

HCS HB 371 -- JUDICIAL PROCEDURES (Cox)

COMMITTEE OF ORIGIN: Committee on Judiciary

This substitute changes the laws regarding judicial procedures.

DEPARTMENT OF REVENUE RECORDS (Section 32.056, RSMo)

The Department of Revenue is prohibited from releasing the home address or any vehicle information on a judge or member of his or her immediate family even if the judge's status changes and he or she and his or her immediate family do not qualify for the exemption.

CRIMINAL RECORDS AND JUSTICE INFORMATION ADVISORY COMMITTEE
(Section 43.518)

The substitute replaces the chairman of the Circuit Court Budget Committee with the chairman of the Court Automation Committee for the purpose of service on the Criminal Records and Justice Information Advisory Committee.

CRIMINAL CASE SURCHARGE (Sections 56.807 and 488.026)

Currently, each county treasurer must transfer a specified sum of money each month to the Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund for use by the fund. Beginning August 28, 2013, the substitute requires that the county contribution be adjusted in accordance with the following schedule based on the retirement system's annual actuarial valuation report:

- (1) If the system's funding ratio is 120% or more, no monthly sum must be transmitted;
- (2) If the system's funding ratio is more than 110% but less than 120%, the monthly sum transmitted must be reduced 50%;
- (3) If the system's funding ratio is at least 90% and up to 110%, the monthly sum transmitted must remain the same;
- (4) If the system's funding ratio is at least 80% and less than 90%, the monthly sum transmitted must be increased 50%; and
- (5) If the system's funding ratio is less than 80%, the monthly sum transmitted must be increased 100%.

Currently, a \$4 surcharge is assessed in all criminal cases including any violation of a county ordinance and any criminal or traffic law including infractions for deposit into the Missouri

Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund except under certain circumstances. The substitute removes the provision that specifies that no surcharge will be assessed against a person who has pled guilty and paid his or her fine through a fine collection center and requires the individual to pay the \$4 surcharge.

IMMUNITY WHILE CONDUCTING SERVICE OF PROCESS (Section 57.095)

The substitute specifies that all sheriffs or any other law enforcement officers have immunity from any civil or criminal liability while conducting service of process at the direction of any court to the extent that the officers' actions do not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

SEXUAL OFFENSES (Sections 160.261 - 375.1312 and 556.036 - 632.480)

The substitute changes the laws regarding certain sexual offenses. The substitute:

- (1) Renames the crime of forcible rape to rape in the first degree and specifies that a person commits the crime if he or she has sexual intercourse with an individual who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (2) Renames the crime of forcible sodomy to sodomy in the first degree and specifies that a person commits the offense if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (3) Renames the crime of sexual assault to rape in the second degree;
- (4) Renames the crime of deviate sexual assault to sodomy in the second degree;
- (5) Renames the crime of sexual abuse to sexual abuse in the first degree and specifies that a person commits the offense if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (6) Renames the crime of "sexual misconduct in the second degree" to "sexual misconduct in the first degree";
- (7) Renames the crime of "sexual misconduct in the third degree"

to "sexual misconduct in the second degree";

(8) Renames the crime of "sexual misconduct" to "sexual abuse in the second degree";

(9) Specifies that a real estate broker's or salesperson's license must be revoked and an applicant must not be issued a license if the licensee or applicant has pled guilty to, entered a plea of nolo contendere to, or been found guilty of rape in the first degree, rape in the second degree, sodomy in the first degree, sodomy in the second degree, or sexual abuse in the first or second degree;

(10) Specifies that a prosecution for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree may be commenced at any time;

(11) Defines the term "domestic violence," "family" and "household member" as they apply to certain information that an insurance company cannot disclose to be the same as they are in Section 455.010;

(12) Specifies that a prosecution for an unlawful sexual offense involving a person 18 years old or younger must be commenced within 30 years after the victim reaches the age of 18 unless the prosecution is for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree in which case the prosecution may be commenced at any time;

(13) Includes being in a drug-induced state or for any other reason being manifestly unable or known by the actor to be unable to make a reasonable judgment to those who are incapable of giving consent to sexual activity;

(14) Repeals the provision which specifies that a person is not considered incapacitated with respect to an act committed upon a person if he or she became unconscious, unable to appraise the nature of the person's conduct or unable to communicate unwillingness to an act after consenting to the act; and

(15) Requires the court to sentence a person an extended term of imprisonment if it finds that the defendant is a persistent sexual offender and has been found guilty of attempting to commit or committing specified offenses. Multiple sentences of imprisonment cannot run concurrently for any offense committed during or at the same time as or multiple offenses of specified felonies.

MOTOR VEHICLE ROADSIDE CHECKPOINTS (Section 304.152)

The substitute prohibits a law enforcement agency from establishing a roadside checkpoint or road block pattern based upon a particular vehicle type, including the establishment of a motorcycle-only checkpoint. A law enforcement agency may establish a roadside checkpoint pattern that only stops and checks commercial motor vehicles. The provisions of the substitute cannot be construed to restrict any other type of checkpoint or road block that is lawful and is established and operated in accordance with the provisions of the United States and Missouri constitutions.

CREDIT AGREEMENTS (Section 432.047)

The substitute specifies that a debtor may not maintain an action upon or a defense in any way related to a credit agreement unless the agreement is in writing, provides for the payment of interest or for other consideration, specifies the terms and conditions, and the agreement is executed by the debtor and the lender.

MORTGAGE LOAN ORIGINATORS (Section 443.723)

A licensed mortgage loan originator is required to also complete at least one hour of Missouri law and regulations in order to meet the annual state continuing education requirements.

VISITATION RIGHTS (Section 452.400)

The substitute specifies that if custody, visitation, or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts that constitute a violation of a judgment of paternity.

CUSTODY (Section 452.375)

The substitute specifies that a court may deny custody and may exercise discretion in granting visitation to a parent not granted custody if the parent, while the child was unborn, attempted to coerce the mother of the child to obtain an abortion.

ADOPTIONS (Sections 453.015 - 453.050)

The substitute defines "coerce" as it relates to adoptions and foster care as forcing a person to act in a given manner or to compel by pressure or threat.

The substitute specifies that a written consent to adoption must be executed in front of a judge or acknowledged before a notary public. If the consent is executed in front of a judge, the judge

must advise the consenting birth parent and consenting party of the consequences of the consent.

A consent to adoption is final when executed unless the consenting party, prior to a final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The consenting party bears the burden of proving the consent was not freely and voluntarily given. A consent to an adoption must have been executed not more than six months prior to the date the petition for adoption is filed.

The consent to the adoption of a child is not required of a man who has reason to believe he is the biological father of an unborn child and who attempted to coerce the mother of the child to obtain an abortion.

A parent's waiver of the necessity of his or her consent to a future adoption of the child must be executed in front of a judge or acknowledged before a notary public or the signature of the person giving consent must be witnessed by the signatures of at least two adults. If the waiver is executed in front of a judge, the judge is required to advise the consenting party of the consequences of the waiver of consent.

JUDICIAL PERSONNEL TRAINING FUND (Section 476.057)

The substitute specifies that any moneys received by or on behalf of the State Courts Administrator from fees, grants, or any other sources in connection with providing training to judicial personnel must be deposited into the Judicial Personnel Training Fund but any moneys collected in connection with a particular purpose must be segregated fees and not disbursed for any other purpose.

PRIVATE PROBATION SERVICES FOR DWI COURTS (Section 478.007)

The substitute authorizes DWI courts to utilize private probation and parole services when the Division of Probation and Parole within the Department of Corrections is unable to provide the services. If a private probation and parole service is used, additional costs may be assessed against the participant.

SURCHARGE IN MUNICIPAL CODE VIOLATIONS (Section 479.085)

The City of Springfield is authorized to impose a surcharge of \$10 on all municipal code violations for the purpose of funding the construction, remodel, repair, and maintenance of its municipal court building.

This provision expires on December 31, 2033.

SURCHARGE IN CIVIL COURT CASES (Section 488.426)

The circuit court in any circuit, except the circuit court in Jackson County or the circuit court in any circuit that reimburses the state for the salaries of family court commissioners under Section 487.020 is allowed to change the surcharge in civil actions to any amount up to \$15. Currently, the only exception allowed is the circuit court in Jackson County.

The circuit court in Jackson County or the circuit court in any circuit that reimburses the state for the salaries of family court commissioners is authorized to change the surcharge in civil actions to any amount up to \$20.

COURT REPORTERS (Section 488.2250)

Currently, the court reporter for all transcripts of testimony given or proceedings in any circuit court must receive \$2 per 25-line page for the original of the transcript and 35 cents per 25-line page for each regular size page; a judge may order a transcript of all or any part of the evidence or oral proceedings and the court reporter's fee to be paid by the state; and the court must order the court reporter to furnish three copies of the transcripts of the notes of the evidence for which the court reporter must receive \$2 per legal page and 20 cents per page for the copies. The substitute repeals these provisions and specifies that in cases where an appeal is taken, the court reporter must receive the sum of \$3.50 per legal page for the preparation of a paper and an electronic version of the transcript. In criminal cases where an appeal is taken and the court determines the defendant is unable to pay the costs of the transcript, the court reporter must receive a fee of \$2.60 per legal page for the preparation of a paper and an electronic version of the transcript. Any judge, in his or her discretion, may order a transcript of all or any part of the evidence or oral proceedings, and the court reporter must receive \$2.60 per legal page for the preparation of a paper and an electronic version of the transcript. The court reporter's fees for an appeal in a criminal case where the court determines that the defendant is unable to pay the costs or in a case where the judge orders a transcript must be paid by the state. The cost to prepare all other transcripts of testimony or proceedings must be paid by the party requesting the preparation and production.

CHARGES FOR LAW ENFORCEMENT SERVICES (Section 488.5320)

Currently, law enforcement officers are allowed to charge for their services rendered in criminal cases and in all contempt or

attachment proceedings except for cases disposed of by a traffic violation bureau. The substitute removes the exception and allows a law enforcement officer, except in the City of St. Louis and St. Louis County, to also charge for cases in a violations bureau. However, the charges from cases disposed of by a violations bureau must be distributed so that one-half of the charges collected are deposited into the newly-created MODEX Fund for the operational support and expansion costs of the MODEX system and one-half of the charges collected are deposited into the inmate security fund of the county or municipal political subdivision where the citation originated. If the county or municipal political subdivision has not established an inmate security fund, all of the funds must be deposited in the MODEX Fund.

PROPERTY EXEMPT FROM ATTACHMENT (Section 513.430)

Any money or assets payable to a participant or beneficiary in a health savings plan or a similar retirement, profit-sharing or health savings plan, including an inherited account or plan, that is qualified under Section 401(a), 403(a), 403(b), 408, 408A, or 409 of the Internal Revenue Code of 1986, as amended, must be exempt from attachment and execution in a bankruptcy proceeding whether the participant's or beneficiary's interest arises by inheritance, designation, appointment, or otherwise.

CIVIL IMMUNITY FOR SUPERVISION OF COMMUNITY SERVICE WORK (Section 537.602)

Any entity that supervises community service work performed as a requirement for deferment of any criminal charge under a written agreement with a federal, state, or local prosecutor or any entity that derives benefits from the performance of community service work must be immune from any suit by the person performing the community service work or by any person deriving a cause of action from the person performing the community service work if that cause of action arises from the supervision of the work performed. The entity supervising the work must not be immune from any suit for gross negligence or for an intentional tort.

TRANSCRIPTS (Section 545.417)

Any party who takes a deposition in a criminal case must be responsible for the costs of providing one copy of the transcript of the deposition to the opposing party.

RESTITUTION (Sections 559.100, 559.105, and 570.120)

The substitute requires all restitution to be paid through the office of the prosecuting or circuit attorney. Each prosecuting or

circuit attorney who takes any action to collect restitution must collect from the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full. The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and employees' salaries.

In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering or stealing may be ordered by the court to make restitution to the victim. The substitute allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense. The list of allowable expenses for restitution is revised to require only a victim's reasonable expenses to participate in the prosecution of the crime.

Currently, any person eligible to be released on parole for the offense of tampering or stealing may be required as a condition of parole to make restitution. The substitute requires any person eligible to be released on parole to make restitution as a condition of parole.

The court may set an amount of restitution to be paid by any person who has been found guilty of an offense to the victim for the victim's losses due to the offense that may be taken from the inmate's account at the Department of Corrections while he or she is incarcerated. Upon conditional release or parole, if any amount of the court-ordered restitution is unpaid, the balance may be collected as a condition of conditional release or parole.