

HCS SCS SB 829 -- JUSTICE SYSTEM

SPONSOR: Schaefer (Lipke)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention by a vote of 11 to 0.

This substitute changes the laws regarding the justice system. In its main provisions, the substitute:

(1) Specifies that Jefferson County cannot adopt any charter provision or any order or ordinance that prevents the county from contracting out the county's probation services with a private entity (Section 66.720, RSMo);

(2) Adds Cass County to those counties that may prosecute and punish violations of its county orders in the circuit or municipal court (Section 67.320);

(3) Adds the counties of Andrew, Buchanan, Cass, Clinton, and Livingston to the list of counties authorized to enact nuisance abatement ordinances regarding the condition of real property, including land with tires or storm water runoff conditions resulting in damage to buildings or infrastructure. No county will have the power to adopt any ordinance, resolution, or regulation governing any railroad company regarding these nuisance abatements. Currently, certain cities, including specific third class cities, are allowed to remove weeds and trash at the owner's expense as a special tax bill if the property is in violation of the city ordinances more than once during the year. The substitute allows any third class city to have this power (Sections 67.402 and 71.285);

(4) Specifies that any person who recklessly uses or possesses with an intent to use any drug paraphernalia to manufacture, compound, produce, test, or analyze amphetamine or methamphetamine or any of their analogues will be guilty of an infraction. Anyone who knowingly violates this provision will be guilty of a class D felony (Section 195.233);

(5) Adds alcohol and tobacco violations to the list of violations that may be investigated by a multijurisdictional enforcement group (Section 195.505);

(6) Adds a professional therapy dog to the definition of "service dog" as it relates to crimes against these animals or crimes of impersonating a disabled person. "Professional therapy dog" is defined as a dog which is selected, trained, and tested to provide specific physical therapeutic functions, under the direction and control of a qualified handler who works with the

dog as a team as a part of the handler's occupation or profession but does not include dogs used by volunteers in visitation therapy (Section 209.200);

(7) Lowers the age limit for juvenile court jurisdiction for a person who violates a state or municipal traffic violation from 15 1/2 to 15 years of age (Section 211.031);

(8) Authorizes the Department of Corrections to receive and disburse grants and federal funds (Section 217.045);

(9) Specifies that a person who recklessly operates a vehicle on any highway in the state without a valid license or any motorcycle or motortricycle without a valid license that shows the person has successfully passed an examination for its operation will be guilty of an infraction. A person who knowingly violates this provision will be guilty of a class A misdemeanor. Any person convicted a third or subsequent time of operating a vehicle, motorcycle, or motortricycle without a valid license will be guilty of a class D felony if the prior convictions were misdemeanors (Section 302.020);

(10) Specifies that any person who knowingly commits the crime of driving while revoked will be guilty of a class A misdemeanor and any person who recklessly violates this provision will be guilty of an infraction. No person who pleads guilty to or is found guilty of a felony or misdemeanor of driving while revoked will be granted a suspended imposition of sentence or be eligible for parole or probation until he or she has served a minimum of 48 consecutive hours of imprisonment unless he or she performs at least 10 days involving 48 hours of court-supervised community service (Section 302.321);

(11) Specifies that any owner of a motor vehicle registered or required to be registered in this state who knowingly operates, registers, or permits another person to operate the vehicle without maintaining the required financial responsibility will be guilty of a class C misdemeanor. A person who recklessly violates this provision will be guilty of an infraction (Section 303.025);

(12) Allows the judge in a criminal or municipal case that is dismissed before the defendant pleads guilty or is found guilty to assess court costs against the defendant as specified in Section 488.012 if the defendant consents to pay and is not indigent and is able to pay the costs (Sections 479.260 and 488.5032);

(13) Requires an individual who is found guilty in any criminal case in a circuit court to be assessed a \$30 surcharge and

removes the provision assessing the surcharge to an individual who pled nolo contendere in these cases. A \$15 surcharge is authorized in all other court proceedings in all other criminal cases except for traffic violation cases where the defendant is found guilty, and the provision assessing the surcharge to an individual who pled nolo contendere in these cases is repealed. Currently, these funds are deposited into the General Revenue Fund if the state's general revenue did not increase by 2% or more in the previous fiscal year. The substitute repeals this provision and requires these moneys to be deposited into the DNA Profiling Analysis Fund to be used only by the State Highway Patrol Crime Lab (Section 488.5050);

(14) Increases the amount of the security required on a writ of attachment from \$100 to not less than \$500 (Section 491.170);

(15) Specifies that no indictment or information can be deemed invalid nor can any trial, judgment, or other proceeding be stayed, arrested, or in any manner affected in the case of any sexual or felony offense for the omission of the defendant's name if the identity of the defendant is unknown at the time the indictment or information is brought and the indictment or information describes the defendant as a person whose name is unknown but who has a particular DNA profile (Section 545.030);

(16) Authorizes each prosecuting attorney to, upon agreement with an accused or a defendant, to divert a criminal case to a prosecution diversion program for a period of six months to two years allowing for any statute of limitations to be tolled for that time. The prosecuting attorney may divert a case out of the criminal justice system that is nonviolent, nonsexual, and does not involve a child victim or the possession of an unlawful weapon, does not constitute a violation of a current condition of probation or parole, and is not a traffic offense in which the accused or defendant was a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the offense. The prosecuting attorney is also allowed to divert a case if he or she determines that the advantages of utilizing prosecution diversion outweighs the advantages of immediate court activity. The accused or defendant must submit to all program requirements, and any newly discovered criminal behavior while in the program will immediately forfeit his or her right to continued participation. The prosecuting attorney is authorized to establish any other criteria for the program and to impose conditions, such as remaining free of criminal behavior, payment of restitution, and payment of an administrative handling fee of \$100 for each case diverted upon the behavior and conduct of the accused or defendant during participation in a program. The administrative handling fee collected is to be deposited into the newly created administrative handling cost fund and expended

for use by a prosecuting or circuit attorney for the expenses of the program. The prosecuting attorney or circuit attorney must collect an additional \$5 per case for deposit into the Missouri Office of Prosecution Services Fund. Any person participating in the prosecution diversion program has the right to insist on criminal prosecution for the offense for which he or she is accused at any time and may have counsel present during all phases of the diversion proceedings, but counsel is not required. After successful completion of the program and any conditions imposed to the satisfaction of the prosecuting attorney, the person is entitled to a dismissal or alternative disposition of the charges against him or her (Section 557.014);

(17) Specifies that a defendant is not entitled to an automatic change of judge in a probation revocation proceeding (Section 559.036);

(18) Requires any restitution ordered by the court or agreed to by the parties to be paid through the office of the prosecuting or circuit attorney or another entity the office has contracted with for the collection. When ordered by the court, interest is allowed to be charged on any collection amount. Any prosecuting or circuit attorney who collects restitution will also collect from the person paying restitution an administrative handling cost in addition to all other costs and fees allowed by law. The cost will be \$25 for restitution of less than \$100 and \$50 for restitution between \$100 and \$249. For restitution of \$250 or more, the cost will be 10% of the total restitution, not to exceed \$75. In addition to the administrative handling cost, an installment cost will be assessed in the amount of \$2 for each restitution payment except for the first payment. The county treasurer is to deposit the costs collected and the restitution payments received into the newly created administrative handling cost fund which is to be a separate interest-bearing fund. The prosecuting or circuit attorney is required to collect from the person paying restitution an additional \$5 per crime victim to whom restitution is being paid to be deposited into the Missouri Office of Prosecution Services Fund. The substitute specifies how the moneys are to be used and that the fund may be audited by the State Auditor or the appropriate auditing agency (Section 559.100);

(19) Specifies that a court may set an amount of restitution to be paid by a defendant who is incarcerated with the amount being taken from the inmate's account at the Department of Corrections. The prosecuting attorney or circuit attorney may refer any failure to pay restitution as a condition of conditional release or parole to the Board of Probation and Parole within the department for enforcement (Section 559.105);

(20) Authorizes the department director to establish, as a three-year pilot program, a mental health assessment process. Upon a motion filed by the prosecutor in a criminal case, the judge who is hearing the case may request that an offender be placed in the department for 120 days for a mental health assessment and for treatment if it appears that the person has a mental disorder or illness. The offender must qualify for probation including community psychiatric rehabilitation programs, and the probation must be appropriate and consistent with public safety for the offender to be eligible for placement. Before the judge rules on the motion, the victim must be given the opportunity to be heard by the court. Upon recommendation of the court, the department must determine the offender's eligibility for the mental health process. Following the assessment and treatment period, an assessment report must be sent to the sentencing court. The court, if appropriate, may release the offender on probation that is supervised by a state probation and parole officer who must work with the Department of Mental Health to enroll eligible offenders in community psychiatric rehabilitation programs. A person convicted of certain specified serious offenses, any offense where probation or parole is prohibited, or who has been found to be a predatory sexual offender is not eligible for probation. At the end of the three-year pilot, the directors of the departments of Corrections and Mental Health must jointly submit recommendations by December 31, 2013, to the Governor and General Assembly on whether to expand the process statewide (Section 559.117);

(21) Increases from \$50 to \$65 the maximum monthly amount a person placed on probation must contribute to a private entity providing supervision and rehabilitation services (Section 559.604);

(22) Revises the crime of nonsupport by removing the requirement that the parent knowingly fails to provide adequate support without good cause and specifies that the parent commits the crime if he or she fails to provide adequate support (Section 568.040);

(23) Adds any elected prosecutor or assistant prosecutor with written authorization from the elected prosecuting attorney to the list of individuals who are exempt from certain restrictions on the use of weapons, including the prohibition on carrying concealed weapons (Section 571.030);

(24) Expands the crime of making a false declaration for the purpose of misleading a public servant in the performance of his or her duty, a class B misdemeanor, to include when a person provides any verbal false statement regarding his or her identity which the person believes or knows to be untrue (Section

575.060);

(25) Revises the process for appealing a decision regarding a Crime Victims' Compensation Fund claim filed on or after August 28, 2010, by allowing an aggrieved person to file a petition with the Director of the Department of Public Safety to have the original decision of the department heard de novo. Any party aggrieved by the decision of the department director may file a petition with the Administrative Hearing Commission, and any decision of the commission can be appealed to the appropriate circuit court. Currently, an aggrieved person files a petition with the Division of Workers' Compensation within the Department of Labor and Industrial Relations to have a decision heard de novo by an administrative law judge. Any party aggrieved by the decision of the administrative law judge may file a petition with the Labor and Industrial Relations Commission to appeal the decision. Any party aggrieved by a commission's decision may appeal to the court of appeals (Sections 595.036, 595.037, 595.060, and 621.275); and

(26) Creates the Reverend Nathaniel Cole Memorial Pursuit Reduction Grant to be administered by the Director of the Department of Public Safety. Any moneys appropriated or received from federal grants, gifts, or donations to the fund will be used to provide grants, in the amount of a 50% match, to certain eligible urban police departments which purchase real-time tagging and tracking pursuit management systems (Section 650.470).

The substitute contains an emergency clause for the provisions regarding the surcharge assessed to an individual found guilty in any criminal case for deposit into the DNA Profiling Analysis Fund, prosecution of an unknown defendant with an unknown name but a particular DNA profile for certain sexual and felony offenses, and the automatic change of judge in a probation revocation proceeding.

FISCAL NOTE: Estimated Effect on General Revenue Fund of a cost of More than \$1,400,000 to an income of Unknown in FY 2011, FY 2012, and FY 2013. Estimated Income on Other State Funds of \$1,400,000 in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that the bill will allow counties to deal with storm water drainage nuisance problems.

Testifying for the bill was Representative Hobbs for Senator Schaefer.

OPPOSERS: There was no opposition voiced to the committee.