

FIRST REGULAR SESSION

# HOUSE BILL NO. 384

95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LIPKE.

1222L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 229.110, 302.311, 302.750, 544.665, 545.490, 550.050, 550.070, 550.080, 550.090, 575.030, 575.100, 575.150, and 575.260, RSMo, and to enact in lieu thereof eight new sections relating to certain criminal offenses and criminal procedures, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 229.110, 302.311, 302.750, 544.665, 545.490, 550.050, 550.070, 550.080, 550.090, 575.030, 575.100, 575.150, and 575.260, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 302.311, 302.750, 544.665, 545.490, 575.030, 575.100, 575.150, and 575.260, to read as follows:

302.311. In the event an application for a license is denied or withheld, or in the event that a license is suspended or revoked by the director, the applicant or licensee so aggrieved may appeal to the circuit court of the county of his residence in the manner provided by chapter 536, RSMo, for the review of administrative decisions at any time within thirty days after notice that a license is denied or withheld or that a license is suspended or revoked. Upon such appeal the cause shall be heard de novo and the circuit court may order the director to grant such license, sustain the suspension or revocation by the director, set aside or modify the same, or revoke such license. Appeals from the judgment of the circuit court may be taken as in civil cases. [The prosecuting attorney of the county where such appeal is taken, shall appear in behalf of the director, and prosecute or defend, as the case may require.]

302.750. 1. If a person refuses, upon the request of a law enforcement officer pursuant to section 302.745, to submit to any test allowed under that section, then none shall be given and evidence of the refusal shall be admissible in any proceeding to determine whether a person was

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 operating a commercial motor vehicle while under the influence of alcohol or controlled  
5 substances. In this event, the officer shall make a sworn report to the director that he requested  
6 a test pursuant to section 302.745 and that the person refused to submit to such testing.

7         2. A person requested to submit to a test as provided by section 302.745 shall be warned  
8 by the law enforcement officer requesting the test that a refusal to submit to the test will result  
9 in that person being immediately placed out of service for a period of twenty-four hours and  
10 being disqualified from operating a commercial motor vehicle for a period of not less than one  
11 year if for a first refusal to submit to the test and for life if for a second or subsequent refusal to  
12 submit to the test. The director may issue rules and regulations, in accordance with guidelines  
13 established by the secretary, under which a disqualification for life under this section may be  
14 reduced to a period of not less than ten years.

15         3. Upon receipt of the sworn report of a law enforcement officer submitted under  
16 subsection 1 of this section, the director shall disqualify the driver from operating a commercial  
17 motor vehicle.

18         4. If a person has been disqualified from operating a commercial motor vehicle because  
19 of his refusal to submit to a chemical test, he may request a hearing before a court of record in  
20 the county in which the request was made. Upon his request, the clerk of the court shall notify  
21 the [prosecuting attorney of the county] **director** and the [prosecutor] **director** shall appear at  
22 the hearing on behalf of the officer. At the hearing the judge shall determine only:

23             (1) Whether or not the law enforcement officer had reasonable grounds to believe that  
24 the person was driving a commercial motor vehicle with any amount of alcohol in his system;

25             (2) Whether or not the person refused to submit to the test.

26         5. If the judge determines any issues not to be in the affirmative, he shall order the  
27 director to reinstate the privilege to operate a commercial motor vehicle.

28         6. Requests for review as herein provided shall go to the head of the docket of the court  
29 wherein filed.

544.665. 1. In addition to the forfeiture of any security which was given or pledged for  
2 a person's release, any person who, having been released [pursuant to sections 544.040 to  
3 544.665, or] upon a recognizance or bond pursuant to any other provisions of law **while pending**  
4 **preliminary hearing, trial, sentencing, appeal, probation or parole revocation, or any other**  
5 **stage of a criminal matter against him or her**, [willfully] **knowingly** fails to appear before any  
6 court or judicial officer as required shall be guilty of [an offense and punished as follows:] **the**  
7 **crime of failure to appear.**

8             [(1)] **2. Failure to appear is:**

9           (1) **A class D felony** if [arrested for or charged with] **the criminal matter for which the**  
10 **person was released included** a felony[, by a fine of not more than five thousand dollars or  
11 imprisoned for not more than five years];

12           (2) **A class A misdemeanor** if [arrested for or charged with] **the criminal matter for**  
13 **which the person was released includes** a misdemeanor[, by a fine of not more than one  
14 thousand dollars or confinement in the county jail for not more than one year] **or misdemeanors**  
15 **but no felony or felonies;**

16           (3) **An infraction** if [arrested for or charged with] **the criminal matter for which the**  
17 **person was released includes only** an infraction[, by a fine of not more than five hundred  
18 dollars] **or infractions;**

19           (4) **An infraction** if [arrested for] **the criminal matter for which the person was**  
20 **released includes only** the violation of a municipal ordinance, [by a fine not to exceed five  
21 hundred dollars;] provided that the sentence imposed shall not exceed the maximum fine [or  
22 maximum period of imprisonment] which could be imposed for the [offense] **municipal**  
23 **ordinance** for which the accused was arrested.

24           [2.] **3.** Nothing in sections 544.040 to 544.665 shall prevent the exercise by any court  
25 of its power to punish for contempt.

          545.490. [The petition of the applicant for a change of venue shall set forth the facts or  
2 grounds upon which such change is sought, and such petition shall be supported by the affidavit  
3 of petitioner and the affidavit of at least two credible disinterested citizens of the county where  
4 said cause is pending and the truth of the allegations thereof shall be proved, to the satisfaction  
5 of the court, by legal and competent evidence, and the prosecuting attorney may in such case  
6 offer evidence in rebuttal of that submitted in support of such application; the court, or judge in  
7 vacation, shall fix the number of witnesses for which the state or county may be liable; provided,  
8 in all cases in counties in this state which now have or may hereafter have a population of less  
9 than seventy-five thousand inhabitants if such petition for change of venue is supported by the  
10 affidavits of five or more credible disinterested citizens residing in different neighborhoods of  
11 the county where said cause is pending, then the court or judge in vacation, shall grant such  
12 change of venue, as of course, without additional proof; provided further, that reasonable  
13 previous notice of such application shall in all cases be given to the prosecuting attorney; and  
14 provided further, that if the facts alleged as the ground of the application be within the  
15 knowledge of the court or judge, he may order such removal of the cause without any formal  
16 proof or the filing of affidavit; and provided further, that if the application shall allege prejudice  
17 of the inhabitants of more than one county in the circuit in which the case is pending, the court  
18 may, upon proof of the allegations as herein provided for, order the case sent to some county in  
19 the same or some other circuit where such causes do not exist.] **1. Upon written application**

20 of the defendant, a change of venue may be ordered in any criminal proceeding for the  
21 following reasons:

22 (1) That the inhabitants of the county are prejudiced against the defendant; or

23 (2) That the state has an undue influence over the inhabitants of the county.

24 2. In felony cases, the application must be filed not later than thirty days after  
25 arraignment. In misdemeanor cases, the application must be filed not later than ten days  
26 before the date set for trial.

27 3. A copy of the application and a notice of the time when it will be presented to the  
28 court shall be served upon all parties.

29 4. The application shall set forth the reason or reasons for change of venue. It need  
30 not be verified and shall be signed by the defendant or his attorney.

31 5. The state may, within five days after the filing of the application for a change of  
32 venue, file a denial of the existence of the reason or reasons alleged in the application. Such  
33 denial need not be verified. If the issues are determined in favor of the defendant, or if no  
34 denial is filed, a change of venue shall be ordered to some other county convenient to the  
35 parties and where the reason or reasons for the change of venue do not exist.

36 6. In lieu of transferring the case to another county, the court may secure a jury  
37 from another county as provided by law.

575.030. 1. A person commits the crime of hindering prosecution if for the purpose of  
2 preventing the apprehension, prosecution, conviction or punishment of another [for  
3 conduct constituting a crime] he **or she**:

4 (1) Harbors or conceals **or attempts to harbor or conceal** such person; or

5 (2) Warns such person **or attempts to warn such person** of impending discovery or  
6 apprehension, except this does not apply to a warning given in connection with an effort to bring  
7 another into compliance with the law; or

8 (3) Provides such person **or attempts to provide such person** with money,  
9 transportation, weapon, disguise or other means to aid him in avoiding discovery or  
10 apprehension; or

11 (4) Prevents or obstructs **or attempts to prevent or obstruct**, by means of force,  
12 deception or intimidation, anyone from performing an act that might aid in the discovery or  
13 apprehension of such person.

14 2. Hindering prosecution is a class D felony if [the conduct] **such apprehension,**  
15 **prosecution, conviction, or punishment** of the other person [constitutes] **relates to** a felony;  
16 otherwise hindering prosecution is a class A misdemeanor.

575.100. 1. A person commits the crime of tampering with physical evidence if he **or**  
2 **she**:

3 (1) Alters, destroys, suppresses or conceals **or attempts to alter, destroy, suppress, or**  
4 **conceal** any record, document or thing with purpose to impair its verity, legibility or availability  
5 in any official proceeding or **any potential investigation that could result in an official**  
6 **proceeding**; or

7 (2) Makes, presents or uses any record, document or thing knowing it to be false with  
8 purpose to mislead a public servant who is or may be engaged in any official proceeding or **any**  
9 **potential investigation that could result in an official proceeding**.

10 2. Tampering with physical evidence is a class D felony if the actor [impairs or obstructs]  
11 **intends to impair or obstruct** the prosecution or defense of a felony; otherwise, tampering with  
12 physical evidence is a class A misdemeanor.

575.150. 1. A person commits the crime of resisting or interfering with arrest, detention,  
2 or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully  
3 detain or stop an individual or vehicle, or the person reasonably should know that a law  
4 enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an  
5 individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or  
6 detention, the person:

7 (1) Resists the arrest, stop or detention of such person by using or threatening the use of  
8 violence or physical force or by fleeing from such officer; or

9 (2) Interferes with the arrest, stop or detention of another person by using or threatening  
10 the use of violence, physical force or physical interference.

11 2. This section applies to arrests, stops or detentions with or without warrants and to  
12 arrests, stops or detentions for any crime, infraction or ordinance violation. **This section also**  
13 **applies to arrests on warrants issued for probation or parole warrants and arrests on**  
14 **capias warrants or bench warrants issued by federal, state, or municipal judges**.

15 3. A person is presumed to be fleeing a vehicle stop if that person continues to operate  
16 a motor vehicle after that person has seen or should have seen clearly visible emergency lights  
17 or has heard or should have heard an audible signal emanating from the law enforcement vehicle  
18 pursuing that person.

19 4. It is no defense to a prosecution pursuant to subsection 1 of this section that the law  
20 enforcement officer was acting unlawfully in making the arrest. However, nothing in this section  
21 shall be construed to bar civil suits for unlawful arrest.

22 5. Resisting or interfering with an arrest for a felony is a class D felony. **Resisting or**  
23 **interfering with an arrest for a probation warrant, a parole warrant, a capias warrant, or**  
24 **a bench warrant where such warrant issued was related to a felony, is a class D felony.**  
25 Resisting an arrest, detention or stop by fleeing in such a manner that the person fleeing creates  
26 a substantial risk of serious physical injury or death to any person is a class D felony; otherwise,

27 resisting or interfering with an arrest, detention or stop in violation of subdivision (1) or (2) of  
28 subsection 1 of this section is a class A misdemeanor.

575.260. 1. A person commits the crime of tampering with a judicial proceeding if, with  
2 purpose to influence the official action of a judge, juror, special master, referee [or] , arbitrator,  
3 **or state prosecuting or circuit attorney** in a judicial proceeding, he **or she**:

4 (1) Threatens or causes harm to any person or property; or

5 (2) Engages in conduct reasonably calculated to harass or alarm such official or juror;

6 or

7 (3) Offers, confers or agrees to confer any benefit, direct or indirect, upon such official  
8 or juror.

9 2. Tampering with a judicial proceeding is a class C felony.

[229.110. 1. Every person owning a hedge fence situated along or near  
2 the right-of-way of any public road shall between the first days of May and  
3 August of each year cut the same down to a height of not more than five feet, and  
4 any owner of such fence failing to comply with this section shall forfeit and pay  
5 to the capital school fund of the county wherein such fence is situated not less  
6 than fifty nor more than five hundred dollars, to be recovered in a civil action in  
7 the name of the county upon the relation of the prosecuting attorney, and any  
8 judgment of forfeiture obtained shall be a lien upon the real estate of the owner  
9 of such fence upon which same is situated, and a special execution shall issue  
10 against said real estate and no exemption shall be allowed.

11 2. Any prosecuting attorney who shall fail or refuse to institute suit as  
12 herein provided within thirty days after being notified by any road overseer,  
13 county or state highway engineer, that any hedge fence has not been cut down to  
14 the height herein required within the time required, shall be removed from office  
15 by the governor and some other person appointed to fill the vacancy thus created.  
16 The cutting of any such fence after the time herein required shall not be a defense  
17 to the action herein provided for.]  
18

[550.050. 1. Every person who shall institute any prosecution to recover  
2 a fine, penalty or forfeiture shall be adjudged to pay all costs if the defendant is  
3 acquitted although he may not be entitled to any part of the same.

4 2. When such prosecutions are commenced by a public officer whose  
5 duty it is to institute the same, and the defendant is acquitted, the county shall pay  
6 the costs; if he is convicted, and unable to pay the costs, the county shall pay all  
7 the costs, except such as were incurred on the part of the defendant.]  
8

[550.070. If a person, charged with a felony, shall be discharged by the  
2 officer taking his examination, the costs shall be paid by the prosecutor or person  
3 on whose oath the prosecution was instituted, and the officer taking such  
4 examination shall enter judgment against such person for the same, and issue

5 execution therefor immediately; and in no such case shall the state or county pay  
6 the costs.]  
7

2 [550.080. If, upon the trial of any indictment or information, the  
3 defendant shall be acquitted or discharged, and the prosecutor or prosecuting  
4 witness shall be liable to pay the costs according to law, judgment shall be  
5 rendered against such prosecutor for the costs in the case, and in no such case  
6 shall the same be paid by either the county or state.]

2 [550.090. When the proceedings are prosecuted before any associate  
3 circuit judge, at the instance of the injured party, for the disturbance of the peace  
4 of a person, or for libel or slander, or for any trespass against the person or  
5 property of another, not amounting to a felony, except for petit larceny, the name  
6 of such injured party shall be entered by the associate circuit judge on his record  
7 as a prosecutor; and if the defendant shall be discharged or acquitted, such  
8 prosecutor shall be adjudged to pay the costs not otherwise adjudged; and in  
9 every other case of acquittal, if the associate circuit judge or jury trying the case  
10 shall state in the finding that the prosecution was malicious or without probable  
11 cause, the associate circuit judge shall enter judgment for costs against the  
12 prosecution or party at whose instance the information was filed, and shall issue  
13 execution therefor; but in no case shall the prosecuting attorney be liable for  
14 costs. In other cases of discharge or acquittal the costs shall be paid by the  
15 county, except when the prosecution is commenced by complaint and the  
16 prosecuting attorney declines to file information thereon, in which case the  
proceedings shall be dismissed at the cost of the party filing the complaint.]

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