

HCS SCS SB 60 -- JUDICIAL PROCEDURES

SPONSOR: Keaveny (Cox)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 9 to 1.

This substitute changes the laws regarding judicial procedures.

MOTOR VEHICLE AND DRIVER REGISTRATION OF JUDGES (Sections 32.056 and 301.146, RSMo)

The Department of Revenue is prohibited from releasing the home address or any information contained in the department's motor vehicle or driver registration records regarding any state or federal judge or his or her immediate family members. Any state or federal judge is allowed to request the issuance of a special license plate or driver's license.

CHARTER COUNTY ELECTION CYCLES (Section 56.061)

Any charter county is allowed to determine within its charter authority the time of election cycles under Article VI, Section 18, of the Missouri Constitution.

PROSECUTION DIVERSION PROGRAM (Section 56.089)

The substitute authorizes a prosecuting attorney, 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 period. The prosecution diversion plan must be in writing and for a specific period of time, and the prosecuting attorney may impose conditions on the behavior and conduct of the accused or defendant that assures the safety and well-being of the community and the accused or the defendant. Any person participating in the program has the right to insist on criminal prosecution for the accused offense at any time. After completion of the program and any imposed conditions to the satisfaction of the prosecuting attorney, the accused will be entitled to not have the diverted case filed or to a dismissal of the diverted charges.

SURCHARGE ASSESSMENT IN CRIMINAL CASES (Sections 56.807 and 488.026)

Currently, a \$4 surcharge is assessed in all criminal cases including any violation of a county ordinance and any criminal or traffic law including an infraction for deposit into the Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System

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 the central violations bureau requiring this individual to pay the \$4 surcharge.

DISCLOSURE OF CERTAIN FOSTER CARE LICENSURE INFORMATION (Section 210.567)

The substitute changes the laws regarding the disclosure of certain foster care licensure information. A public governmental body can close meetings, records, and votes if they relate to the personal information of any person which was obtained in the process of licensing a foster home. The Division of Family Services within the Department of Social Services must make a report available for each foster home that is licensed and for each foster home renewing an existing license which includes:

- (1) The names of all persons 18 years of age or older licensed to operate the foster home;
- (2) A description of the background investigation conducted on all persons operating or maintaining the foster home including certain specified documentation;
- (3) A description of all concerns raised during the background investigation and foster home licensure process and how those concerns were resolved;
- (4) A description of a person's ability to perform the minimum competency requirements of a foster parent; and
- (5) A list of all references provided by each person, stating the reference's name, how and when the reference was contacted, and a brief description of the reference's opinion of the person.

The report must not contain the address of any residence or any personal information not otherwise required which could be used by another to threaten, harm, harass, or embarrass any person.

ELECTRONIC MONITORING OF CERTAIN OFFENDERS (Sections 221.025, 221.105, 544.455, 544.470, and 557.011)

The substitute:

- (1) Allows a judge to place any nonviolent offender on electronic monitoring as an alternative to jail confinement. The court may place conditions on the monitoring, including the condition that the individual pay for the costs of electronic monitoring in full prior to the beginning of the monitoring. The

offender must receive credit against any period of confinement ordered while complying with court-ordered electronic monitoring, but electronic monitoring cannot be considered to be custody or incarceration for Medicaid purposes. A sheriff may contract monitoring services to a private company;

(2) Requires the governing body of any county and the City of St. Louis to establish the amount to be expended for the cost of incarceration of individuals on electronic monitoring; requires the sheriff or the facility superintendent to certify to the circuit clerk of the county or the chief executive officer of the city the total number of days an individual was in custody or subjected to electronic monitoring; and requires the county commission or the facility superintendent to supply the cost per diem for county prisoners and electronic monitoring. If the judge finds that an offender is unable to afford the costs associated with electronic monitoring, the state must reimburse the county for any costs associated with electronic monitoring;

(3) Specifies that any person charged with a bailable nonviolent offense who does not post bail prior to his or her appearance before a judge may be placed on house arrest with electronic monitoring; and

(4) Allows a court to order an individual who has been sentenced to confinement to serve all or a portion of the sentence on electronic monitoring. A circuit court may adopt a local rule authorizing the pretrial release on electronic monitoring in lieu of incarceration of an individual charged with an offense specifically identified in Section 557.011.

CERTAIN MISDEMEANOR VIOLATIONS (Sections 302.020, 302.321, 303.025, and 311.325)

The substitute changes the specified class of certain misdemeanor violations to only be a misdemeanor violation and establishes fines and penalties for a violation of the provisions regarding:

- (1) Driver's licenses;
- (2) Motorcycle helmets;
- (3) Driving while revoked;
- (4) Financial responsibility; and
- (5) Purchase, possession, or consumption of alcohol by a minor.

FIDUCIARIES (Sections 404.710, 456.3-301, 456.4-419, 456.5-505, 456.5-508, 456.8-813, 469.411, 469.437, and 469.459)

The substitute:

(1) Allows an attorney authorized in a power of attorney to make an anatomical gift of all or part of the principal's body or to exercise the right to bury the principal's body;

(2) Specifies that consent to represent and bind another person is binding on the person represented regardless of whether the person represented objects if the person who may represent and bind is:

(a) The holder of a testamentary power of appointment and the interests of the person represented are subject to the power;

(b) The conservator, conservator ad litem, or guardian and the person represented is disabled; or

(c) A parent and the person represented is a minor or unborn child of the parent;

(3) Changes the laws regarding the Missouri Uniform Trust Code by:

(a) Allowing certain trustees to move trust assets from a first trust to a second trust if the trustee of the first trust determines that moving the trust assets to the second trust is necessary or desirable after considering the terms and purposes of the first and second trusts and the consequences of the move;

(b) Specifying that a second trust can only have beneficiaries who were eligible to receive income or principal under the first trust or may in the future receive income or principal from the first trust;

(c) Prohibiting a trustee from moving trust assets to a second trust if the trustee is a beneficiary of the first trust or if a beneficiary can remove and replace the trustee of the first trust with a person who is related to that beneficiary;

(d) Prohibiting a trustee from moving trust assets to a second trust if it would increase the distributions to the trustee or to a beneficiary who could replace the trustee or if it would remove restrictions that were in the document creating the first trust;

(e) Specifying that moving trust assets cannot reduce any income interest of an income beneficiary of a trust for which a marital deduction has been taken for federal or state tax purposes, a charitable remainder trust, a grantor retained annuity trust, or a Subchapter S trust or an electing small business trust;

(f) Specifying that a spendthrift clause or a provision in the first trust prohibiting amendment or revocation of the first trust cannot prevent the trustee from moving trust assets from the first trust to the second trust;

(g) Requiring the trustee of the first trust to notify the permissible distributees or the qualified beneficiaries of the second trust at least 60 days prior to making a discretionary distribution;

(h) Specifying that a trustee does not have a duty to move trust assets from a second trust;

(i) Specifying that a creditor of a person who creates a trust may not reach that person's interest in the trust regardless of whether the person retains the ability to dispose of his or her interest through a testamentary power of appointment;

(j) Prohibiting a creditor of certain beneficiaries of a trust from attaching trust property or beneficial interest, obtaining a court order forcing a judicial sale, compelling the exercise of the power, or reaching the trust property or beneficial interests by any other means to satisfy the beneficiary's debts; and

(k) Changing the number of days, from 60 to 120, in which a trustee must notify the qualified beneficiaries of the trust's existence; the identity of the settlor or settlors; the right to request a copy of the trust instrument; the right to a trustee's report; the acceptance of the trusteeship; and the trustee's name, address, and telephone number; and

(4) Changes the calculation of the unitrust amount under the provisions of the Uniform Principal and Income Act by requiring the unitrust amount of a trust determined for each accounting year to be a percentage between 3% and 5% of the average net fair market value of the trust and specifies certain income sources from which the unitrust amount must be paid. If a trust contains an election to qualify for a marital deduction, upon the request of a surviving spouse, the trustee must demand that the person administering the plan distribute the plan income to the trust, allocate a payment from the plan to income, and distribute that amount to the surviving spouse.

ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, LANDSCAPE ARCHITECTS, AND WELL DIGGERS (Sections 429.015 and 516.098)

The substitute increases, from one to three acres, the extent of acreage authorized for a lien on property to secure payment for work performed by an architect, engineer, land surveyor, landscape architect, or well digger.

The statute of limitations for an error or omission in a land survey is increased from five years after the error or omission is discovered to 10 years from the completion of the survey.

FAMILY SUPPORT DIVISION FEES (Sections 454.425 and 454.548)

The Family Support Division within the Department of Social Services is required to charge a specified fee to an obligor or obligee who requests the division to review or to modify a support order. The fee is waived for an individual meeting certain income limits.

The substitute also requires the division to charge a fee for submitting past-due child and spousal support debts collected through federal income tax refund offsets. The division is also required to charge and collect an annual \$10 fee for each support order for which payments are received by the payment center. Currently, the division may charge the fee.

FULL ORDERS OF PROTECTION (Section 455.007)

The substitute specifies that, regardless of any other provision of law, the public interest exception to the mootness doctrine will apply to an appeal of a full order of protection which has expired and which subjects the person against whom the order is issued to significant collateral consequences by the mere existence of the order after its expiration.

CHILD PROTECTION (Section 455.040)

The substitute specifies that the provisions regarding the Amber Alert System will be known as Sam and Lindsey's Law and requires the law enforcement agency maintaining the Missouri Uniform Law Enforcement System (MULES) to enter information contained in an order of protection including any order regarding child custody or visitation and all specifics as to the times and dates of custody or visitation provided in the order. Any change in child custody or visitation within an order must be issued to the local law enforcement agency and the agency responsible for entering the information into MULES.

GUARDIANSHIP OF AN INCAPACITATED PERSON (Section 475.060)

Any person is allowed to file a petition to appoint himself or herself or another qualified person as the guardian of an incapacitated person. The substitute specifies the information that must be stated in the petition.

TRANSFER OF COURT CASES BY PUBLIC ADMINISTRATORS (Section 475.115)

A public administrator is allowed to request the transfer of any case to the jurisdiction of another county by filing a petition for transfer. The substitute requires the court to transfer the case if the requirements for venue are met and the administrator of the receiving county consents to the transfer. The receiving county court must appoint, without the necessity of a hearing, its public administrator as successor guardian and/or successor conservator and issue the appropriate letters. In the case of a conservatorship, the final settlement must be filed in the original county within 30 days and forwarded to the receiving county upon audit and approval.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT (Sections 475.501 - 475.555)

The substitute authorizes Missouri to enter into the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act which:

- (1) Allows a court to treat a foreign country as if it were a state for the purpose of the act;
- (2) Allows a court to communicate with an out-of-state court concerning a guardianship or protective proceeding;
- (3) Allows a court to request an out-of-state court to:
 - (a) Hold an evidentiary hearing;
 - (b) Order an individual to produce evidence or give testimony;
 - (c) Order that an evaluation or assessment be made of a respondent;
 - (d) Order any appropriate investigation of an individual involved in a guardianship or protective proceeding;
 - (e) Forward to the court of this state a certified copy of the transcript or other record of an evidentiary hearing or any other proceeding any evidence otherwise produced and any evaluation or assessment prepared in compliance with a court order;
 - (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and
 - (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including specified protected health information;

(4) Allows testimony taken in another state from a witness who is located in another state to be offered by deposition or other means allowable;

(5) Permits a court to allow a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means;

(6) Specifies when a court of this state has jurisdiction to appoint a guardian or to issue a protective order for a respondent;

(7) Specifies that when a court of this state is otherwise lacking jurisdiction it has special jurisdiction for specified guardianship actions;

(8) Specifies that a court which has appointed a guardian or issued a protective order has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own term;

(9) Allows a court to decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum;

(10) Allows a guardian or conservator to petition the court to transfer the guardianship or conservatorship to another state;

(11) Specifies that if a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian may register, after giving notice to the appointing court of an intent to register, the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office;

(12) Specifies that if a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator may register, after giving notice to the appointing court of an intent to register, the protective order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office and of any bond; and

(13) Specifies that upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except those powers prohibited under the laws of this state.

PRIVATE ATTORNEY RETENTION ACT (Section 484.500)

The Private Attorney Retention Act is established which specifies the procedures a state agency or agent must follow when retaining a lawyer or law firm to perform legal services on behalf of the state if the anticipated fees and expenses for the services will exceed or can be reasonably expected to exceed \$100,000. The substitute:

(1) Prohibits any state agency or agent from retaining a lawyer or law firm until an open and competitive bidding process has been undertaken;

(2) Prohibits a state agency or agent from entering into a contract for legal services exceeding \$1 million without the opportunity for legislative review of the terms of the contract;

(3) Requires a state agency or agent to file a copy of a proposed contract for legal services exceeding \$1 million with the Chief Clerk of the House of Representatives and provide a written statement that identifies:

(a) The reasons for retaining private counsel and the consideration of alternatives;

(b) The open and competitive bidding process undertaken for the proposed legal services;

(c) The reasons for the selection of the lawyer or law firm that is the proposed contracting party;

(d) The past or present relationship, if any, between the lawyer, law firm, or any partner or other principal in the law firm and the state agency or agent of the proposed contract; and

(e) The reasons a contingent fee arrangement is believed to be in the state's interest if the proposed contract includes a provision for fees contingent on the outcome of the legal proceeding and any efforts made to obtain private counsel on a noncontingent fee basis;

(4) Requires the chief clerk, with the approval of the President Pro Tem of the Senate and Speaker of the House of Representatives, to promptly refer any proposed contract and written statement to the appropriate committee for review;

(5) Specifies that within 45 days after the filing of the proposed contract the reviewing committee may hold a public hearing on the contract and must issue a report with any recommended changes to the referring state agency or agent

whether or not a public hearing is held;

(6) Allows the state agency or agent to enter into a proposed contract if the reviewing committee recommends no changes to the contract within 45 days of the initial filing with the chief clerk;

(7) Specifies that, if the reviewing committee's report recommends changes to the proposed contract, the state agency or agent is required to review the report, prepare a revised proposed contract as deemed appropriate, and file a copy of the revised contract with the chief clerk;

(8) Specifies that, if the revised proposed contract does not contain all the changes recommended by the reviewing committee, the state agency or agent is required to include with the revised contract a letter stating why the recommended changes were not adopted and requires the chief clerk to refer the letter and revised contract to the committee;

(9) Allows the reviewing committee to hold additional hearings and issue additional reports if a revised proposed contract does not contain all the changes recommended by the committee and allows the state agency or agent to enter into the revised contract not earlier than 45 days after the filing of the letter and revised contract with the chief clerk;

(10) Requires the proposed contract and written statement to be filed with the Governor and the chief clerk if the legislature is not in session. The Governor must establish an interim committee to act as the reviewing committee consisting of five legislators, one appointed by the Governor, Speaker of the House of Representatives, President Pro Tem of the Senate, Minority Leader of the House of Representatives, and Minority Leader of the Senate;

(11) Specifies that the Governor must establish a committee consisting of the same five legislator appointments as the interim committee to consult with the state agency or agent to establish an expedited schedule for review if the state agency or agent states that time exigencies require counsel retention prior to the time periods specified for review;

(12) Requires outside counsel retained by the state on a contingent fee basis to provide to the state, at the conclusion of any legal proceeding, a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate based on the hours worked divided into the fee recovered, less expenses; and

(13) Prohibits the state from incurring fees and expenses in excess of \$250 per hour for legal services and requires any proposed contract with an hourly rate of more than \$250 per hour to be reduced to \$250 per hour.

RECOVERY OF DEPOSITS IN CIVIL ACTIONS (Section 488.432)

Currently, a deposit is not required in a civil action if the filing party is a city, county, or the State of Missouri. The substitute requires the respondent in a civil action to pay a city, county, or the state the amount of the deposit that would otherwise have been awarded and collectable as a judgment if the entity is the prevailing party. The prevailing party must pay the amount collected to the clerk of the appropriate court.

STATUTE OF LIMITATIONS FOR INJURIOUS FALSEHOOD (Section 516.140)

An action for injurious falsehood is added to the two-year statute of limitations.

SENTENCING ADVISORY COMMITTEE (Section 558.019)

The provisions regarding the Sentencing Advisory Commission are repealed.

RESTITUTION (Sections 559.100, 559.105, and 570.120)

The substitute requires restitution to be paid through the office of the prosecuting or circuit attorney. Each prosecuting or circuit attorney who takes action to collect restitution must assess 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.

Court-ordered restitution may be taken from an inmate's account at the Department of Corrections while the inmate is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

FIREARMS (Sections 571.030, 571.063, 571.085, 571.087, and 571.092 and Section 1)

The substitute:

(1) Removes a requirement that some specified uses of a firearm will not be a crime when the use was reasonably associated with or necessary to the fulfillment of a person's official duties and exempts any federal probation officer or federal flight deck officer, whether on or off duty and whether within or outside of his or her agency's jurisdiction, and any member of a fire department or fire protection district, who is employed on a full-time basis as a fire investigator and has a valid concealed carry endorsement, from the crime of unlawful use of weapons when associated with or is necessary to fulfill the person's official duties. No person who pleads guilty to or is found guilty of a felony violation of the unlawful use of weapons can receive a suspended imposition of sentence if the person has previously received a suspended imposition of sentence for any other firearms or weapons related felony offense;

(2) Creates the crime of fraudulent purchase of a firearm, a class D felony, if a person knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate federal or state laws; provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition; or willfully procures another to violate these provisions;

(3) Repeals non-penalty merchandising practices provisions, in Sections 407.500 and 407.505, which restrict the sale of rifles and shotguns by requiring a purchaser or seller to live in Missouri or a contiguous state and to conform to federal and state gun regulations. Currently, handguns are not subject to this merchandising practice regulation because all permit requirements for purchasing a handgun have been repealed. The substitute applies this practice to all types of firearms by allowing a Missouri resident or the resident of any state to purchase any firearm if he or she conforms to federal laws and the laws of the state in which he or she resides;

(4) Repeals the provisions regarding the filing of a petition for the removal of a disqualification for certain individuals from purchasing, possessing, or transferring a firearm and establishes new provisions regarding the petition. An individual 18 years of age or older who has been adjudicated incapacitated under Chapter 475, has been involuntarily committed under Chapter 632, or has had a Missouri adjudication or commitment that results in a firearms disqualification pursuant to 18 U.S.C. Section 922(d)(4) or (g)(4) is allowed to file a petition for the removal of the disqualification to ship, transport, receive, purchase, possess, or transfer a firearm. The procedures for filing the petition and the rules of evidence are specified in the substitute. The circuit court must grant a removal of the disqualification if there is a finding by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting the removal is not contrary to the public interest. If a petition is granted, the county clerk must forward the order to the State Highway Patrol who must contact the Federal Bureau of Investigation to update the petitioner's record with the National Instant Criminal Background Check System within 21 days of the receipt of the order. If a petition is denied, the individual may appeal, and the review of a circuit court ruling will be de novo; and

(5) Specifies that no political subdivision can enact or enforce any ordinance that prohibits the use of a pneumatic gun on a shooting range or other property where firearms may be discharged or within any private property with the permission of the owner where reasonable care is used to prevent a projectile from crossing bounds of property.

QUALIFIED SPOUSAL TRUSTS (Section 2)

The substitute establishes provisions regarding a qualified spousal trust by:

(1) Specifying that a "qualified spousal trust" is a trust where the settlors of which are husband and wife at the time of the creation of the trust and the terms of the trust provide that during the joint lives of the settlors all property or interests in property are:

(a) Held for the benefit of both settlors and revocable by either or both settlors and having the right to receive income distributions from the entire trust for each individual settlor's life; or

(b) Held in two separate shares of one trust for the benefit of each settlor and revocable by each settlor with respect to each

settlor's separate share without consent of the other settlor and each having the right to receive income distributions from the settlor's separate share for the individual settlor's life;

(2) Specifying that property transferred to a qualified spousal trust will have the same immunity from individual creditors as would have existed if the settlors continued to hold the property as husband and wife as tenants by the entirety as long as both settlors are alive and remain married and the property, proceeds, or income continues to be held in trust by the trustee of the qualified spousal trust;

(3) Specifying that the right of a claimant to any property placed in a qualified spousal trust that was not held as tenants by the entirety will not be affected by these provisions;

(4) Specifying that upon the death of each settlor, the current terms of the governing instrument of the trust will control the distribution of trust property or interests;

(5) Specifying that a transfer of spousal property by a husband and wife as settlors to a qualified spousal trust will not affect or change either settlor's marital property rights to the transferred property or interest immediately prior to the transfer in the event of a dissolution of marriage of the spouses unless both spouses agree in writing; and

(6) Specifying that these provisions will apply to all trusts that fulfill the requirements of these provisions regardless of whether the trust was created before or after the effective date of the substitute.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of an income of Unknown to a cost of Unknown in FY 2012, FY 2013, and FY 2014. Estimated Net Income on Other State Funds of Up to \$453,861 in FY 2012, Up to \$937,935 in FY 2013, and Up to \$963,073 in FY 2014.

PROPONENTS: Supporters say that the bill updates and clarifies the law regarding trusts and anatomical gifts and provides additional time for a trustee to notify the beneficiaries of the trust.

Testifying for the bill were Senator Keaveny; The Missouri Bar; and Riezman Berger, P.C.

OPPONENTS: There was no opposition voiced to the committee.