

2020 Legal Update

Effect of the Pandemic on the legislature

- ▶ Due to the COVID-19 pandemic, the Missouri General Assembly closed for a period of time during their regular session.
- ▶ When the General Assembly came back into session they were working on an abbreviated time line.
- ▶ This resulted in a number of "omnibus style" bills.
- ▶ Several of these bills are several hundred pages long.
- ▶ This course is designed to be a summary of provisions in certain bills and is not an exhaustive list of all bills or all sections of a particular bill.

House Bill No. 1896

- ▶ Signed by Governor Parsons on July 6, 2020.
- ▶ The bill made several changes to the controlled substance schedule.
- ▶ Requires the Department of Health and Senior Services to submit emergency rules related to the controlled substance schedule if any substance is designated, rescheduled or deleted as a controlled substance under federal law.
- ▶ Adds medical marijuana into the section of law regulating how physicians may use telemedicine for prescriptions.
- ▶ Prohibits the sale, dispensing or providing of more than 43 and 2/10 grams of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers to any individual within a 12 month period.

House Bill No. 1896

- ▶ Limits the 30 day amount to 7 2/10 grams and the 24 hour period amount remains at 3 6/10 grams.
 - ▶ Sale or purchase in amounts greater than 43 2/10 grams to the same individual within a twelve month period has been added to the crime of Unlawful Sale, Distribution or Purchase of Over-the-Counter Methamphetamine Precursor Drugs.
 - ▶ If a person has a prescription for greater amounts it is an exception.
- ▶ States that no prescription shall be required to dispense, sell or distribute ephedrine, phenylpropanolamine, pseudoephedrine or any of their salts or optical isomers. (Limited by the restrictions for 24 hours, 30 days and 12 months).
- ▶ Voids any local ordinance or regulation enacted prior to August 28, 2020, which required a prescription for ephedrine, phenylpropanolamine, pseudoephedrine or any of their salts or optical isomers, in an amount within the limits established by HB 1896.

House Bill No. 1896

- ▶ Created limitations on the edible marijuana-infused products.
- ▶ RSMO 195.805
 - ▶ 1. No edible marijuana-infused product, packaging, or logo sold in Missouri pursuant to article XIV of the Missouri Constitution shall be designed in the shape of a human, animal, or fruit, including realistic, artistic, caricature, or cartoon renderings. However, geometric shapes, including but not limited to, circles, squares, rectangles, and triangles, shall be permitted.
 - ▶ 2. Each package, or packages within a package, containing an edible marijuana infused product with ten or more milligrams of tetrahydrocannabinols (THC) shall be stamped with a universal symbol for such products, which shall consist of the following:
 - ▶ (1) A diamond containing the letters "THC";
 - ▶ (2) The letter "M" located under the "THC" within the diamond, to signify that the product is for medical purposes; and
 - ▶ (3) The number of milligrams of THC in the package.
 - ▶ The universal symbol shall be placed on the front of the package in red and white print and shall measure one-half inch by one-half inch from point to point.

House Bill No. 1896

- ▶ RSMO 195.805 (continued)
 - ▶ 3. Any licensed or certified entity regulated by the department of health and senior services pursuant to article XIV of the Missouri Constitution found to have violated the provisions of this section shall be subject to department sanctions, including an administrative penalty, in accordance with the regulations promulgated by the department pursuant to article XIV of the Missouri Constitution.
 - ▶ 4. The department shall promulgate rules and regulations prohibiting edible marijuana-infused products designed to appeal to persons under eighteen years of age, as well as promulgate rules and regulations to establish a process by which a licensed or certified entity may seek approval of an edible product design, package, or label prior to such product's manufacture or sale in order to determine compliance with the provisions of this section and any rules promulgated pursuant to this section. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2020, shall be invalid and void.

House Bill No. 1896

▶ RSMO 195.815

- ▶ 1. The department of health and senior services shall require all officers, managers, contractors, employees, and other support staff of licensed or certified medical marijuana facilities, and all owners of such medical marijuana facilities who will have access to the facilities or to the facilities' medical marijuana, to submit fingerprints to the Missouri State Highway Patrol for the purpose of conducting a state and federal fingerprint-based criminal background check.
- ▶ 2. The department may require that such fingerprint submissions be made as part of a medical marijuana facility application for licensure or certification, a medical marijuana facility application for renewal of licensure or certification, and an individual's application for an identification card authorizing that individual to be an owner, officer, manager, contractor, employee, or other support staff of a medical marijuana facility.

House Bill No. 1896

▶ RSMO 195.815 (Continued)

- ▶ 3. Fingerprint cards and any required fees shall be sent to the Missouri State Highway Patrol's central repository. The fingerprints shall be used for searching the state criminal records repository and shall also be forwarded to the Federal Bureau of Investigation for a federal criminal records search under section 43.540. The Missouri State Highway Patrol shall notify the department of any criminal history record information or lack of criminal history record information discovered on the individual. Notwithstanding the provisions of section 610.120 to the contrary, all records related to any criminal history information discovered shall be accessible and available to the department.

House Bill No. 1896

▶ RSMO 195.815 (Continued)

- ▶ 4. As used in this section, the following words shall mean:
 - ▶ (1) "Employee", any person performing work or service of any kind or character for hire in a medical marijuana facility;
 - ▶ (2) "Medical marijuana facility", an entity licensed or certified by the department of health and senior services, or its successor agency, to acquire, cultivate, process, manufacture, test, store, sell, transport, or deliver medical marijuana;
 - ▶ (3) "Other support staff", any person performing work or service of any kind or character, other than employees, on behalf of a medical marijuana facility if such a person would have access to the medical marijuana facility or its medical marijuana or related equipment or supplies.

House Bill No. 1896

- ▶ Changes were also made to the drug trafficking offenses.
 - ▶ The "but less than" language was removed from the listed substances
 - ▶ The following substances and amounts were added:
 - ▶ One gram or more of flunitrazepam for the first offense;
 - ▶ Any amount of gamma-hydroxybutyric acid for the first offense;
 - ▶ More than ten milligrams of fentanyl or carefentanil or any derivative, combination, compound, mixture or substance containing a detectable amount of fentanyl or carefentanil or their optical isomers or analogues.
 - ▶ Mirror provisions were added for the upgrade if it's a second or subsequent offense. Amounts are the same for the upgrade with the exception of fentanyl, carefentanil etc., which goes to 20 milligrams or more.

RSMO 217.850

- ▶ This statute is contained in the House Transportation Bill (HB 1963)
- ▶ The statute makes it unlawful to use an unmanned aircraft over a correctional center.
- ▶ Correctional center is defined as:
 - ▶ Any correctional center as defined in RSMO 217.010
 - ▶ Any private jail as defined in RSMO 221.095 and
 - ▶ Any county or municipal jail
- ▶ Prohibits operating an unmanned aircraft "within a vertical distance of four hundred feet over a correctional center's secure perimeter fence.

RSMO 217.850

- ▶ The statute also prohibits allowing an unmanned aircraft to make contact with a correctional center, including any person or object on the premises of or within the facility.
- ▶ Prohibitions do not apply to
 - ▶ An employee of the correctional center at the direction of the chief administrative officer of the facility
 - ▶ A person with the written consent of the chief administrative officer of the facility
 - ▶ An employee of a law enforcement agency, fire department or emergency medical service in the exercise of their official duties
 - ▶ A government official or employee in the exercise of official duties

RSMO 217.850

- ▶ Prohibitions do not apply to (continued)
 - ▶ A public utility or rural electronic cooperative if:
 - ▶ The unmanned aircraft is used for the purpose of inspecting, repairing, or maintaining utility transmission or distribution lines or other utility equipment or infrastructure;
 - ▶ The utility notifies the correctional center before flying the unmanned aircraft, except during an emergency; and
 - ▶ The person operating the unmanned aircraft does not physically enter to prohibited space without an escort provided by the correctional center
 - ▶ An employee of a railroad in the exercise of official duties on any land owned or operated by a railroad corporation regulated by the Federal Railroad Administration
 - ▶ A person operating an unmanned aircraft pursuant to and in compliance with any waiver issued by the Federal Aviation Authority (FAA) under 14 CFR 107.200.

RSMO 217.850

- ▶ Violation of this statute is an infraction. It becomes a felony if the person uses an unmanned aircraft for the purpose of:
 - ▶ "Delivering a gun, knife, weapon or other article that may be used in such manner to endanger the life of an offender or correctional employee" (B felony)
 - ▶ "Facilitating an escape from confinement" (C felony)
 - ▶ Delivering a controlled substance, as defined in RSMO 195.010 (D felony)
- ▶ The statute requires each correctional center to post a sign warning of the provisions of the statute.
 - ▶ The sign must be at least 11 inches by 14 inches and posted in a conspicuous place.

Sidenote

- ▶ There are two new statutes that contain similar provisions for open-air facilities (RSMO 577.800) and mental health hospitals (RSMO 632.460)
 - ▶ Open-air facility: sports, theater, music, performing arts or other entertainment facility with a capacity of 5,000 people or more which is not completely enclosed by a roof or other structure.
 - ▶ Mental health hospital: a facility operated by the Department of Mental Health to provide inpatient evaluation, treatment or care to persons suffering from a mental disorder, mental illness or mental abnormality (as defined in RSMOs 630.005 and 632.480).

RSMO 302.020 & 302.026

- ▶ These two statutes deal with the motorcycle helmet requirements.
 - ▶ RSMO 302.020 was an existing statute which has been amended and RSMO 302.026 is a new statute.
- ▶ RSMO 302.020 now requires anyone under 26 years of age who is operating or riding as a passenger on any motorcycle or motortricycle to wear protective headgear anytime the vehicle is in motion.
 - ▶ Any person 26 years of age or older who is operating a motorcycle or motortricycle on an instruction permit also has to wear protective headgear at all times the vehicle is in motion.
- ▶ RSMO 302.020 also prohibits any political subdivision from imposing a requirement for protective headgear on the operator of a motorcycle or motortricycle.
- ▶ The law also states that no person shall be stopped, inspected, or detained solely to determine compliance with this statute.

RSMO 302.020 & 302.026

- ▶ RSMO 302.026 states:
 - ▶ "1. Any qualified motorcycle operator who is twenty-six years of age or older may operate a motorcycle or motortricycle upon any highway of this state without wearing protective headgear if he or she in addition to maintaining proof of financial responsibility in accordance with chapter 303, 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 an accident while operating or riding on a motorcycle or motortricycle."
 - ▶ "2. Proof of coverage required by subsection 1 of this section shall be provided, upon request by authorized law enforcement, by showing a copy of the qualified operator's insurance card."
 - ▶ "3. No person shall be stopped, inspected, or detained solely to determine compliance with this section."

RSMO 302.205

- ▶ This is a new statute that allows residents of Missouri to have a medical alert notation placed on their driver's license or state ID card for the following conditions:
 - ▶ Post-traumatic stress disorder;
 - ▶ Diabetes;
 - ▶ Heart conditions;
 - ▶ Epilepsy;
 - ▶ Drug allergies;
 - ▶ Alzheimer's or dementia;
 - ▶ Schizophrenia;
 - ▶ Autism; or
 - ▶ Other conditions as approved by the Director of the Department of Revenue (DOR).

RSMO 302.205

- ▶ The statute requires DOR to put a notice on the application that informs the applicant that they "will be consenting to the release of such medical information to anyone who sees or copies his/her driver's license or ID card, even if that person is otherwise ineligible to access such medical information under state or federal law."
- ▶ At this time, it is not clear if DOR will be placing this information on DOR returns through the CJIS system.
- ▶ Agencies may want to consider policies regarding what information is transmitted over the radio and redaction of information on records disseminations.
 - ▶ Until there are court decisions it is not clear if the consent provision will apply to secondary disseminations.

Senate Bill 569

- ▶ Senate Bill 569 is known as the "Justice for Survivors Act".
- ▶ The Bill contains multiple provisions and new statutes related to victims of sexual assault and how medical examinations and investigations are conducted.
- ▶ One of the largest provisions effecting law enforcement is the creation of the Sexual Assault Survivors' Bill of Rights.

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ The rights provided by this statute attach whenever a survivor is subject to a forensic examination under RSMO 595.220 (SAFE/SANE) and whenever a survivor is subject to an interview by a law enforcement official, prosecuting attorney or defense attorney.
- ▶ The statute defines a "sexual assault survivor" as any person who is a victim of an alleged sexual offense under section 566.010 to 566.223 and, if the survivor is incompetent, deceased or a minor who is unable to consent to counseling services, the parent, guardian, spouse, or any other lawful representative of the survivor, unless such person is the alleged assailant.
- ▶ The statute also contains a separate definition for "survivor" – a natural person who suffers direct or threatened physical, emotional, or financial harm as a result of the commission or attempted commission of a crime.
- ▶ The term "victim" also includes the family members of a minor, incompetent or homicide victim.

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ A survivor retains all the rights provided by the statute at all times regardless of whether the survivor agrees to participate in the criminal justice system or family court.
- ▶ A survivor also retains all the rights provided by the statute at all times regardless of whether they consent to forensic examination to collect sexual assault forensic evidence.
- ▶ The statute contains 18 subsections which contain the various rights provided under the Sexual Assault Survivors' Bill of Rights.

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 1. "A survivor has the right to consult with an employee or volunteer of a rape crisis center during any forensic examination that are subject to confidentiality requirements pursuant to section 455.003, as well as the right to have a support person of the survivor's choosing present, subject to federal regulations as provided in 42 CFR 482; and during any interview by a law enforcement official, prosecuting attorney or defense attorney. A survivor retains this right even if the survivor has waived the right in a previous examination or interview."

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 2. "Reasonable costs incurred by a medical provider for the forensic examination portion of the examination of a survivor shall be paid by the Department of Public Safety, out of appropriations made for that purpose, as provided under section 595.220. Evidentiary collection kits shall be developed and made available, subject to appropriations, to appropriate medical providers by the Highway Patrol or its designees and eligible crime laboratories. All appropriate medical provider charges for eligible forensic examinations shall be billed to and paid by the Department of Public Safety."

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 3. "Before a medical provider commences a forensic examination of a survivor, the medical provider shall provide the survivor with a document to be developed by the Department of Public Safety that explains the rights of survivors, pursuant to this section, in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages of the state. This document shall include, but is not limited to:
 - ▶ (a) The survivor's rights pursuant to this section and other rules and regulations by the Department of Public Safety and the Department of Health and Senior Services, which shall be signed by the survivor of sexual assault to confirm receipt;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ Requirements of the document (continued)
- ▶ (b) "The survivor's right to consult with an employee or volunteer of a rape crisis center, to be summoned by the medical provider before the commencement of the forensic examination, unless no employee or volunteer of a rape crisis center can be summoned in a reasonably timely manner, and to have present at least one support person of the victim's choosing;
- ▶ (c) If an employee or volunteer of a rape crisis center or a support person cannot be summoned in a timely manner, the ramifications of delaying the forensic examination; and
- ▶ (d) After the forensic examination, the survivor's right to shower at no cost, unless showering facilities are not reasonably available;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 4. "Before commencing an interview of a survivor, a law enforcement officer, prosecuting attorney, or defense attorney shall inform the survivor of the following:
 - ▶ (a) The survivor's rights pursuant to this section and other rules and regulations by the Department of Public Safety and the Department of Health and Senior Services, which shall be signed by the survivor of sexual assault to confirm receipt;
 - ▶ (b) The survivor's right to consult with an employee or volunteer of a rape crisis center during any interview by a law enforcement official, prosecuting attorney, or defense attorney, to be summoned by the interviewer before the commencement of the interview, unless no employee or volunteer of a rape crisis center can be summoned in a reasonably timely manner;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ Subsection 4 notice requirements continued
- ▶ (c) "The survivor's right to have a support person of the survivor's choosing present during any interview by a law enforcement officer, prosecuting attorney, or defense attorney unless the law enforcement officer, prosecuting attorney, or defense attorney determines in his or her good faith professional judgment that the presence of that individual would be detrimental to the purpose of the interview; and
- ▶ (d) For interviews by a law enforcement officer, the survivor's right to be interviewed by a law enforcement official of the gender of the survivor's choosing. If no law enforcement official of that gender is reasonably available, the survivor shall be interviewed by an available law enforcement official only upon the survivor's consent;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 5. "The right to counsel during an interview by a law enforcement officer or during any interaction with the legal or criminal justice systems within the state;"
- ▶ 6. "A law enforcement official, prosecuting attorney, or defense attorney shall not, for any reason, discourage a survivor from receiving a forensic examination;"
- ▶ 7. "A survivor has the right to prompt analysis of sexual assault forensic evidence, as provided under section 595.220;"
- ▶ 8. "A survivor has the right to be informed, upon the survivor's request, of the results of the analysis of the survivor's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in CODIS. The survivor has the right to receive this information through a secure and confidential message in writing from the crime laboratory so that the survivor can call regarding the results;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 9. "A defendant or person accused or convicted of a crime against a survivor shall have no standing to object to any failure to comply with this section, and the failure to provide a right or notice to a survivor under this section may not be used by a defendant to seek to have the conviction or sentence set aside;"
- ▶ 10. "The failure of a law enforcement agency to take possession of any sexual assault forensic evidence or to submit that evidence for analysis within the time prescribed under section 595.220 does not alter the authority of a law enforcement agency to take possession of that evidence or to submit that evidence to the crime laboratory, and does not alter the authority of the crime laboratory to accept and analyze the evidence or to upload the DNA profile obtained from that evidence into CODIS. The failure to comply with the requirements of this section does not constitute grounds in any criminal or civil proceeding for challenging the validity of a database match or of any database information, and any evidence of that DNA record shall not be excluded by a court on those grounds;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 11. "No sexual assault forensic evidence shall be used to prosecute a survivor for any misdemeanor crimes or any misdemeanor crime pursuant to sections 579.015 to 579.185 (drug offenses); or as a basis to search for further evidence of any unrelated misdemeanor crimes or any misdemeanor crime pursuant to sections 579.015 to 579.185, that shall have been committed by the survivor, except that sexual assault forensic evidence shall be admissible as evidence in any criminal or civil proceeding against the defendant or person accused;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 12. "Upon initial interaction with a survivor, a law enforcement officer shall provide the survivor with a document to be developed by the Department of Public Safety that explains the rights of survivors, pursuant to this section, in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages of the state. This document shall include, but is not limited to:
 - ▶ (a) A clear statement that a survivor is not required to participate in the criminal justice system or to receive a forensic examination in order to retain the rights provided by this sections and other relevant law;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ Document requirements continued:
 - ▶ (b) "Telephone and internet means of contacting nearby rape crisis centers and employees or volunteers of a rape crisis center;
 - ▶ (c) Forms of law enforcement protection available to the survivor, including temporary protection orders, and the process to obtain such protection;
 - ▶ (d) Instructions for requesting the results of the analysis of the survivor's sexual assault forensic evidence; and
 - ▶ (e) State and federal compensation funds for medical and other costs associated with the sexual assault and any municipal, state, or federal right to restitution for survivors in the event of a criminal trial;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 13. "A law enforcement official shall, upon written request by a survivor, furnish within fourteen days of receiving such request a free, complete, and unaltered copy of all law enforcement reports concerning the sexual assault, regardless of whether the report has been closed by the law enforcement agency;
- ▶ 14. A prosecuting attorney shall, upon written request by a survivor, provide:
 - ▶ (a) Timely notice of any pretrial disposition of the case;
 - ▶ (b) Timely notice of the final disposition of the case, including the conviction, sentence, and place and time of incarceration;
 - ▶ (c) Timely notice of a convicted defendant's location, including whenever the defendant receives a temporary, provisional, or final release from custody, escapes from custody, is moved from a secure facility to a less secure facility, or re-enters custody; and
 - ▶ (d) A convicted defendant's information on a sex offender registry, if any;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 15. "In either a civil or criminal case relating to the sexual assault, a survivor has the right to be reasonably protected from the defendant and persons acting on behalf of the defendant, as provided under section 595.209 and Article I, Section 32 of the Missouri Constitution;
- ▶ 16. A survivor has the right to be free from intimidation, harassment, and abuse, as provided under section 595.209 and Article I, Section 32 of the Missouri Constitution;
- ▶ 17. A survivor shall not be required to submit to a polygraph examination as a prerequisite to filing an accusatory pleading, as provided under 595.223, or to participating in any part of the criminal justice system;"

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ 18. "A survivor has the right to be heard through a survivor impact statement at any proceeding involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any other proceeding where a right of the survivor is at issue, as provided under section 595.229 and Article I, Section 32 of the Missouri Constitution.
- ▶ Section 3 of the statute provides definitions for several terms used in RSMO 595.201.
- ▶ While most of the definitions will not be covered in this course, it is worthwhile to point out the definition of the term 'crime'".

RSMO 595.201 Sexual Assault Survivors' Bill of Rights

- ▶ "Crime", an act committed in this state which, regardless of whether it is adjudicated, involves the application of force or violence or the threat of force or violence by the offender upon the victim and shall include the crime of driving while intoxicated, vehicular manslaughter and hit and run; and provided, further, that no act involving the operation of a motor vehicle, except driving while intoxicated, vehicular manslaughter and hit and run, which results in injury to another shall constitute a crime for the purpose of this section, unless such injury was intentionally inflicted through the use of a motor vehicle. A crime shall also include an act of terrorism, as defined in 18 U.S.C. Section 2331, which has been committed outside of the United States against a resident of Missouri."

RSMO 595.220

- ▶ This is a pre-existing statute that has been amended by Senate Bill 569.
- ▶ Not all of the amendments are covered in this course. Some amendments of particular note are:
- ▶ Law enforcement agencies, labs, court personnel and other people or entities "involved in the final disposition or destruction of evidentiary collection kits" or "who have custody of evidentiary collection kits shall participate in the electronic evidence tracking system" established by the Missouri Attorney General's Office.
- ▶ The Department of Public Safety is to develop and retain a central repository for unreported evidentiary collection kits.
- ▶ Unreported evidentiary collection kits must be retained for a period of five years.
 - ▶ If the kit was collected from a person under the age of 18, it must be retained for a period of five years after the victim turns 18.

34.600 The Anti-Discrimination Against Israel Act

- ▶ Senate Bill 739 created RSMO 34.600 which places new contract requirements on public entities.
- ▶ RSMO 34.600 defines a public entity as "the State of Missouri or any political subdivision thereof, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state created by or in accordance with state law or regulations."
- ▶ Any contract that fails to comply with the provisions of RSMO 34.600 is void as being against public policy.

34.600 The Anti-Discrimination Against Israel Act

- ▶ The contract provisions of the law are as follows:
 - ▶ "2. A public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; or persons or entities doing business in the State of Israel."
 - ▶ The prohibition does not apply to contracts with a total potential value of less than one hundred thousand dollars (\$100,000) or to contractors with fewer than ten employees.
- ▶ Section three of the statute contains the definitions of the terms used in the statute, including "boycott Israel" and "boycott of the State of Israel".

34.600 The Anti-Discrimination Against Israel Act

- ▶ "Boycott Israel" and "boycott of the State of Israel" are defined as:
 - ▶ "engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel. A company's statement that it is participating in boycotts of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or person or entities doing business in the State of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of the State of Israel;"

34.600 The Anti-Discrimination Against Israel Act

- ▶ "companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel shall be considered to be conclusive evidence that a company is participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel; provided, however that a company that has made no such statement may still be considered to be participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel if other factors warrant such a conclusion."

34.600 The Anti-Discrimination Against Israel Act

- ▶ The term "company" is defined as "any for-profit or not-for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations;"
- ▶ The Commissioner of Administration for the State of Missouri has also been given rule making authority to promulgate regulations to implement the provisions of this statute.

Senate Bill 600

- ▶ Senate Bill 600 is a bill that modified several provisions related to dangerous felonies.
- ▶ Many of these provisions deal with the court process and don't directly effect the actions law enforcement will take in investigating cases.
- ▶ There are some provisions that law enforcement officers should be aware of which could impact how cases are reviewed and/or submitted.

Senate Bill 600

- ▶ RSMO 556.061 has been amended to add the following offenses to the definition of "dangerous felony"
 - ▶ Armed Criminal Action
 - ▶ Conspiracy to commit an offense when the offense is a dangerous felony
 - ▶ Vehicle hijacking when punished as a class A felony
- ▶ RSMO 562.014 (conspiracy statute) has been amended
 - ▶ "A person commits the offense of conspiracy to commit, in any manner or for any purpose, an offense if the person agrees, with one or more persons, to commit any class A, B, or C felony offense, or any unclassified felony offenses if the maximum term of imprisonment for such unclassified felony exceeds ten years or more, and one or more of such persons do any act in furtherance of such agreement."
 - ▶ Conspiracy to commit an offense is a class C felony.

Senate Bill 600

- ▶ 570.027 Vehicle Hijacking
 - ▶ "A person commits the offense of vehicle hijacking when he or she knowingly uses or threatens the use of physical force upon another person to seize or attempt to seize possession or control of a vehicle, as defined in section 302.010, from the immediate possession or control of another person."
 - ▶ Vehicle hijacking is a class B felony. The offense is a class A felony if, in the course of the vehicle hijacking, a person or another participant in the offense:
 - ▶ Causes serious physical injury to any person in immediate possession, control, or presence of the vehicle;
 - ▶ Is armed with a deadly weapon;
 - ▶ Uses or threatens the immediate use of a dangerous instrument against any person;
 - ▶ Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument; or
 - ▶ Seizes a vehicle, or attempts to seize a vehicle, in which a child or special victim as defined in section 565.002 is present.

Senate Bill 600

- ▶ RSMO 571.070 has been amended in relation to unlawful possession of a firearm.
 - ▶ Currently this offense is a class D felony. An enhancement has been added.
 - ▶ If a person has been convicted of a dangerous felony then it becomes a class C felony.
- ▶ The criminal street gang statutes have multiple amendments.
 - ▶ RSMO 578.421: the phrase "having as one of its primary activities the commission of one or more criminal acts..." has been changed to "having as one of its motivating activities the commission of one or more criminal acts..."
 - ▶ The requirement for a common name, sign or symbol has been removed.
 - ▶ "Any dangerous felony, as defined in section 556.061" has been added to the list of enumerated offenses for a "pattern of criminal street gang activity".
 - ▶ RSMO 578.423: participation in a criminal street gang is now a class B felony.

Senate Bill 600

- ▶ RSMO 578.425: This statute is a sentencing enhancement statute.
 - ▶ Misdemeanors have been removed from allowing for the criminal street gang enhancement.
 - ▶ Previously individuals had to act with "specific intent" to promote, further or assist in criminal conduct by gang members. The culpable mental state has been changed from "with specific intent" to "with purpose".
 - ▶ A new sentencing enhancement regarding dangerous felonies has been added.
 - ▶ "Any person who violates this section in the commission of a dangerous felony shall, upon conviction of that dangerous felony, in addition and consecutive to the punishment prescribed for the dangerous felony of which he or she has been convicted, be punished by an additional term of five years.

Senate Bill 600

- ▶ Some miscellaneous provisions of interest include:
 - ▶ Enhancements in the armed criminal action sentence for first time and subsequent offenders if the person was unlawfully possessing a firearm.
 - ▶ If two or more defendants are charged with being joint participants in a conspiracy, the court shall presume that there is no substantial prejudice from the defendants being charged in the same indictment or information or from being tried together.
 - ▶ Individuals who are found guilty or plead guilty to the following offenses are not eligible for probation, suspended imposition of sentence (SIS), suspended execution of sentence (SES) or conditional release:
 - ▶ 2nd degree murder when a 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, as defined in section 556.061, where the person has been previously found guilty of a class A or B felony or a dangerous felony; or
 - ▶ An dangerous felony, as defined in section 556.061, where the commission of the felony involves the use of a deadly weapon, as defined in section 556.061.

Selig v. Russell (Western Dist. Of MO)

- ▶ This is a case where a sex offender tried to get a judgment saying he was exempt from the sex offender registry.
- ▶ The Western District of Missouri opinion was issued on April 21, 2020.
- ▶ The Missouri Supreme Court denied transfer on May 28, 2020 (meaning the Missouri Supreme Court refused to hear the appeal).
- ▶ The case originated from the Circuit Court of Johnson County, Missouri.
 - ▶ The trial court ruled for Selig (sex offender) and the State appealed the judgment arguing that the court failed to consider Selig's independent registration requirement under federal law.

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- ▶ Selig pled guilty to furnishing or attempting to furnish pornographic material to a minor on February 27, 2019.
 - ▶ Selig sent photos of his penis to other high school students.
- ▶ On March 1, 2019, Selig filed a Petition for Exemption from Sex Offender Registry, seeking a declaratory judgment that he was exempt from registration as a sex offender under both the state and federal sex offender registries.
- ▶ The State argued that while Selig may have been exempt under RSMO 589.400.9(2)(c), he was still required to register under RSMO 589.400.1(7) because that statute incorporates federal registration requirements into Missouri's registration requirements.

Selig v. Russell

- ▶ The trial court held that Selig's conviction did not fall within the federal registration law (SORNA) and that he was exempt from registration under Missouri's Sex Offender Registration Act (SORA or MO-SORA).
- ▶ On appeal, the Western District of Missouri noted that there were two registration laws at issue in the case (SORNA and SORA) and that each has independent registration requirements.
- ▶ The Western District also noted that Missouri courts have recognized an interplay between these two laws.
 - ▶ "The Missouri Supreme Court held as follows: If a Missouri resident is a 'sex offender' pursuant to the terms of SORNA, SORNA imposes upon such a person an 'independent, federally mandated registration requirement' which triggers the individual's duty to register in Missouri pursuant to section 589.400.1(7) of SORA."

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- ▶ The Court went on to say that "regardless of the other terms of MO-SORA, section 589.400.1(7) acts as an 'independent' requirement for registration."
- ▶ The Court also noted that Missouri integrated the registration requirements of SORNA into SORA through section 589.400.1(7) and that failure to do so would have put Missouri's receipt of certain federal funding at risk.
- ▶ During arguments it was brought up that the Missouri General Assembly had drastically changed SORA in 2018 by restructuring the time frames for registration and by adding a list of crimes exempt from registration.

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- ▶ The Court noted that "[w]hen the legislature amends a statute, it is presumed that its intent was to bring about some change in existing law. We presume the legislature acted with full awareness and complete knowledge of the present state of the law, including judicial and legislative precedent. We never construe a statute in a way that would moot the legislative changes because the legislature is never presumed to have committed a useless act".
- ▶ The Court went on to note that while the legislature made a number of substantive changes to SORA, it did not change the language of 589.400.1(7).
- ▶ The Court also noted that 589.400.1(7) has been thoroughly discussed by Missouri courts and has previously been held as creating a lifetime registration requirement if a person has ever met the registration requirements of SORNA.

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- ▶ "Section 589.400.1(7) still requires that a person must register if he or she **'has been'** or is required to register under tribal, federal, or military law".
- ▶ The Court held that the legislature was aware of the Court's interpretation of this phrase "and yet chose to make no changes to this provision".
- ▶ The Court did note that there may be a subset of people whose offense is exempt from registration under SORA who do not have a SORNA registration requirement and that these individuals would be exempt from all registration under SORA.

Selig v. Russell

- ▶ The Court also noted that "Missouri courts must consider, determine, and apply the registration requirements of SORNA through application of section 589.400.1(7) regardless of the other terms of MO-SORA. This is consistent with the language of the statute and to do otherwise could threaten Missouri's federal funding".
- ▶ **NOTE:** This is the current state of the law and could be changed by the General Assembly. The Court basically told the legislature, 'you messed up'.
- ▶ "While it is troubling that Selig may be expressly exempt from registration under section 589.400.9(2)(c) and yet have lifetime registration requirements pursuant to section 589.400.1(7), that is the current status of the law as the legislature enacted it. This Court's opinion in *Wilkinson* fully set forth the effects and possible inequality of this statutory scheme before the legislature most recently amended the statute and the General Assembly did not amend the provisions of section 589.400.1(7) creating lifetime registration requirements. Thus, we can only presume that the legislature intended this result".

Questions?

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