

CCS SS SCS HCS HB 1231 -- ADMINISTRATION OF JUSTICE

This bill changes the laws regarding the administration of justice.

JOINT COMMITTEE ON THE JUSTICE SYSTEM (Section 21.880, RSMo)

The Joint Committee on the Justice System is established consisting of members of the General Assembly and three ex-officio members as specified in the bill, including a member of the House of Representatives and the Senate appointed by the Minority Floor Leader of each chamber. The committee must review and monitor all aspects of the state's justice system as specified in the bill and file a report with the General Assembly by January 15, 2016, and every year thereafter, of its activities and any findings or recommendations for legislative action. The joint committee must establish a permanent subcommittee on the Missouri criminal code to periodically review the criminal laws of the state. The joint committee may select an advisory committee to aid the subcommittee, consisting of a representative of the Missouri Supreme Court, a representative of the Office of the Attorney General, and other individuals known to be interested in the improvement of the state's criminal laws. The subcommittee must present to the General Assembly a criminal code revision bill as it finds appropriate in each tenth year.

PROSECUTING ATTORNEYS AND CIRCUIT ATTORNEYS RETIREMENT SYSTEM
(Sections 56.807 and 488.026)

Currently, each county must transfer a specified amount to the Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund based on its classification. Beginning August 28, 2015, each county's contribution must be adjusted in accordance with the specified schedule based upon the Prosecuting Attorneys and Circuit Attorneys' Retirement System's annual actuarial valuation report.

The bill specifies that a \$4 surcharge, payable to the retirement system fund, must be assessed in each criminal case against any person who had pled guilty for any violation and paid a fine through a fine collection center.

IMMUNITY FOR LAW ENFORCEMENT OFFICERS (Section 57.095)

The bill specifies that a sheriff or any other law enforcement officer must have immunity from any civil or criminal liability while conducting service of process at the direction of any court to the extent that the officer's actions do not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

STATE LEGAL EXPENSE FUND (Section 105.711)

Currently, for the purposes of the State Legal Expense Fund a "free health clinic" means a nonprofit community health center exempt from federal taxation that provides primary care and preventative services to people without health insurance without charge. The bill changes the term "free health clinic" to "community health clinic" and removes the without charge requirement. The bill excludes specified federally funded community health centers and rural health clinics from the organizations that are eligible to receive payment of a claim from the fund.

DRIVER'S AND NONDRIVER'S LICENSES (Sections 302.065 and 302.067)

The bill specifies that a person who has presented documents to the Department of Revenue 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 of the United States, if it is reasonably believed by the department that the prior license was issued as a result of a fraudulent act of the applicant, the applicant is applying for or renewing a commercial driver's license or instruction permit, or in order to correct an error on the license or permit.

SAFE CARE PROVIDERS (Section 334.950)

The Department of Public Safety must establish rules and make payments to SAFE CARE providers who provide forensic examinations of persons under 18 years of age who are alleged victims of physical abuse out of appropriations made for that purpose. The department must establish maximum reimbursement rates that reflect the reasonable cost of providing the examination.

Only providers for forensic evaluation and case reviews may be reimbursed by the department. In order to provide reimbursement, the child must be the subject of a child abuse investigation or reported to the Children's Division within the Department of Social Services as a result of the examination.

The bill specifies that a minor may consent to the examination, the consent is not subject to disaffirmance because of his or her status as a minor, and parental consent is not required.

JUDGMENTS AND GARNISHMENTS (Sections 408.040, 488.305, and 525.040 - 525.310)

A judgment must accrue interest on the judgment balance, which is

the total amount of the judgment awarded on the day the judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees. Post-judgment payments or credits must be applied first to post-judgment costs, then to post-judgment interest, and then to the judgment balance.

In a case where a garnishment is granted, the circuit court clerk may charge and collect a surcharge of up to \$10 for the clerk's duties. Any moneys collected from this surcharge must be placed in a fund to be used to maintain and improve case processing and record preservation.

The bill specifies that in the case of a continuous wage garnishment, a notice of garnishment served as required by law must have the effect of attaching all personal property, money, rights, or other choses in action of the defendant until the judgment is paid in full or the employment relationship is terminated, whichever occurs first.

Writs of garnishment which would otherwise have equal priority must have priority according to the date of service, and if the employee's wages have been attached by more than one writ of garnishment, the employer must inform the inferior garnisher of the other garnishments.

When applicable, a garnishee may discharge himself or herself by paying the money or giving the property owed to the defendant to the attorney for the party on whose behalf the order of garnishment was issued. The court may order the delivery of the defendant's property possessed by the garnishee to the attorney for the party on whose behalf the order of garnishment was issued.

The bill allows the garnishee to deduct up to \$20 or a fee previously agreed upon between the garnishee and judgment debtor if the garnishee is a financial institution for his or her trouble and expenses in answering the interrogatories and withholding the funds. The garnishee may file a motion with the court for additional costs incurred in answering the interrogatories.

The bill modifies provisions regarding the issuance of a writ of sequestration. Currently, the wages of state government employees are not subject to direct garnishment but must be collected under a process called sequestration. The bill specifies that the state, municipal, or other political subdivision employer must have the same duties and obligations as a private employer when served with a garnishment. The bill repeals provisions requiring a writ of sequestration when the judgment debtor is an employee of the state, municipality, or other political subdivision and specifies that all garnishments against the employees must proceed in the same manner

as any other garnishment.

OFFICE OF STATE COURTS ADMINISTRATOR HANDBOOK (Section 452.556)

Currently, each court must mail a copy of the handbook created by the Office of State Courts Administrator to individuals involved in a dissolution of marriage proceeding where minor children are involved. The bill specifies that the court must provide a copy of the handbook.

ADMINISTRATIVE CHILD SUPPORT ORDERS (Section 454.500)

The bill allows an additional child to be added to an existing administrative child support order. If the Family Support Division within the Department of Social Services has entered an administrative child support order and an additional child or children not the subject of the order are born to the parties, the division may, following specified actions, modify an underlying child support order to include a single child support obligation for all children of the parties in conformity with Missouri Supreme Court child support guidelines.

ORDERS OF PROTECTION (Section 455.007)

Currently, the public interest exception to the mootness doctrine applies to an appeal of 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.

WILLS AND TRUSTS (Sections 456.950, 456.4-420, and 474.395)

Any property or interest in property held by a husband and wife as tenants by the entirety or as joint tenants or another form of joint ownership with right of survivorship must be deemed to be held as tenants by the entirety upon its 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 if a trust instrument containing a no-contest clause is or has become irrevocable, 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 the ruling must be verified under oath and may be filed as a separate judicial proceeding or along with other claims for relief in a single proceeding. The bill specifies that when ruling on the petition, the court must consider the text of the clause, the context to the terms of the trust instrument as a whole, and in the context of the verified factual allegations in the petition. The court must not accept evidence beyond the pleadings and the trust instrument except as required to resolve an ambiguity in the no-contest clause.

An order or judgment on the application of a no-contest clause must be subject to appeal as with other final judgments. Following the ruling, if claims are subsequently filed that are materially different than those upon which the no-contest clause order or judgment is based, the party in whose favor the order or judgment was entered must have no protection from enforcement of the no-contest clause provided under these provisions to the extent the new claims are raised.

The bill specifies the types of circumstances in which a no-contest clause is not enforceable, including filing a claim objecting to the jurisdiction or venue of the court or filing a claim for relief concerning an accounting, report, or notice that has or should have been made by a trustee. In these situations, the court may award attorney fees and costs to any party.

If a will contains a no-contest clause, an interested person may file a petition with the court for a determination 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.

MISSOURI SUPREME COURT AND COURT OF APPEALS COMMISSIONERS (Sections 476.445 - 477.191)

The obsolete provisions referencing the commissioners of the Missouri Supreme Court and the commissioners of the Court of Appeals are repealed.

The bill modifies the specified number of judges to serve in each district of the court of appeals to reflect the current number authorized by statute.

JUDGESHIP POSITIONS (Sections 478.320 - 478.740)

The bill repeals the provisions requiring one additional associate circuit judge position when the Office of State Courts Administrator indicates in an annual judicial weighted workload

model for three or more consecutive years the need for four or more full-time judicial positions in any judicial circuit with a population of 100,000 or more.

Beginning in Fiscal Year 2015, there must be 20, instead of the current 19, circuit judges in the 21st Judicial Circuit, and they must sit in 20 divisions. There must be one additional associate circuit judge position in the circuit starting in Fiscal Year 2015 that must not be included in the statutory formula for authorizing additional judgeships per county.

There must be 10, instead of the current nine, associate circuit judges in the 16th Judicial Circuit. The tenth associate circuit judgeship position must not be included in the statutory formula for authorizing additional associate circuit judgeships per county.

Beginning in Fiscal Year 2015, there must be one additional associate circuit judge in the 31st Judicial Circuit, and there must continue to be the associate circuit judge position authorized in Fiscal Year 2014. These positions must not be included in the statutory formula for authorizing additional associate circuit judgeships per county.

Beginning in the Fiscal Year 2015, there must be one additional associate circuit judge position in the 11th Judicial Circuit. The judge must be elected in 2016 and the position must not be included in the statutory formula for authorizing additional associate circuit judgeships per county.

There must be one more additional associate circuit judge position in Boone County than is authorized in the statutory formula for authorizing additional associate circuit judgeships per county.

There must be two circuit judges in the 38th Judicial Circuit, and these judges must sit in divisions numbered one and two. The circuit judge in division two must be elected in 2016, and the position must not be considered vacant or filled until January 1, 2017. The judge in division one must be elected in 2018.

COURT RECORDS (Section 483.140)

The provisions requiring every judge to examine and superintend court records must not be construed to permit the adoption of any local court rule that grants a judge the discretion to remove or direct the removal of any pleading, file, or communication from a court file or record without the agreement of all parties.

MUNICIPAL COURT FUNDS (Section 488.014)

The bill specifies that any overpaid funds owed to a municipal division of the circuit court not exceeding \$5 may be retained by the municipality for the operation of the municipal court.

31ST JUDICIAL CIRCUIT SURCHARGE (Section 488.2206)

In addition to all court fees and costs, a surcharge of up to \$10 must be assessed as costs in each criminal proceeding filed in the 31st Judicial Circuit except in any proceeding in any court when the proceeding or defendant has been dismissed by the court or when the costs are to be paid by the state, county, or municipality. For violations of the general criminal laws of the state or county ordinances, a surcharge must not be collected unless it is authorized by the county government where the violation occurred. For violations of municipal ordinances, a surcharge must not be collected unless it is authorized by the municipal government where the violation occurred. The moneys collected from the surcharge must only be used to pay for the costs associated with the land assemblage and purchase, construction, maintenance, and operation of any county or municipal judicial facility.

SURCHARGE FOR MUNICIPAL VIOLATIONS IN THE CITY OF FLORISSANT (Section 488.2245)

The City of Florissant is authorized 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 the land assemblage and purchase, construction, maintenance, and upkeep of a municipal courthouse.

STATUTE OF LIMITATIONS (Section 516.140)

The bill adds an action for injurious falsehood to the types of actions that must be brought within two years after the cause accrued.

JUDGMENT FOR UNPAID RENT (Section 516.350)

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

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 gross negligence or 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. The offense is a class A misdemeanor if the offense is committed by a person who has previously been found guilty of a violation of these provisions.

The bill repeals Sections 578.501 through 578.503, known as the Spc. Edward Lee Myers' Law, regarding unlawful picketing or other protest activities at a location at which a funeral is held.

DISARMING A PEACE OFFICER OR A CORRECTIONAL OFFICER (Section 575.153)

The bill changes the laws regarding the crime of disarming a peace officer or a correctional officer by specifying that a person also commits the crime by intentionally removing a less-lethal weapon from a peace officer or a correctional officer including any blunt impact, chemical, or conducted energy device used in the performance of his or her official duties while the officer is acting within the scope of his or her official duties or intentionally depriving a peace officer or a correctional officer of a less-lethal weapon while the officer is acting within the scope of his or her official duties.

CRIMES BY SEXUALLY VIOLENT PREDATORS (Section 632.520)

An offender ordered or committed to the Department of Mental Health after being determined by a court to be a sexually violent predator who knowingly commits violence to an employee of the department or to another offender housed in a secure facility must be guilty of a class B felony. An offender who knowingly damages any building or other property owned or operated by the department is guilty of a class C felony.

CYBER CRIME INVESTIGATION FUND AND TASK FORCE (Section 650.120)

The provision requiring the General Assembly to annually appropriate \$3 million to the Cyber Crime Investigation Fund is repealed.

The program to distribute grants to multi-jurisdictional Internet crime law enforcement task forces through the fund is reauthorized until December 31, 2024. The provisions regarding the program had expired on June 5, 2012.

The provisions of the bill regarding judgments and garnishments become effective on January 1, 2015.

The provisions of the bill regarding judgeship positions contain an emergency clause.