

HCS HB 1231 -- JUDICIAL PROCEDURES

SPONSOR: Cox

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by a vote of 9 to 2.

This bill changes the laws regarding judicial procedures.

CRIMINAL CASE SURCHARGE (Sections 56.363, 56.800, 56.805, 56.807, 56.811, 56.827, 56.833, 56.840, 56.850, 56.860, 105.684, and 488.026, RSMo)

The bill allows prosecuting attorneys, in all counties that elect to make the position of prosecuting attorney a full-time position, to participate in the retirement system for prosecuting and circuit attorneys. The prosecutor is eligible for the same benefits as a full-time prosecutor in a county of the first classification.

Currently, each county treasurer must transfer a specified sum of money each month to the Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund for use by the fund. Beginning August 28, 2015, this bill requires that the county contribution be adjusted in accordance with the following schedule based on the retirement system's annual actuarial valuation report:

- (1) If the system's funding ratio is 120% or more, no monthly sum must be transmitted;
- (2) If the system's funding ratio is more than 110% but less than 120%, the monthly sum transmitted must be reduced 50%;
- (3) If the system's funding ratio is at least 90% and up to 110%, the monthly sum transmitted must remain the same;
- (4) If the system's funding ratio is at least 80% and less than 90%, the monthly sum transmitted must be increased 50%; and
- (5) If the system's funding ratio is less than 80%, the monthly sum transmitted must be increased 100%.

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 bill removes the provision that 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 the individual to pay the \$4

surcharge.

REPORTS OF ALLEGED ABUSE (Sections 210.145, 210.150, and 452.375)

The bill specifies that if three or more unsubstantiated reports of abuse involving any of the parties or children of the marriage are made to the child abuse and neglect hotline within 30 days prior to or during a dissolution or child custody proceeding, the identity of the person making the report or reports must be admissible as evidence in the dissolution or child custody proceeding.

TERMINATION OF PARENTAL RIGHTS (Sections 211.183 and 211.447)

The bill specifies that the Division of Family Services in the Department of Social Services is not required to make reasonable efforts to prevent or eliminate the need for removal of a child and make it possible for the child to return home if aggravating factors that in the totality of the circumstances affect the fitness of the parent including, but not limited to, alcohol, controlled substances, or prescription drug dependency of the parent, all of which prevents him or her from consistently providing the necessary care, custody, and control of the child and which in the totality of the circumstances appear to be not treatable such as to enable the parent to consistently provide the care, custody, and control of the child. The bill specifies some of the factors that the juvenile court may consider when determining if a child should be removed from his or her parent, guardian, or custodian.

The bill changes the laws regarding the termination of parental rights under which a parent is presumed unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse by adding the following circumstances:

- (1) If, while a child is in utero or within eight hours after a child's birth, the child's birth mother has tested positive for alcohol, cocaine, heroin, or methamphetamine;
- (2) If, at the time of the child's birth or within eight hours after a child's birth, the child tested positive for alcohol, cocaine, heroin, or methamphetamine; or
- (3) If, within a three-year period immediately prior to termination adjudication, the parent has pled guilty to or has been convicted of a felony involving the possession, distribution, or manufacture of cocaine, heroin, or methamphetamine.

DRIVER'S AND NON-DRIVER'S LICENSES (Sections 302.065 and 302.067)

The bill specifies that a person who has presented documents to obtain a driver's license, nondriver's license, or instruction permit must not be required to present the documents again to obtain a renewal or replacement except for documents that demonstrate lawful presence of an applicant who is not a citizen if it is reasonably believed by the Department of Revenue that the prior license may have been issued as a result of a fraudulent act of the applicant or the applicant is applying for or renewing a commercial driver's license or instruction permit.

HANDBOOKS FOR PARENTS (Section 452.556)

Currently, the court must mail a handbook to individuals involved in a dissolution with minor children. The bill specifies that the court must "provide" a handbook, meaning it could be emailed or sent via postal mail.

ABORTION (Sections 452.375, 452.400, 453.015, and 453.040)

The bill specifies that if a court finds that a parent of a child, while the child was unborn, attempted to coerce the mother of the child to obtain an abortion, the court may deny custody of that child to the parent and may exercise discretion in granting visitation. The consent to the adoption of a child is not required of a man who has reason to believe he is the biological father of the unborn child and attempted to coerce the mother of the child to obtain an abortion.

ADOPTIONS (Sections 453.110 and 453.700)

The bill specifies that a parent cannot be prohibited from placing a child with another individual for care as part of a pre-adoption placement if the right to supervise the care of the child and to resume custody is retained until superseded by any court order regarding the legal or physical custody of the child.

Only a licensed attorney or a child placing agency licensed under Missouri law may place or cause to be placed an advertisement or listing of the attorney's or agency's telephone number or other contact information in a telephone directory or other advertising distributed within the State of Missouri that states or implies that a child is offered or wanted for adoption or the attorney or agency is able to place, locate, or receive a child for adoption. The information required in the advertisement is specified in the bill. Any person who knowingly or intentionally violates these provisions will be guilty of a class A misdemeanor.

ORDERS OF PROTECTION (Section 455.007)

Currently, the public interest exception to the mootness doctrine applies to a full order of protection which has expired and subjects the person against whom the order was issued to significant collateral consequences by the mere existence of the order after its expiration. The bill removes the requirement that it subjects the person against whom the order is issued to significant collateral consequences by the mere existence of the order after its expiration.

TRUST PROVISIONS (Sections 456.950, 456.2-205, 456.4-420, 456.8-818, and 474.395)

The bill specifies that when a trustee retains an attorney for any purpose, the trustee and the attorney communications must be afforded all the protections granted under attorney-client privilege, and no exceptions to the privilege are to be allowed regardless of whether the attorney's services are used for the administration of a trust or otherwise. All other exceptions to the attorney-client privilege recognized by law must remain applicable if warranted by the evidence.

The bill specifies that property held by a husband and wife as tenants by the entirety, as joint tenants, or other form of joint ownership with right of survivorship must be treated as being held as tenants by the entirety upon the property's transfer to a qualified spousal trust.

Currently, a no-contest clause in a will or trust is enforceable, which generally means that a beneficiary forfeits interest in the will or trust property if he or she contests the trust or will. The bill specifies that when an irrevocable trust contains a no-contest clause, as defined in the bill, an interested person may file a petition with a court for a ruling on whether a particular claim for relief would trigger application of the no-contest clause or trigger a forfeiture that is enforceable under applicable law and public policy. The petition for a ruling may be filed as a separate judicial proceeding or along with other claims for relief in a single judicial proceeding. The bill specifies that when ruling on the petition, the court must consider the text of the clause and the context to the terms of the trust as a whole and in the context of the verified factual allegations in the petition. Any evidence beyond the pleadings and the trust must not be taken except as required to resolve an ambiguity in the no-contest clause.

An order or judgment on a petition regarding a no-contest clause must be subject to appeal as with other final judgments. Following the ruling, if a claim is subsequently filed in which differing facts are asserted from those that the no-contest clause judgment

was based, the party in whose favor the order or judgment was entered has no protection from enforcement of the no-contest clause.

The bill also specifies the types of circumstances in which a no-contest clause is enforceable such as objections to venue or a claim for relief concerning an accounting error. In these situations, the court may award attorney fees and costs to any party.

The bill also specifies that if a will contains a no-contest clause, an interested person may file a petition with the court for a determination on whether a court action would trigger the application of the no-contest clause or trigger a forfeiture that is enforceable under applicable law and public policy.

The bill specifies that a provision in a trust instrument requiring the mediation or arbitration of disputes between or among the beneficiaries, a fiduciary, a person granted non-fiduciary powers under the trust instrument, or any combination of those individuals is enforceable.

A provision in a trust instrument requiring the mediation or arbitration of disputes relating to the validity of a trust is not enforceable unless all interested persons with regard to the dispute consent to the mediation or arbitration of the dispute.

GUARDIANSHIPS (Section 475.072)

The bill specifies that by January 1, 2015, the Missouri Supreme Court must develop a form petition for the appointment of a guardian for a minor to be used in uncontested guardianship cases.

ST. LOUIS COUNTY COURTHOUSE SECURITY (Section 476.085)

The bill requires the St. Louis County Bar Association to consult with the judges of 21st Judicial Circuit and the Chief of Police of St. Louis County to establish a more safe and efficient method for attorneys to enter the St. Louis County Courthouse and the St. Louis County Justice Center. The association must present a report to the St. Louis County Council six months after the passage of these provisions that includes its research findings and recommendations.

JUDGESHIPS IN CIRCUIT COURTS (Sections 478.437, 478.610, and 478.740)

The bill specifies that if the circuit court of St. Louis County is awarded additional associate circuit judge positions in 2014 based

on the judicial weighted workload model, there must be one additional associate circuit judge position and one additional circuit judge position in lieu of the additional associate circuit judge positions awarded under Section 478.320, RSMo.

If the 38th Judicial Circuit is awarded an additional associate circuit judge position in 2014 based on the judicial weighted workload model, there must be one additional circuit judge position in lieu of the additional associate circuit judge position awarded under Section 478.320. The additional circuit judge position must be in addition to the number of circuit judge and associate judge positions in existence in the 38th Judicial Circuit on the effective date of this provision, with at least one circuit judge appointed for Taney County and at least one circuit judge appointed for Christian County.

The bill authorizes the 13th Judicial Circuit to appoint or retain a commissioner pursuant to Section 478.003.

COURT COSTS FOR CERTAIN MUNICIPAL ORDINANCE VIOLATIONS (Section 488.2240)

The bill allows the City of Springfield to impose an additional court cost of up to \$10 for each municipal ordinance violation case filed before a municipal division judge or associate circuit judge. The city can only use the additional costs for land assemblage and purchase, construction, maintenance, and upkeep of a municipal courthouse.

STATUTE OF LIMITATIONS FOR INJURIOUS FALSEHOODS (Section 516.140)

The bill adds an action for injurious falsehood to the two-year statute of limitations.

JUDGMENT FOR UNPAID RENT (Section 516.350)

The bill specifies that any judgment, order, or decree awarding unpaid rent may be revived upon publication, consistent with the publication requirements of Section 506.160, and does not need to be personally served on the defendant.

JOINT COMMITTEE ON ADMINISTRATIVE RULES (Sections 536.010 and 546.720)

The bill changes the laws regarding the authority of the Joint Committee on Administrative Rules to review law or policy of state agencies by revising the definition of "rule" to not exclude statements concerning the execution of inmates. The Department of Corrections is authorized to establish rules to administer these

provisions.

CIVIL IMMUNITY FOR SUPERVISION OF COMMUNITY SERVICE WORK (Section 537.602)

The bill specifies that any entity that supervises community service work performed as a requirement for deferment of any criminal charge under a written agreement with a federal, state, or local prosecutor or any entity that derives benefits from the performance of community service work must be immune from any suit by the person performing the community service work or by any person deriving a cause of action from the person performing the community service work if that cause of action arises from the supervision of the work performed. The entity supervising the work must not be immune from any suit for an intentional tort.

PROTESTS AT FUNERAL SERVICES (Section 574.160)

The bill specifies that a person commits the offense of unlawful funeral protest, a class B misdemeanor, if he or she pickets or engages in other protest activities within 300 feet of a residence, cemetery, funeral home, church, synagogue, or other establishment during or within one hour before or one hour after the conducting of any funeral or burial service at that place. These provisions do not apply to a funeral procession while it is in transit beyond the 300-foot zone. It is a class A misdemeanor if a person who has previously been found guilty of a violation of these provisions commits the offense again.

The bill repeals Sections 578.501, 578.502, and 578.503, RSMo, commonly referred to as "Spc. Edward Lee Myers' Law."

SEXUALLY VIOLENT PREDATORS (Sections 632.480, 632.483, and 632.484)

The bill specifies that a conviction in this state or any other jurisdiction for a sexually violent offense can be considered when determining if a person is a sexually violent predator for purposes of confinement and treatment.

CRIMES BY SEXUALLY VIOLENT PREDATORS (Section 632.520)

The bill specifies that a sexually violent predator ordered or committed to the Department of Mental Health who knowingly commits violence to an employee of the department or to another offender housed in a secure facility operated by the department will be guilty of a class B felony.

An offender who knowingly damages any building or other property owned or operated by the department will be guilty of a class C

felony.

PROPONENTS: Supporters say that each federal district in the state has different rules with regard to the ability to appeal domestic violence orders of protection. It would be difficult to prove evidence of collateral consequences so the bill will repeal that language from the statute. By removing this language it gives an individual a right to an appeal, because most people do not present evidence of this at the trial level in anticipation of an appeal, and therefore have no case on appeal.

Testifying for the bill was Representative Cox.

OPPONENTS: There was no opposition voiced to the committee.