

HCS SB 636 -- JUDICIAL PROCEDURES

SPONSOR: Keaveny (Diehl)

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

This substitute changes the laws regarding judicial procedures.

JOINT COMMITTEE ON CHILD ABUSE AND NEGLECT (Section 21.771, RSMo)

The Joint Committee on Child Abuse and Neglect of the General Assembly is established composed of seven members of the House of Representatives appointed by the Speaker and Minority Floor Leader and seven members of the Senate appointed by the President Pro Tem and the Minority Floor Leader.

The joint committee is required to:

- (1) Make a continuing study and analysis of the state child abuse and neglect reporting and investigation system;
- (2) Devise a plan for improving the structured decision making regarding the removal of a child from a home;
- (3) Determine the additional personnel and resources necessary to adequately protect children in this state and improve their welfare and the welfare of families;
- (4) Address the need for additional foster care homes and to improve the quality of care provided to abused and neglected children in the custody of the state;
- (5) Determine from its study and analysis the need for changes in statutory law;
- (6) Make any recommendation to the General Assembly necessary to provide adequate protection for the children of our state;
- (7) Meet within 30 days after its creation and select a chairperson and a vice chairperson and meet quarterly thereafter; and
- (8) Compile a full report of its activities for submission to the General Assembly by January 15 of each year that the General Assembly convenes in regular session.

These provisions expire January 15, 2018.

DRIVER'S REGISTRATION AND MOTOR VEHICLE RECORDS (Section 32.056)

Currently, the Department of Revenue is prohibited from releasing the home address or any other information contained in the department's motor vehicle or driver registration records on specified groups of individuals. The substitute adds any state or federal judge or his or her immediate family members to those groups and specifies that the department cannot release any information that identifies any vehicle owned or leased by the specified groups in its records.

CRIMINAL CASE SURCHARGE (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 infractions 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 a fine collection center and requires this individual to pay the \$4 surcharge.

ADMINISTRATIVE FINES OR COSTS (Section 67.136)

Any local governmental agency is allowed to utilize collection agencies to collect any court or administrative fines or costs associated with a criminal conviction or entry of a civil judgment.

GREENE COUNTY ASSOCIATE CIRCUIT COURT JUDGES (Section 67.2010)

Associate circuit court judges in Greene County are allowed to hear and determine county ordinance violations.

TRAFFICKING DRUGS (Sections 195.222 and 195.223)

Currently, a person commits the crime of trafficking drugs in the first degree if he or she distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture, or produce more than two grams of crack cocaine. The substitute raises the quantity required to 28 grams. If the quantity involved is more than 28 grams but less than 280 grams, the person must be sentenced to the authorized term of imprisonment for a class A felony. If the quantity is 280 grams or more, the person must be sentenced to the authorized term of imprisonment for a class A felony with no probation or parole.

Currently, a person commits the crime of trafficking drugs in the second degree if he or she possesses or has under his or her control, purchases or attempts to purchase, or brings into this state more than two grams of crack cocaine. The substitute

raises the quantity required to 28 grams. If the quantity involved is more than 28 grams but less than 280 grams, the person will be guilty of a class B felony. If the quantity is 280 grams or more, the person will be guilty of a class A felony.

FOSTER CARE LICENSURE INFORMATION (Section 210.567)

A public governmental body may close meetings, records, and votes if they relate to personal information 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 and the amount of state funds paid to the operator for foster care services;
- (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;
- (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;
- (6) The number of the operator's previous care assignments, if any; and
- (7) Any history of previous complaints involving the foster care operator or the foster child.

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, and it must not contain any information that is otherwise closed, confidential, or privileged.

JUVENILE COURT JURISDICTION (Section 211.031)

The age when the juvenile court will have jurisdiction over a child involving a state or local traffic violation is changed from a child up to 15 1/2 years of age to a child up to 15 years

of age.

TERMINATION OF PARENTAL RIGHTS (Sections 211.093, 211.177, 452.374, and 452.402)

The substitute prohibits a person who commits an act of rape from obtaining custody or visitation rights to the child who is the product of the rape including during pending court proceedings, and no parent of the person can have standing as a grandparent or otherwise be permitted to file an action for custody or visitation during pending court proceedings.

PERFECTION OF SECURITY INTERESTS (Section 400.9-311)

The filing of a financing statement is necessary to perfect a security interest in collateral that is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind.

ADOPTION PROCEEDINGS (Section 211.444, 453.030, 453.050, 453.065, and 453.080)

The Children's Division within the Department of Social Services is authorized to terminate the rights of a parent or approve the consent to adoption or waiver of consent to adoption by a parent, including a child who is a ward of the court, if a court finds that the termination or consent to adoption or waiver of consent to adoption is in the best interests of the child and the parent has consented in writing to the termination of his or her parental rights or consented or waived consent to the adoption.

A written consent to adoption is allowed to be executed in front of a judge and requires the judge to advise the consenting birth parent 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 substitute requires a court conducting a final adoption hearing to determine whether the court has received and reviewed an investigation report required under Section 453.070, if any, and an investigation and social study required under Section 211.455, if any.

Prospective adoptive parents and the parents of a prospective adoptee may enter into a written post adoption contract agreement

to allow contact after the adoption between parents, siblings, or other relatives of the adoptee and the adoptee and the adoptive parents. Any agreement is at the discretion of the adoptive parents, must be in writing and signed by the parties to the agreement, and must be made part of the court record. The court must enforce an agreement unless to do so is not in the best interest of the adoptee.

By January 1, 2013, the Missouri Supreme Court must develop a standardized form to be used in all adoption cases which includes a checklist to verify that all the documents and procedures required by law have been submitted, followed, and reviewed by the judge prior to the entry of a final order. The form and attachments must be included as part of the adoption record.

QUALIFIED SPOUSAL TRUSTS (Section 456.950)

The substitute changes the requirements for a qualified spousal trust to allow the trust to consist of both property held in one trust for both spouses and property held in two shares in one trust for each spouse.

MISSOURI UNIFORM TRUST CODE (Section 456.8-808)

The substitute changes the laws regarding the Missouri Uniform Trust Code by allowing a trust instrument to appoint a trust protector who is expressly granted one or more powers over the trust in the trust instrument. The substitute:

- (1) Specifies the express powers that may be granted to a trust protector;
- (2) Specifies when a trust protector has no power to modify a trust;
- (3) Specifies that the trust protector must not exercise a power that would result in a taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the trust protector's gross estate for federal estate tax purposes;
- (4) Specifies that a trust protector is not a trustee, is not liable or accountable as a trustee or fiduciary when performing or declining to perform the express powers given in the trust instrument, and is not liable for the acts or omissions of any fiduciary or beneficiary under the trust instrument;
- (5) Exonerates a trust protector from all liability for his or her acts or omissions or arising from any exercise or non-exercise of the express powers given in the trust instrument unless it is established by a preponderance of the evidence that

the acts or omissions were done or omitted in breach of the protector's duty, in bad faith, or with reckless indifference;

(6) Authorizes a trust protector to exercise the express powers granted in the trust instrument at any time after the trust protector acquires knowledge of his or her appointment as trust protector and of the powers granted;

(7) Allows the trust protector to receive from the assets of the trust reasonable compensation and reimbursement of reasonable costs and expenses incurred in determining whether to carry out and in carrying out the express powers of the trust instrument;

(8) Allows the trust protector to receive from the assets of the trust reimbursement of the reasonable costs and expenses, including attorney fees, of defending any claim made against the trust protector arising from his or her acts or omissions while acting in that capacity unless it is established by clear and convincing evidence that the protector was acting in bad faith or with reckless indifference;

(9) Prohibits the trust protector from exercising the express powers granted in the trust instrument for his or her own personal benefit;

(10) Specifies that a trustee must not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of the written direction of the trust protector or the failure of the trust protector to provide consent unless there is bad faith or reckless indifference on the part of the trustee;

(11) Specifies when the trust protector is entitled to receive information regarding the administration of the trust;

(12) Allows a trust protector to resign by giving 30 days' written notice to the trustee and any successor trust protector;

(13) Grants any successor trust protector the same powers expressly granted in the trust instrument to the resigning trust protector unless those powers are expressly modified for the successor trust protector; and

(14) Specifies that a trust protector of a trust having its principal place of administration in Missouri submits personally to the jurisdiction of the courts of Missouri while the trust is being administered in this state.

STATEWIDE COURT AUTOMATION FUND (Section 476.055)

Currently, the provisions regarding the fee assessed in certain

court cases which is to be deposited into the Statewide Court Automation Fund expire on September 1, 2013. The substitute extends the expiration date to September 1, 2018. The Court Automation Committee is required to complete its duties by September 1, 2020. Currently, the committee must complete its duties prior to September 1, 2015.

ADMINISTRATIVE ADJUDICATION SYSTEM (Section 479.011)

Any home rule city with more than 155,000 but less than 200,000 inhabitants may establish an administrative adjudication system.

MUNICIPAL ORDINANCE VIOLATIONS (Section 479.040)

Currently, a city, town, or village with less than 400,000 residents can choose to have violations of its municipal ordinances heard and determined by either a county municipal court or an associate circuit court, and once the choice is made, all municipal ordinance violations will be heard by that court. The substitute authorizes a city, town, or village to elect to have violations involving an accused with special needs due to mental disorder or mental illness, or whose special needs, circumstances, and charges cannot adequately be accommodated by the municipal court to be heard and determined by the associate circuit court or county municipal court. The associate circuit court or county municipal court must be able to provide adequate accommodations and resources for specifically handling these matters and must consent to the transfer.

ST. LOUIS CITY CIRCUIT CLERK (Section 483.015)

Currently, the circuit clerk in the 22nd Judicial Circuit for the City of St. Louis is elected by the qualified voters of the city. The substitute requires him or her to be appointed by a majority of the circuit judges and associate circuit judges of the circuit court, en banc. The clerk will be removable for cause by a majority of the circuit judges and associate judges of the circuit, en banc, in accordance with Supreme Court administrative rules governing court personnel. The elected circuit clerk that is holding office when these provisions become effective must continue to hold office for the duration of his or her elected term.

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.

FEES FOR COURT TRANSCRIPTS (Section 488.2250)

Currently, for all transcripts of testimony given or proceedings in a circuit court, the court reporter must receive \$2 per 25-line page for the original of the transcript and 35 cents per 25-line page for each additional copy. The substitute specifies that in cases where an appeal is taken, the court reporter must receive \$3.50 per 25-line page for the original and up to three copies of the transcript and 50 cents per 25-line page for each additional copy. 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 must order the court reporter to provide three paper or electronic copies of the transcript. Currently, the reporter must receive \$2 per legal page and 20 cents per page for the copies. The substitute specifies that the court reporter must receive \$2.60 per legal page and 20 cents per page for each additional copy. An electronic version of all transcripts must be provided. All transcripts must be provided by a court reporter certified by the Missouri Supreme Court.

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 disposed of by a central violations bureau. However, those cases disposed of by a central 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 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, the funds must be deposited into the MODEX Fund.

SEXUAL OFFENSES (Section 488.5375)

The substitute allows the court to order a defendant, upon a plea of guilty or a finding of guilt for a felony sexual offense in which a computer, cellular telephone, or other electronic devices

were seized to reimburse the state or local law enforcement agency for the reasonable costs incurred in the examination of the seized items.

CONDEMNATION PROCEEDINGS (Sections 508.050 and 523.010)

Suits in inverse condemnation or involving dangerous conditions of public property against a municipal corporation established under Article VI, Section 30(a) of the Missouri Constitution must be brought only in the county where the land or any part of the land lies.

PROPERTY EXEMPT FROM ATTACHMENT (Sections 513.430 and 513.440)

The substitute specifies how fraud will be defined when determining if certain funds must be held exempt from a bankruptcy proceeding.

Currently, each head of a family may exempt from attachment \$350 for each of the person's unmarried dependent children under 18 years old. The substitute raises the age to a child under 21 years old.

LANDOWNER LIABILITY TO TRESPASSERS (Sections 537.345, 537.346, and 537.351)

The substitute changes the laws regarding a landowner's liability as it applies to an individual trespassing on the owner's land by:

(1) Defining "trespasser," as it applies to these provisions, as any person who enters on the property of another without permission and without an invitation, express or implied, regardless of whether actual notice of trespass was given or the land was posted with signs or purple markings in accordance with Sections 569.140 and 569.145; and

(2) Specifying that a possessor of real property owes no duty of care to a trespasser, except to refrain from harming the trespasser by an intentional, willful, or wanton act and may use justifiable force to repel a criminal trespasser. However, a possessor of real property may be subject to liability for physical injury or death to a trespasser in specified situations, including if the trespasser is a child who is harmed by a dangerous artificial condition on the land, the possessor knew or should have known that trespassers consistently intrude upon a limited area of the land where the trespasser was harmed by a dangerous artificial condition on the land, or the possessor knew of the trespasser's presence on the land and failed to exercise ordinary care as to active operations carried out on the land.

CONDUCT AT PUBLIC MEETINGS (Section 537.528)

Currently, any action seeking monetary damage against a person for conduct or speech at a public hearing or meeting is subject to a special motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment so it can be considered on an expedited basis to prevent the unnecessary expense of litigation. The substitute allows any action against a person for conduct or speech at a public hearing or meeting to be subject to these special motions.

UNCLAIMED SEIZED PROPERTY (Section 542.301)

The substitute specifies that computers, computer equipment, computer software and hardware, cellular telephones, or other devices capable of accessing the Internet which are used by the owner or with the owner's consent as a means for committing felonies must be forfeited to the state;

Upon a court order, a law enforcement agency in possession of computers, computer equipment, computer software and hardware, cellular telephones, or other devices capable of accessing the Internet or other devices used in the acquisition, possession, or distribution of child pornography or obscene material is allowed to retain possession of the property and convert it to the use of the agency for use in criminal investigations.

SENTENCING ADVISORY COMMISSION (Section 558.019)

The substitute specifies that the provisions regarding the Sentencing Advisory Commission cannot be construed to allow the commission to issue recommended sentences in specific cases pending in the courts of this state.

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 any 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.

SEXUAL MISCONDUCT INVOLVING A CHILD (Section 566.083)

The crime of sexual misconduct involving a child is revised to include when a person knowingly coerces or induces a child who is known by the person to be younger than 15 years of age to expose a female child's breasts through the Internet or other electronic means for the purpose of arousing or gratifying the sexual desire of any person, including the child.

FIRST DEGREE PROPERTY DAMAGE (Section 569.100)

The substitute revises the crime of property damage in the first degree to include when a person knowingly damages a motor vehicle of another while making entry into the vehicle for the purpose of committing the crime of stealing or the damage occurs while committing the crime of stealing within the vehicle. Anyone who commits this crime will be guilty of a class C felony unless it is a subsequent violation in which case he or she will be guilty of a class B felony.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of a cost of \$71,524 to an income of Unknown in FY 2013, a cost of \$89,163 to an income of Unknown in FY 2014, and a cost of \$92,580 to an income of Unknown in FY 2015. Estimated Net Income on Other State Funds of \$929,143 in FY 2013, \$929,146 in FY 2014, and \$929,146 in FY 2015.

PROPOSERS: Supporters say that the bill is identical to House Bill 1165. After language was passed last year relating to spousal trusts, clarification is needed in the law.

Testifying for the bill were Senator Keaveny; Missouri Bar Association; and Riezman Berger, PC.

OPPOSERS: There was no opposition voiced to the committee.