMATION

ProceduralFairness.org
ProceduralFairnessGuide.org
Center for Court Innovation (www.courtinnovation.org)
National Center for State Courts (www.ncsc.org)

This bench card is jointly produced by the American Judges Association, the Center for Court Innovation, the National Center for State Courts, and the National Judicial College.

BENCH CARD ON PROCEDURAL FAIRNESS

PRACTICAL TIPS FOR COURTROOM PROCEEDINGS

INTRODUCE YOURSELF. Introduce yourself at the beginning of proceedings, making eye contact with litigants and other audience members. Court staff can recite the basic rules and format of the court proceedings at the beginning of each court session. Written procedures can be posted in the courtroom to reinforce understanding.

GREET ALL PARTIES NEUTRALLY. Address litigants and attorneys by name and make eye contact. Show neutrality by treating all lawyers respectfully and without favoritism. This includes minimizing the use of jokes or other communication that could be misinterpreted by court users.

ADDRESS ANY TIMING CONCERNS. If you will be particularly busy, acknowledge this and outline strategies for making things run smoothly. This can help relax the audience and make the process seem more transparent and respectful.

Example: "I apologize if I seem rushed. Each case is important to me, and we will work together to get through today's calendar as quickly as possible, while giving each case the time it needs."

EXPLAIN EXTRANEOUS FACTORS. If there are factors that will affect your conduct or mood, consider adjusting your behavior accordingly. When appropriate, explain the issue to the audience. This can humanize the experience and avoid court users' making an incorrect assumption.

Example: "I am getting over the flu. I'm not contagious, but please excuse me if I look sleepy or uncomfortable."

EXPLAIN THE COURT PROCESS AND HOW DECISIONS ARE MADE. The purpose of each appearance should be explained in plain language. Tell the defendant if and when she will have an opportunity to speak and ask questions. Judges and attorneys should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.

Example: "Ms. Smith: I'm going to ask the prosecutor some questions first, then I'll ask your lawyer some questions. After that, you'll have a chance to ask questions of me or your attorney before I make my decision."

USE PLAIN LANGUAGE. Minimize legal jargon or acronyms so that defendants can follow the conversation. If necessary, explain legal jargon in plain language. Ask litigants to describe in their own words what they understood so any necessary clarifications can be made.

MAKE EYE CONTACT. Eye contact from an authority figure is perceived as a sign of respect. Try to make eye contact when speaking and listening. Consider other body language that might demonstrate that you are listening and engaged. Be conscious of court users' body language too, looking for signs of nervousness or frustration. Be aware that court users who avoid making eye contact with you may be from a culture where eye contact with authority figures is perceived to be disrespectful.

ASK OPEN-ENDED QUESTIONS. Find opportunities to invite the defendant to tell his/her side of the story, whether directly or via defense counsel. Use open-ended questions to invite more than a simple "yes" or "no" response. Warn litigants that you may need to interrupt them to keep the court proceeding moving forward.

Example: "Mr. Smith: I've explained what is expected of you, but it's important to me that you understand. What questions do you have?"

EXPLAIN SIDEBARS. Sidebars are an example of a court procedure that can seem alienating to litigants. Before lawyers approach the bench, explain that sidebars are brief discussions that do not go on the record and encourage lawyers to summarize the conversation for their clients afterward.

STAY ON TASK. Avoid reading or completing paperwork while a case is being heard. If you do need to divert your attention briefly, pause and explain this to the audience. Take breaks as needed to stay focused.

Example: "I am going to take notes on my computer while you're talking. I will be listening to you as I type."

PERSONALIZE SCRIPTED LANGUAGE. Scripts can be helpful to outline key points and help convey required information efficiently. Wherever possible, scripts should be personalized–reading verbatim can minimize the intended importance of the message. Consider asking defendants to paraphrase what they understood the scripted language to mean to ensure the proper meaning was conveyed.

Adapted from Emily Gold LaGratta, Procedural Justice: Practical Tips for Courts (2015).

FOR ADDITIONAL READING

Emily Gold LaGratta, Procedural Justice: Practical Tips for Courts (2015), available at https://goo.gl/YbuC3K.

Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 Ct. Rev. 4 (2007-2008) (an AJA White Paper), available at http://goo.gl/afCYT.

Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-Making Process,* 49 Ct. Rev. 76 (2013) (an AJA White Paper), available at http://goo.gl/RrFw8Y.

Brian MacKenzie, *The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Court,* 52 Ct. Rev. 8 (2016) (an AJA White Paper), available at http://goo.gl/XA75N3.

David B. Rottman, *Procedural Fairness as a Court Reform Agenda*, 44 Ct. Rev. 32 (2007-2008), available at https://goo.gl/sXRTW7.

Tom R. Tyler, *Procedural Justice and the Courts*, 44 Ct. Rev. 26 (2007-2008), available at https://goo.gl/UHPkxY.

This bench card is jointly produced by the American Judges Association, the Center for Court Innovation, the National Center for State Courts, and the National Judicial College.

THE MISSOURI BAR
CITIZENSHIP EDUCATION

Purposes and Responsibilities of Courts

Dr. Anthony Simones
tsimones@mobar.org

Justice happens in this state largely because of you and the work you do.

However, you are so busy making justice happen that you don't take the time to consider just how important your role is.

Today, we are going to take the opportunity to look at the purposes and responsibilities of the courts and the role you play in making justice happen.

The National Association for Court Management provides us with a list of purposes, as articulated by practitioners from around the country.

The Purposes of Courts

1. To do justice in individual cases

Courts provide a forum in which broad laws can be applied to the specific facts of a particular case.

However, this involves more than just processing cases.

As one prominent Missouri judge put it, doing justice in individual cases …

"Challenges the judge to see each person as an individual and to meet them where they are, rather than believing themselves to be strictly bound to a fine schedule set for defendants generally."

What this means and what this does not mean…

Where the law calls upon judges to use their discretion…

… they should consider all of the relevant factors and administer individualized justice.

It is a more difficult endeavor, but it provides a greater quality of justice.

The Purposes of Courts

2. To Appear to Do Justice in Individual Cases

It doesn’t mean that courts should just go through the motions.

It means that appearances matter.

The power of the court comes down to the public’s trust and confidence in the court.

Thus, the people must see that justice is being done in the courts.

Research shows that people's view of the courts is not based upon whether they won or lost.

It comes down to how they were treated by the court.

This reality gave rise to the "procedural fairness" movement, focusing on the way that courts interact with members of the public.

Procedural Fairness: Understanding

- Does the litigant have an understanding of the court and its process?
- Has the court provided information and clear explanations?

Procedural Fairness: Voice

- Are litigants being given the opportunity to be heard?
- Is the court listening to what is being said?

Procedural Fairness: Respect

Is the court treating litigants with dignity and respect?

Procedural Fairness: Neutrality

- Is the court providing a neutral forum?
- Does the court treat defending parties the same as prosecuting parties?

You interact with more members of society than any other part of the judiciary.

You have the opportunity and the responsibility to make that interaction one that reflects positively on the judiciary.

The Purposes of Courts

3. To Protect Individual Freedom From the Arbitrary Use of Government Power

The Rights That Distinguish and Define Us as a Nation

- The Bill of Rights
- Due Process of Law
- Equal Protection of the Law

Who did the Framers of our constitutional system entrust to be the guardians of these constitutional rights and freedoms? The courts.

The Purposes of Courts

4. To Provide a Forum for the Peaceful and Final Resolution of Disputes

You have the ability to create a citadel, where victory is not about power or popularity …

… but instead about the force of an argument, the weight of the law and the strength of a claim

Abraham Lincoln could have been talking about judges when he said, "Let us have faith that right makes might; and in that faith let us, to the end, dare to do our duty as we understand it."

The Purposes of Courts

5. To provide an accurate record of legal status and obligations.

This is the purpose that people tend to rely upon most extensively.

It is also the purpose for which you will have to rely most extensively on your staff.

Because staff is so important, make certain they are fully trained and educated.

- Training on case management, maintenance of records, customer service and professionalism
- Education on how important their work is to the effective functioning of the judiciary

The story of the "glorified factory workers"

So, how do we turn these "Purposes of the Courts" into the way courts do business?

Alaska chose to put it in writing and to put it up in every courthouse in the state.

Alaska's Pledge of Fairness

The fundamental mission of the Alaska Court System is to provide a fair and impartial forum for the resolution of disputes according to the rule of law.

Alaska's Pledge of Fairness

Fairness includes the opportunity to be heard, the chance to have the court process explained and the right to be treated with respect.

Alaska's Pledge of Fairness

The judges and staff of the Alaska Court System therefore make the following pledge to each litigant, defendant, victim, witness, juror and person involved in a court proceeding.

Alaska's Pledge of Fairness

We will LISTEN to you.

We will respond to your QUESTIONS about court procedure.

We will treat you with RESPECT.

Of What Value is a Pledge of Fairness?

It serves as a promise to those who come into the courthouse

It serves as a reminder to those who work in the courthouse

Chief Justice Broderick In the Phoenix Airport

Broderick's Challenge:
Examine the experience of those who come into our courts.

What can YOU do to improve the experience of those who come to your courthouse and to improve the quality of justice in Missouri?

Alexander Hamilton wrote in Federalist 17:

"Nothing has a greater impact on the people's view of the government than the day to day administration of justice."

1717 East Republic Road, Suite A, Springfield, MO 65804

p 417.886.8606 | f 417.886.3685

www.MMACJA.org | jean@clubmanagementservices.com