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DWI Loophole Needs to be Closed

Last month the Missouri Supreme Court discovered a gap in Missouri's current drunken driving law. The defect takes away prior DWI convictions for certain cases and allows some repeat offenders to evade a felony charge, effectively striking down Missouri's three-strike rule when it comes to drunken driving.

The loophole came to light after the Missouri Supreme Court made a ruling in a Lafayette County case that overturned the 2005 conviction of a man who was convicted of DWI. His felony conviction was based on a municipal drunken-driving plea and the judge sentenced him to three years in prison due to two prior convictions. The court found that the statute as currently written is not clear and doesn't specifically allow municipal convictions to be counted as prior offenses. When it comes to criminal law, when two conflicting standards exist, the defendant will always get the lesser penalty.

The ramifications of this decision are serious. Many of the 1,100 inmates in Missouri who are serving time in prison for drunken driving could potentially be released and other repeat offenders could get off the hook for a felony charge.

Now that it has been brought to our attention, we are going to do what we can to close the loophole as quickly as possible. We have added language to do this in a Senate bill (SB 747) that covers a wide-range of issues relating to alcohol abuse and have sent the bill to the House of Representatives for their approval.

Senate Bill 747 also holds those who provide alcohol to minors or knowingly allow minors to drink on their property accountable to the minor's parent or guardian if the minor suffers harm as a result. In addition it makes it possible for an officer to deem a minor "visibly intoxicated" if he or she refuses a breathalyzer test. The minor could then be charged with a minor in possession offense. Another major component of SB 747 prohibits the use or possession of an alcoholic beverage vaporizer. This device converts hard liquor into a mist that can be inhaled and speeds up the rate of intoxication by bypassing the stomach and directly entering the bloodstream. Alcoholic beverage vaporizers are already banned in 22 states.

If you have any comments or questions about this week's column or any other matter involving state government, please do not hesitate to contact me. You can reach my office by e-mail at matt_bartle@senate.mo.gov or by phone at (888) 711-9278. My web address is <http://www.senate.mo.gov/bartle>.

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