

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 690

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**Version:** As introduced (see S.F. 302, second engrossment)

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**Subject:** DWI and Criminal Vehicular Operation

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### Overview

This bill makes various changes to the DWI laws and the criminal vehicular operation laws.

#### Section

- 1**      **Requirements for conducting tests.** Amends the DWI law's provision listing the type of health care professionals who may, at the request of a peace officer, withdraw blood from a DWI offender for the purpose of testing the blood for alcohol, a controlled substance, or a hazardous substance. Adds phlebotomists to this list. A phlebotomist is a person trained to draw blood samples either for testing or donations.
- 2-5**     **Criminal vehicular operation.** Amend the criminal code's criminal vehicular operation law. These sections make two primary changes.

First, section 2 broadens the definition of what constitutes criminal vehicular operation. Under current law, a person who injures another through the operation of a motor vehicle in a negligent manner while any amount of a controlled substance listed in schedule I or II, other than marijuana, is present in the person's body is guilty of a crime. This provision adds metabolites of schedule I or II controlled substances. (This change was made throughout the DWI law last year. However, making the change in this section was inadvertently overlooked.)

Second, these sections make numerous technical/structural changes to the criminal vehicular operation law. The way the law is currently structured, the criminal vehicular operation

## Section

crime is contained in six different subdivisions. The only differences between these subdivisions involve the level of harm caused, who the victim is, and the statutory maximum penalty. The changes made in these sections collapse the substantive criminal vehicular operation crime into a single subdivision (the remaining five subdivisions are repealed in **section 9**).

**6-7 Evidence; testimony; blood samples.** Amend a section of Minnesota Statutes, chapter 634 (special rules, evidence; privileges, witnesses), that addresses the admissibility of reports of certain laboratory analyses/examinations and DWI blood samples. The law currently provides that in criminal cases, an accused person may request that the person who performed the laboratory analysis or examination or who prepared the blood sample report actually testify in person at the trial if the request is made at least ten days before the trial.

A recent Minnesota Supreme Court decision (*State v. Caulfield*) held that because this statute does not inform the defendant of the consequences of the failure to make the request for the report's preparer to testify, it imposes an unreasonable burden on the defendant's constitutional right to confront witnesses. However, the Court added "at a minimum, any statute purporting to admit testimonial reports without the testimony of the preparer must provide adequate notice to the defendant of the contents of the report and the likely consequences of his failure to request the testimony of the preparer. Otherwise there is no reasonable basis to conclude that the defendant's failure to request the testimony constituted a knowing, intelligent, and voluntary waiver of his confrontation rights."

**Section 6** requires a prosecutor to submit to an accused person notice of the contents of the report sought to be admitted into evidence and also of the requirements of **section 7**. This must be done at least 20 days before trial.

**Section 7** provides that if the accused does not comply with the requirement to demand the in-person testimony of the preparer of the report, the prosecutor is not required to produce the person at trial, the accused's right to confront the witness is waived, and the report is admitted into evidence.

**8 Revisor's instruction.** Provides a Revisor's instruction to change statutory references consistent with the restructuring of the criminal vehicular operation law made in **sections 2 to 5 and 9**.

**9 Repealer.** Repeals five subdivisions of the criminal vehicular operation law no longer necessary in light of the restructuring done in **sections 2 to 5**.