

CCS HCS SB 100 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

DEPARTMENT OF REVENUE RECORDS (Section 32.056, RSMo)

The bill repeals the requirement that a member of the judiciary notify the Department of Revenue when the member's status changes and he or she and his or her immediate family do not qualify for the exemption from the release of specified personal information contained in the department's motor vehicle or driver registration records and repeals the requirement that the department revise its records in this case.

CRIMINAL RECORDS AND JUSTICE INFORMATION ADVISORY COMMITTEE
(Section 43.518)

The bill 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 within the Department of Public Safety.

CREDIT AGREEMENTS (Section 432.047)

The bill specifies that a party cannot 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 must complete at least one hour of education in Missouri law and regulations in order to meet the annual state continuing education requirements.

VISITATION RIGHTS (Section 452.400)

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 bill 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.

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)

An administrative hearing officer from the Department of Social Services is authorized to correct any administrative child support decision or order, except a proposed administrative modification of a judicial order, containing clerical mistakes arising from oversight or omission at any time upon his or her own initiative or written motion filed by the division or any party to the action if the written notice is mailed to all parties. Any objection or response to the motion must be made in writing and filed with the hearing officer within 15 days from the mailing date. A proposed administrative modification of a judicial order may be corrected by an agency administrative hearing officer prior to the filing of the proposed modification with the court that entered the underlying order or upon the express order of the court that entered the underlying order. A correction cannot be made during the court's review of the administrative decision, order, or proposed order except in response to an express order from the reviewing court.

An administrative order or decision or proposed administrative modification of a judicial order containing errors arising from mistake, surprise, fraud, misrepresentation, excusable neglect, or inadvertence may be corrected prior to being filed with the court if 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 with the hearing officer within 15 days from the mailing date of the motion. Any decision, order, or proposed administrative modification of a judicial order cannot be corrected after 90 days

from the mailing of the administrative decision, order, or proposed order or during the court's review of the decision, order, or proposed order except in response to an express order from the reviewing court.

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 an administrative decision or order or proposed administrative modification of a judicial order if the hearing officer determines that it is found that the order or decision was issued without subject matter jurisdiction, without personal jurisdiction, or without affording the parties due process and the order, decision, or modification has not been filed with the court. Any objection or response to the motion must be filed with the hearing officer within 15 days from the mailing date of the motion. A decision, order, or proposed administrative modification of a judicial order cannot 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)

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 and not disbursed for any other purpose.

JUDICIAL PERSONNEL (Sections 477.405 and 478.320)

The Missouri 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. The guidelines must be filed with the chairs of the House and Senate Judiciary committees for distribution to the members of the General Assembly, and the court must annually file a report measuring and assessing judicial performance in the state appellate and circuit courts including a judicial weighted workload model and a clerical weighted workload model.

When the Office of the State Courts Administrator indicates in an annual weighted workload model for three consecutive years or more 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 as indicated in the model. In a multicounty circuit, the additional positions must be apportioned among the counties in the circuit as specified based on population.

PRIVATE PROBATION AND PAROLE SERVICES (Section 478.007)

The bill allows a DWI court to use a private probation 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 the court. All additional costs may be assessed against the participant. A person cannot be rejected from participating in a DWI court solely because he or she does not reside in the city or county where the applicable court is located, but the DWI court can base acceptance into a treatment court program on its ability to adequately provide services for the person or handle the additional caseload.

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 COSTS (Section 488.2230)

The City of Kansas City is allowed to charge, in addition to all other court costs for municipal ordinance violations, up to \$7 for each municipal ordinance violation case except when the proceeding or the defendant has been dismissed by the court. The judge may waive the assessment if the defendant is found to be indigent and unable to pay the costs. The city must use the money to fund special mental health, drug, and veterans courts, including indigent defense and ancillary services associated with the specialized courts.

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 copy; a judge may order a transcript of all or any part of the evidence or oral proceedings and the court reporter's fee is 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 bill repeals these provisions and specifies that for all appeal transcripts of testimony given or proceedings in any circuit court, 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 by the defendant and the court determines that the defendant is unable to pay the costs of the transcript for the purpose of perfecting the appeal, 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 upon a voucher approved by the court. 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 violations bureau. The bill removes the exception and allows them to also charge \$6 for their services in a case in a violations bureau. The charges from cases disposed of by a traffic 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 of the Missouri Data Exchange (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. The fund is to be administered by the Peace Officers Standards and Training Commission. If the county or municipal political subdivision has not established an inmate security fund, all of the funds must be deposited into the MODEX Fund.

Sheriffs, county marshals, or other officers located in St. Louis

County or the City of St. Louis cannot charge for their services rendered in cases disposed of by a traffic violations bureau.

PROPERTY EXEMPT FROM ATTACHMENT (Section 513.430)

Any money or assets payable to a participant or beneficiary from or any interest of any participant or beneficiary in a retirement plan, profit-sharing plan, health savings plan, or similar 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.

LAW SCHOOL CLINICS (Section 514.040)

Currently, when a legal aid society, legal services, or a nonprofit organization funded in whole or substantial part by moneys appropriated by the General Assembly represents an indigent party in a civil case, the court costs and expenses may be waived without the necessity of a motion and court approval if the organization has already determined the party is unable to pay the expenses and has filed the determination with the clerk of the court. The bill adds a law school clinic that has as its primary purpose educating law students through furnishing legal services to indigent persons to the list of organizations that may waive court expenses without filing a motion with the court.