

HCS SB 100 -- JUDICIAL PROCEDURES

SPONSOR: Keaveny (Cox)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by a vote of 9 to 2.

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 Joint Legislative Committee on Court Automation for the purpose of service on the Criminal Records and Justice Information Advisory Committee.

MISSOURI PROSECUTING ATTORNEYS AND CIRCUIT ATTORNEYS' RETIREMENT SYSTEM FUND (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 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 which 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.

IMMUNITY WHILE CONDUCTING SERVICE OF PROCESS (Section 57.095)

The substitute specifies that all sheriffs or any other law enforcement officers must 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.

CREDIT AGREEMENTS (Section 432.047)

The substitute specifies that no party may 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 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.

ADOPTIONS (Sections 453.030 - 453.050)

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.

ADMINISTRATIVE HEARING OFFICERS (Section 454.475)

The substitute authorizes an administrative hearing officer from the Department of Social Services to set aside or correct administrative child support decisions or orders and proposed administrative modifications of a judicial order. The authority to set aside or correct decisions, orders, or modifications must be done after written notice to all parties and the opportunity for them to respond. Any objection or response to the motion must be made in writing and filed with the hearing officer within 15 days from the filing of the motion to correct or set aside. The substitute specifies the conditions and time frame under which the corrections can be made.

The substitute specifies that no order, decision, or modification based on errors arising from mistake, surprise, fraud, misrepresentation, excusable neglect, or inadvertence may be corrected prior to being filed with the court provided the written motion is mailed to all parties and filed within 60 days of the administrative decision, order, or proposed decision and order. Any objection or response to the motion must be filed within 15 days from the mailing of the motion. No decision, order, or proposed modification of a judicial order may be vacated after 90 days from the mailing of the administrative decision, order, or proposed modification of a judicial order.

In a case of lack of jurisdiction, the hearing officer may, after notice to the parties, on his or her own initiative or upon the

motion of any party or the Family Support Division within the department vacate the administrative order or proposed administrative modification of a judicial order if it is found that the order, decision, or modification was without subject matter jurisdiction or personal jurisdiction or without affording the parties due process and the order, decision, or modification had not been filed with the court.

The substitute specifies that no decision, order, or proposed administrative modification of a judicial order may be vacated during the court's review of the applicable administrative decision, order, or proposed order as authorized under Sections 536.100 to 536.140, except in response to an express order from the reviewing court.

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.

JUDICIAL PERSONNEL (Sections 477.405 and 478.320)

The Supreme Court must, by January 1, 2015, recommend the guidelines appropriate for use by the General Assembly in determining the need for additional judicial personnel or the reallocation of existing personnel and recommend appropriate guidelines for the evaluation of judicial performance including a judicial weighted workload model and a clerical weighted workload model.

When the Office of the State Courts Administrator indicates an annual weighted workload model for three consecutive years or more shows the need for four or more full-time judicial positions in any judicial circuit having a population of 100,000 or more, there must be one additional associate circuit judge position in the circuit for every four full-time judicial positions needed.

PRIVATE PROBATION SERVICES (Section 478.007)

The substitute authorizes a DWI court to utilize a court-approved private probation and parole service when the Division of Probation and Parole within the Department of Corrections is unavailable to assist in the judicial supervision of a person who wishes to enter a DWI court. If a service is used, any and all additional necessary costs may be assessed against the participant. No person

can be rejected from participating in DWI court because he or she does not reside in the city or county where the applicable DWI court is located.

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 CRIMINAL CASES (Section 488.026)

Currently, a surcharge of \$4 is assessed and collected in all criminal cases filed in court, including any violation of a county ordinance or any violation of the state's criminal or traffic laws, including infractions. The substitute adds any person who has pled guilty and paid a fine through a fine collection center to the list of those who are to be assessed the surcharge.

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 where 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 them to also charge for cases in a traffic violation bureau. However, the charges from cases disposed of by a traffic violation 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.

COURT-APPOINTED ATTORNEY IMMUNITY (Section 537.865)

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.

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. 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.

JUVENILE OFFENDERS (Section 565.020)

The substitute specifies that if an offender has not reached his or her eighteenth birthday at the time of committing the offense of first degree murder, the punishment must be life imprisonment without the eligibility for probation, parole, or release except by act of the governor or life imprisonment with eligibility for parole after 50 years.

REPRESENTATION FOR INDIGENT DEFENDANTS (Sections 600.042 to 600.090)

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, juvenile offenders, and the provisions regarding 18 C.S.R. 10-4.010 contain an emergency clause.

PROPONENTS: Supporters say that the bill exempts certain property from bankruptcy proceedings.

Testifying for the bill were Senator Keaveny; and Reginald Turnbull.

OPPONENTS: There was no opposition voiced to the committee.