

CCS#2 HCS SB 621 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

PUBLICATION OF THE MISSOURI REVISED STATUTES (Sections 3.010, 3.066, and 3.090, RSMo)

Currently, the Revised Statutes of Missouri are required to be published at least every 10 years. The bill removes this requirement and specifies that the statutes must be published only upon the adoption of a concurrent resolution by the General Assembly. Annotations or statutory supplements may be printed without the adoption of a concurrent resolution.

When a state or federal court issues a permanent order enjoining a bill or statute enacted by the General Assembly as unconstitutional on procedural grounds, the Missouri Attorney General must notify the Revisor of Statutes of the order and he or she must publish a footnote to each affected section calling attention to the court ruling on any official website of the Joint Committee on Legislative Research. The footnote must remain until a final ruling by the Missouri Supreme Court or a federal court at which time the footnote must be removed and, if necessary, the website updated.

The Revisor of Statutes is required to publish the revised statutes on any official website of the committee. However, the on-line version of the revised statutes must not be considered an official version of the revised statutes unless the Revisor of Statutes chooses to certify it and places a certificate on the website. The Revisor of Statutes must periodically update the website as new laws are enacted, including an update on the effective date of any section that becomes law.

JOINT COMMITTEE ON THE JUSTICE SYSTEM (Section 21.880)

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.

SPECIAL PROSECUTORS (Section 56.110)

When a special prosecutor is appointed in any case, he or she must not otherwise represent a party other than the State of Missouri in any criminal case or proceeding in that circuit for the duration of that appointment and must be considered an appointed prosecutor for purposes of Section 56.360.

LAW ENFORCEMENT OFFICER IMMUNITY (Section 57.095)

A sheriff or any other law enforcement officer must have immunity from any criminal and civil 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.

JEFFERSON COUNTY MUNICIPAL COURTS (Section 67.320)

The bill updates the legal description of Jefferson County to its current description in the provisions that allow Jefferson and Franklin counties to prosecute a violation of a county order in a county municipal court.

INTEREST ON JUDGMENTS (Section 408.040)

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.

UNCLAIMED PROPERTY (Sections 447.534 - 447.584)

The bill changes the laws regarding unclaimed property. A United States savings bond in possession of the State Treasurer or with an owner whose last known address is located in Missouri must be deemed abandoned when it has remained unclaimed for more than three years after its maturity date and must escheat to the state three years after abandonment. At least 180 days after the bond escheats to the state, the State Treasurer must bring a civil action to confirm that the bond must escheat to the state. The State

Treasurer must retain a record of the name and, if known, the last known address of each person named on the savings bond that has escheated to the State of Missouri and which has been redeemed by the State Treasurer.

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.

WILLS AND TRUSTS (Sections 456.4-420 and 474.395)

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 the application of the no-contest clause or trigger a forfeiture that is enforceable under applicable law and public policy.

JUDICIAL RESOURCES AND THE JUDICIAL CONFERENCE (Sections 476.001 - 476.340)

Current law states that it is the purpose of specified provisions of law to provide the General Assembly and the Supreme Court with the mechanisms to obtain a comprehensive analysis of judicial resources and an efficient method for identifying problems and allocating personnel, facilities, and resources within the judicial system. The bill adds and repeals specific provisions from the list.

The bill removes commissioners of the Supreme Court as members of the Judicial Conference of the State of Missouri and requires the conference to meet at least once every odd-numbered year instead of at least once a year.

PRELIMINARY HEARINGS (Section 478.240)

The presiding judge is authorized to assign a judge to hear the trial of a felony case when he or she has previously conducted the preliminary hearing in that case if the defendant has signed a written waiver permitting the same judge to hear both the preliminary hearing and the trial.

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 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.

GARNISHMENTS (Sections 488.305 and 525.040 - 525.310)

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 employee must proceed in the same manner as any other garnishment.

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.

SEXUALLY VIOLENT PREDATORS (Sections 632.480 - 632.484)

A conviction in this state or any other jurisdiction for a sexually violent offense can be considered when determining if a person meets the criteria of a sexually violent predator for purposes of confinement and treatment.

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.

COURT COSTS (Sections 550.040 and 550.060)

The provision is repealed that requires the state to pay the costs in all capital cases and those in which imprisonment is the sole punishment for the offense if the defendant is acquitted and the costs to be paid by the county in which the indictment was found or information filed in all other trials on indictments or information if the defendant is acquitted.

The bill repeals the provision requiring the prosecutor or the person on whose oath the prosecution was commenced to be liable for all the court costs in any case where a person must be committed or recognized to answer for a felony and no indictment is issued against the person and prohibiting the state or county from paying the costs.

The provisions of the bill regarding interests on court judgments and the provisions regarding garnishments will become effective January 15, 2015.

The provisions of the bill regarding unclaimed savings bonds contain an emergency clause.