

HCS SB 893 -- JUDICIARY

SPONSOR: Days (Stevenson)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 10 to 0 with 4 present.

This substitute changes the laws regarding courts and judges, records, and criminal proceedings.

COURTS AND JUDGES

The substitute:

(1) Requires the chief governing body in Jackson County to establish a jury service expense fund to aid with the compensation of jurors. A petit or grand juror for this county will receive no compensation for the first day of jury service, \$6 for the second day, and \$40 for each subsequent day. No reimbursement will be given for mileage (Sections 50.567 and 494.455, RSMo);

(2) Establishes procedures for asserting a mechanic's lien against residential real property other than a mechanic's lien for the repair, remodeling, or addition to owner-occupied residential property of four units or less (Section 429.016);

(3) Repeals the provisions regarding the Uniform Interstate Family Support Act; re-enacts them to be consistent with the changes adopted by the National Conference of Commissioners on Uniform State Laws; and extends the provisions of the act to the establishment, enforcement, or modification of child or spousal support orders that involve a foreign country (Sections 210.844 and 454.1500 - 454.1730);

(4) Changes certain requirements regarding identification information in certain court pleadings, liens, notice of garnishment, and writs of sequestration. The substitute requires any pleading, other than the interlocutory or final judgment, or any modification thereof, in a dissolution of marriage, legal separation, or motion to modify filed before August 28, 2009, to be subject to inspection only by the parties or an attorney of record or upon order of the court for good cause shown; by any person or designee of a person licensed and acting under Chapter 381, who must keep any information obtained confidential except as necessary for the performance of functions required under the chapter; or by the Family Support Division within the Department of Social Services when services are being provided under Section 454.400. Persons authorized to inspect these documents are allowed to receive or make copies of the documents without

requiring the clerk to redact information unless specifically ordered to do so by the court. The clerk must redact the Social Security number from any copy of a judgment or satisfaction of judgment before releasing a copy of the interlocutory or final judgment or satisfaction of judgment to the public. The substitute also requires a lien on real estate that is obtained based on a judgment or order for child support or maintenance to state only the last four digits of the obligor's Social Security number instead of the full number and requires a notice of garnishment and a writ of sequestration to contain only the last four digits of a person's Social Security number instead of the full number (Sections 452.430, 454.515, and 525.233);

(5) Requires all circuit clerks in the counties of the 6th, 7th, and 28th judicial circuits and the circuit clerk in Scott County to be appointed by a majority of the circuit and associate circuit judges of each county, en banc. A clerk in those counties will be removable for cause by a majority of the circuit and associate circuit judges of his or her county, en banc (Section 483.015);

(6) Requires the September 17, 1996, Missouri Supreme Court standards for representation by guardians ad litem to be updated and adopted statewide. Each circuit is required to devise a plan to implement the standards that takes into account the individual needs of its circuit and the negative impact that excessive caseloads have upon the effectiveness of counsel. These plans must be approved by the Supreme Court en banc and fully implemented by July 1, 2011 (Section 484.350);

(7) Specifies that when a judgment from any other state or territory of the United States is paid or presumed to be paid and satisfied by operation of law in that state or territory, it must have the same effect in this state. When a judgment is deemed satisfied, the judgment debtor may file a verified motion in any action seeking to enforce the satisfied judgment to acknowledge that the judgment is satisfied. The verified motion must set forth a copy of the judgment and the date of its entry, all authenticated in the manner authorized by the laws of the United States or of this state, and proof of payment or a copy of the applicable statute from the other state or territory demonstrating that the judgment is presumed to be paid and satisfied by operation of law in that state or territory. The judgment debtor must serve the motion upon the judgment creditor or assignee. This acknowledgment of satisfaction must be entered by the court unless the judgment creditor or assignee objects within 30 days after service (Section 511.580);

(8) Adds an unliquidated personal injury claim to the list of property that is exempt from attachment and execution. The

substitute changes the age of an unmarried dependent for whom a head of family may exempt certain property or wages from 18 years of age to 21 years of age (Sections 513.430 and 513.440);

(9) Adds actions for injurious falsehood to the list of actions that must be brought within two years (Section 516.140);

(10) Removes the requirement that the presiding judge of a circuit court must certify a case for assignment when a party files a petition, counterclaim, cross claim, or third-party claim that independently exceeds the jurisdiction of cases triable under Chapter 517 or when a consolidation of cases appear proper and the consolidation would result in a claim exceeding the jurisdictional limit of the division and allows the presiding judge to certify a case for assignment (Section 517.081);

(11) Allows the court or jury in any action for private nuisance where the amount in controversy exceeds \$1 million to visit the property alleged to be affected by the nuisance if any party makes that request. Currently, the court or jury must visit the property (Section 537.296); and

(12) Requires an overdue patient account submitted to a court for collection to be certified by the Director of the Department of Mental Health or his or her designee instead of the head of the facility or program in order to constitute prima facie evidence of the amount due (Section 630.220).

RECORDS

The substitute:

(1) Prohibits the Department of Revenue from releasing the home address or any other information contained in the motor vehicle or driver registration records of any state or federal judge or his or her immediate family members as well as the immediate family members of any county, state, or federal parole officer, pretrial officer, or peace officer pursuant to Section 590.010. The substitute also allows any state or federal judge to request the issuance of special license plates and driver's licenses (Sections 32.056 and 301.146);

(2) Removes the condition that only land surveys evidencing the establishment, restoration, or re-establishment of one or more corners that create a new parcel of land to be filed with the recorder of deeds of the county in which the survey is located and requires that any survey evidencing the establishment, restoration, or re-establishment of a corner to be filed (Section 60.650);

(3) Specifies that a completed form for the voluntary acknowledgment of paternity is not a public record except that the State Registrar must, upon request and payment of a fee as established by rule by the Department of Social Services under Section 454.455, make a copy available to the child's mother, the father listed on the child's birth record, the attorney representing the mother or father, the child, the guardian ad litem, and the child's attorney as well as upon the request of the state and federal government for child support purposes or upon an order of a court of competent jurisdiction for good cause shown (Section 193.087);

(4) Requires the certificate of title for a new outboard motor to designate the year the motor was manufactured and the year the dealer received the motor from the manufacturer (Section 306.532);

(5) Requires local law enforcement agencies or other government agencies responsible for serving ex parte orders of protection to enter service information into the State Highway Patrol's Missouri Uniform Law Enforcement System (MULES) or future electronic databases that are intended for law enforcement use within 24 hours after an ex parte order is served on a respondent. The law enforcement agency responsible for maintaining the applicable system must enter information regarding a notice of expiration or termination of an order of protection within 24 hours of receipt of information evidencing the expiration or termination (Sections 455.038 and 455.040); and

(6) Specifies that notwithstanding the provision that requires the redaction of any information in a court record that could be used to identify or locate the victim of a sexual assault, domestic assault, stalking, or forcible rape, the defendant's name in any criminal proceeding must never be redacted from the court record (Section 566.226).

CRIMINAL PROCEEDINGS

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);

(2) Allows the presiding circuit court judge to assign a judge to hear the trial of a felony case when that judge has previously conducted the case's preliminary hearing if the defendant has signed a written waiver stating that he or she waives any right to object or argue about any potential conflict that might occur

as a result of having the same judge hear both the preliminary hearing and the trial. Currently, a presiding judge is prohibited from making this assignment (Section 478.240);

(3) Specifies that the Missouri Supreme Court is not required to consider death penalty cases where life imprisonment without probation or parole was imposed (Section 565.035);

(4) Creates the crime of disturbing a worship service when a person knowingly disturbs, interrupts, or disquiets any assembly of people met for religious worship by using profane discourse, by rude or indecent behavior, or by making noise either within the place of worship or so near it as to disturb the order and solemnity of the worship service (Section 574.035); and

(5) Establishes the Conditional Post-Conviction Release Act which allows the releasing authority, upon the decision of the releasing authority, to release a person by requiring the posting of an early release bond by a surety. The releasing authority may set conditions of release which must be appended to and be made a part of the bond. The surety must pay a breach penalty upon the breach of a condition by the person and upon the person not being back in custody within the required 180 days. The surety may arrest the person and surrender him or her to the nearest county jail at any time after receiving notice of a breach by the person (Sections 1, 2, 3, 4, and 5).

MISCELLANEOUS PROVISIONS

The substitute:

(1) Allows any statewide elected official to request the Office of Administration to determine the lowest and best bidder with respect to any contract for purchasing, printing, or services for which the official has the authority to contract (Section 37.900);

(2) Specifies that the provisions of Section 262.802 will not apply to any drainage district or levee district formed under the laws of this state (Section 246.310);

(3) Changes the definition of "security" as it is used in the laws regulating securities so that the sale of variable annuities will be regulated by the Commissioner of Securities appointed by the Secretary of State and changes the process for registering securities in Missouri under the Missouri Securities Act by requiring a statement of cash flows instead of a statement declaring changes in financial position. Orders from the commissioner may include a civil penalty or the costs of the investigation when sought in the statement accompanying the

order. The standard for imposing a \$50,000 civil penalty is changed from several violations to more than one violation of a commissioner's order (Sections 376.309, 409.1-102, and 409.2-202 - 409.6-607);

(4) Allows a trust instrument to appoint a trust protector who will have the powers and functions conferred upon him or her as specified in the trust document (Section 456.8-818);

(5) Revises the procedure for the restoration of an individual's right to possess a firearm for a person who has previously been adjudged mentally incompetent by specifically stating that evidence of reputation is admissible in these cases. This provision is required in order to qualify for federal funds for the state's crime reporting systems (Section 475.375);

(6) Requires the Department of Health and Senior Services upon receipt of a report of elder abuse to promptly report the incident to the appropriate law enforcement agency and prosecutor and determine whether protective services are required. Currently, the incident must only be reported upon substantiation of the report (Section 565.186); and

(7) Requires the governing body of any county, city, town, or village or any entity created by these political subdivisions to hold a public meeting and to allow public comment at least four business days prior to voting on an issue involving fee or tax increases, eminent domain, zoning, transportation development districts, capital improvement districts, commercial improvement districts, or tax increment financing. These provisions will not apply to any votes or discussions related to proposed ordinances that require a minimum of two separate readings on different days or in the case of an emergency. A tax increase will not include the setting of the annual tax rates under Sections 67.110 and 137.055 (Section 610.020).

The provisions regarding the Uniform Interstate Family Support Act become effective upon ratification by the United States Congress.

The substitute contains an emergency clause for the provisions regarding who may inspect certain pleadings in a dissolution of marriage, legal separation, or modification.

FISCAL NOTE: Estimated Cost on General Revenue Fund of More than \$69,593,000 in FY 2011, More than \$71,676,600 in FY 2012, and More than \$73,824,150 in FY 2013. Estimated Income on Other State Funds of \$19,398 in FY 2011, \$25,813 in FY 2012, and \$25,489 in FY 2013.

PROPONENTS: Supporters say that the bill requires information regarding ex parte protection orders to be entered into the State Highway Patrol's electronic database within 24 hours so that law enforcement and victims of domestic violence are quickly aware of these orders.

Testifying for the bill were Senator Days; Department of Public Safety; and Missouri Coalition Against Domestic and Sexual Violence.

OPPONENTS: There was no opposition voiced to the committee.