

HCS SB 12 -- JUDICIAL PROCEDURES

SPONSOR: Schaefer (Jones, 50)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by a vote of 8 to 3.

This substitute changes the laws regarding judicial procedures.

MISSOURI PROSECUTING ATTORNEYS AND CIRCUIT ATTORNEYS' RETIREMENT SYSTEM FUND

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 and including 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 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 this individual to pay the \$4 surcharge.

COURT-APPOINTED ATTORNEYS IMMUNITY

The substitute specifies that an attorney appointed by the court to represent an indigent defendant in a criminal case without compensation must be immune from civil liability, including causes of action for malpractice and for discretionary acts or omissions

committed during the course of the representation so long as the actions or omissions are taken in good faith and are not performed with reckless disregard. The immunity will not apply to conduct that is willfully wrong or performed with malice or corruption.

RESTITUTION

The substitute requires all restitution to be paid through the office of the prosecuting or circuit attorney. The provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the restitution and costs. 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, but not be limited to, 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.

REPRESENTATION FOR INDIGENT DEFENDANTS

Currently, the State Public Defender Director must contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. The substitute repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D felonies, all nonsexual misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the contracts. The Office of Administration must award contracts through a competitive bidding process with the approval of the presiding judge of the judicial circuit where the services are rendered that is designed to award contracts to the lowest and best bidder. Priority must be given to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are conflicts of the public defender and establish a quality assurance program, with the assistance of each presiding circuit judge, to ensure that defendants are being provided quality representation under the contracts.

The director must also, with the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system if the prosecuting attorney does not collect and enforce those liens and judgments.

The director must establish district offices, the boundaries of which must coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but no judicial boundary can include any geographic region of a judicial circuit without including the entire judicial circuit.

The substitute repeals the requirement that the director and defenders must provide legal services to an eligible person who is detained or charged with any felony, including appeals from a conviction in the case; is detained or charged with a misdemeanor that will probably result in confinement in the county jail upon

conviction, including appeals from a conviction; or is detained or charged with a violation of probation or parole and requires them to provide legal services to an eligible person who is detained or charged with a class A or class B felony, including appeals from a conviction in the case or a person who is detained or charged with any sexual offense. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders. The public defender must provide legal services in those cases in which a private attorney who has a contract for the provision of legal services has a conflict of interest.

The director and defenders are prohibited from providing legal services or contracting out for legal services with private attorneys for motions claiming ineffective assistance of counsel or the representation of any crime victim or witness.

Currently, 18 C.S.R. 10-4.010 authorizes a local public defender office to certify that its maximum caseload has been exceeded and thereafter limit its availability to take additional cases after consultation with the presiding court. The substitute invalidates that rule and prohibits the public defender from refusing to provide any representation required under the law without prior approval from a court of competent jurisdiction.

The public defender must pay the prosecuting or circuit attorney a collection fee of 20% of the funds collected by the prosecuting or circuit attorney on behalf of the public defender. The fee must be deposited in the same manner as collection fees are deposited in the county treasury for delinquent taxes.

If the prosecuting attorney does not take action to enforce the judgment within 90 days of entry, the commission may contract with private collection agencies.

The provisions of the substitute regarding the public defender in Sections 600.042, 600.044, 600.052, and 600.090 become effective July 1, 2014.

The provisions of the substitute regarding court-appointed attorney immunity and the provisions regarding 18 C.S.R. 1-4.010 contain an emergency clause.

PROPONENTS: Supporters say that the bill is needed to protect members of the Missouri Bar who do not carry malpractice insurance and are appointed by the court, without their permission, to handle criminal cases for indigent defendants. Boone County recently experienced a problem with a judge appointing members of the private bar, who had no prior experience in criminal law and no

malpractice insurance, to represent indigent criminal defendants without the consent of the attorney being appointed.

Testifying for the bill was Representative Cox.

OPPONENTS: Those who oppose the bill say that the bill will have a negative impact on the quality of representation for indigent defendants.

Testifying against the bill was ACLU - Eastern Missouri.

OTHERS: Others testifying on the bill say that it does not protect indigent defendants from incompetent attorneys who are appointed as their counsel.

Testifying on the bill was Eric Wilson, Missouri Bar Association.