

HCS#2 SCS SB 91 -- JUDICIAL PROCEEDINGS

SPONSOR: Riddle

COMMITTEE ACTION: Voted "Do Pass with HCS #2" by the Standing Committee on Judiciary by a vote of 9 to 1. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 10 to 0.

The following is a summary of the House Committee Substitute for SB 91.

GENERAL ASSEMBLY WITNESSES (Sections 21.403, 21.405, 575.040, 575.050, 575.160, 575.270, 575.280, 575.330, and 576.030 RSMo)

This bill specifies that, when a person is subpoenaed to testify or provide information at a proceeding before a body of the General Assembly, a court must issue, upon request from the President Pro Tem or the Speaker of the body that subpoenaed the person, an order requiring the person to testify or provide information if the person refuses to do so on the basis of the person's privilege against self-incrimination. Before issuing such an order, a court must find that the request for the order has been approved by a vote of a three-fifths majority of the members of the body requesting the order. If a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide information and the person presiding over the proceeding informs the witness that an order requiring the testimony or production of information was issued, the witness must not refuse to comply with the order on the basis of the asserted privilege. However, no testimony or information compelled under the order may be used against the witness in any criminal proceeding other than perjury, giving a false statement, or otherwise failing to comply with the order.

If a witness summoned by a body of the General Assembly willfully fails to appear, refuses to answer any pertinent questions, or fails to produce required documents, a statement of facts regarding such failure may be reported to and filed with the President Pro Tem of the Senate or the Speaker of the House. Either the President Pro Tem or the Speaker may certify the statement of facts to the prosecuting or other attorney having jurisdiction to prosecute. The Attorney General will have concurrent original jurisdiction to commence a criminal action throughout the state. Upon request by the President Pro Tem or the Speaker of the originating body, the court must, within 15 days of the request, appoint independent counsel, who will have jurisdiction to prosecute under Section 575.330, RSMo. If independent counsel is appointed, such independent counsel will have sole jurisdiction to

prosecute under such section.

The bill also specifies that:

(1) The offense of perjury is a class D felony if it is committed in any proceeding before a body of the General Assembly;

(2) The offense of making a false affidavit is a class A misdemeanor when it is done in any proceeding before a body of the General Assembly;

(3) The offense of tampering with a witness or victim is a class E felony when the witness is a witness in a proceeding before a body of the General Assembly;

(4) The offense of acceding to corruption when the person is a witness or prospective witness in a proceeding before a body of the General Assembly is a class D felony;

(5) A person commits the offense of obstructing government operations if he or she purposely obstructs, impairs, hinders, or perverts the performance of a governmental function by the use or threat of harm, intimidation, or coercion. The offense of obstructing government operations is a class A misdemeanor. However, if committed against a body of the General Assembly, it is a class E felony.

CHILD ADVOCATE OFFICE (Sections 37.710 and 210.152)

This bill allows the office of child advocate to release findings for members of a multidisciplinary team relating to their professional performance.

SAFETY REPORTING (Section 37.717)

This bill requires the Office of Child Advocate to create a safety reporting system for the Department of Social Services employees to be able to report information regarding the safety of those served by the office and the safety of the employees. The bill specifies how the identity of the person making the report will be protected.

Any criminal act reported to the reporting system will be disclosed to the Department and to the appropriate law enforcement agency, and any investigation conducted as a result of the report must be conducted by an unbiased and disinterested investigator.

SCHOOL REPORTING POLICIES (Section 160.261)

The bill repeals language related to the Children's Division's

jurisdiction over or ability to investigate reports of alleged child abuse by personnel of a school district, a teacher, or other school employee. It also repeals language related to how a school and school district are to handle reports of alleged child abuse.

COURT FACILITIES (Sections 46.266, 49.310, and 476.083)

The bill provides that, in absence of a local agreement otherwise, in any courthouse that contains both county offices and court facilities, the presiding circuit of the circuit may establish rules and procedures for court facilities and areas necessary for court-related ingress and egress, and other reasonable court-related usage, but the county commission will have authority over all other areas of the courthouse.

The bill also authorizes the county commission in all noncharter counties to promulgate reasonable regulations concerning the use of county property. Currently, the county commissions in all first, second, and fourth counties are authorized to promulgate the regulations.

Currently the presiding judge in specified court circuits may appoint a circuit court marshal to aid the presiding judge by overseeing the physical security of the courthouse. This bill changes courthouse to court facilities, including courtrooms, jury rooms and chambers or offices of the court.

11TH JUDICIAL CIRCUIT (Section 478.600)

The duties and responsibilities for a specified Associate Circuit Judge position in the 11th Judicial Circuit are modified by stating that treatment court activities may be retained as duties and responsibilities.

CHILD PROTECTION REPORTING AND CASE MANAGEMENT (Sections 210.145 and 210.152)

Currently, the Division is responsible for maintaining an information system capable of receiving and maintaining reports of child abuse or neglect. This bill clarifies that the reports should include the following information, if possible:

- (1) The names and addresses of the child and his or her parents or persons responsible for his or her care;
- (2) The child's age, sex, and race;
- (3) The nature and extent of the child's injuries, abuse, or neglect, including any evidence of previous injuries, abuse, or

neglect to the child or his or her siblings;

(4) The name, age, and address of the person responsible for the injuries, abuse, or neglect and the family composition;

(5) Specified information regarding the person making the report; and

(6) The actions taken by the reporting source.

JUVENILE JUSTICE (211.012, 211.181, and 211.435)

This bill specifies that, for the purposes of Chapter 211, RSMo, Section 221.044, and the original jurisdiction of the juvenile court, if a person was considered an adult when the alleged offense or violation was committed, he or she will not later be considered a child. Additionally, under current law, no court will require a child to remain in the custody of the Division of Youth Services past the child's 18th birthday. This bill changes that provision so that a child can remain in the custody of the Division of Youth Services until the child's 19th birthday.

There is currently a state "Juvenile Justice Preservation Fund", which exists in the State Treasury. This bill changes that so there is a Juvenile Justice Preservation Fund in each county's circuit court, and the purpose of this fund is to implement and maintain the expansion of juvenile court jurisdiction to 18 years of age. The surcharge collected under the section will be payable to the county circuit court rather than to the State Treasury. Funds currently held by the State Treasurer in the Fund must be payable and revert to the circuit court's fund in the county of origination. Expenditures from the individual county juvenile justice funds will be made at the discretion of the juvenile office for the circuit court and must be used for the sole purpose of implementing and maintaining the expansion of juvenile court jurisdiction.

The bill states that, to further promote the best interests of the children of Missouri, money in the fund will not be used to replace or reduce the responsibilities of either the counties or the state to provide funding for existing and new juvenile treatment services.

COURT REPORTERS (Section 485.060)

The bill specifies that, starting January 1, 2022, each court reporter for a circuit judge will receive an annual salary based upon his or her cumulative years of service as a court reporter with a circuit court of this state, based upon a schedule provided

in the bill.

UNCLAIMED PROPERTY (Section 447.541)

The bill modifies the notice requirements required to be made by the State Treasurer for purposes of disposing of unclaimed property. Specifically, current law requires the Treasurer to give notice of property that is presumed to be abandoned as follows:

(1) Notice must be published in a newspaper of general circulation once a week for two successive weeks within 240 days of receiving notice of property that is presumed to be abandoned; and

(2) Notice must be mailed to each person having an address listed who appears to be entitled to presumed abandoned property valued at \$50 or more.

The bill allows the State Treasurer to use any other method, in addition to the above methods, deemed appropriate and consistent with the intent to notify the owners of the property.

ELECTRONIC MARRIAGE LICENSE APPLICATION (Section 451.040)

The bill allows the Recorder of Deeds to accept electronic applications for marriage licenses through an online process. If a recorder uses an online process to accept applications for or to issue marriage licenses and the applicants' identity has not been verified in person, the Recorder must have a two-step verification process or a process that independently verifies the identity of the applicants. It is the Recorder's responsibility to ensure that any verification process adopted as part of the electronic system verifies the identities of both applicants. The Recorder must not accept applications for or issue licenses through this online process unless both applicants are at least 18 years old and at least one of the applicants is a resident of the county or city not within a county in which the application was submitted.

CUSTODY ORDERS (Section 452.410)

The bill limits the sections of statute under which custody orders may be modified.

ORDERS OF PROTECTION (Section 455.010)

The bill changes the definition of "course of conduct" in the definition of "stalking", as it relates to orders of protection.

GUARDIANSHIP (Section 475.050)

The bill modifies language related to exemptions for individuals seeking appointment as a guardian or conservator from a background screening. The bill adds a ward's grandparents to the current list of relatives exempt from the screening, unless a background report is requested by a party to the proceeding or ordered by the court.

COURT COSTS AND FEES (Section 479.162 and 488.016)

The bill specifies that in a proceeding for a municipal ordinance violation or any other proceeding before a municipal court if the charge carries the possibility of 15 days or more in jail or confinement, a defendant must not be charged any fee for obtaining a police report or probable cause statement. Such police report or probable cause statement must be provided by the prosecutor upon written request for discovery by the defendant.

The bill provides that court costs will be fully waived for any person who is an honorably discharged veteran of any branch of the Armed Forces and who successfully completes a veterans treatment court.

WITNESS STATEMENTS (Section 491.016)

The bill specifies that an otherwise inadmissible witness statement is admissible in evidence in a criminal proceeding as substantive evidence if the court, after a hearing, finds by a preponderance of the evidence that the defendant engaged in or acquiesced to wrongdoing with the purpose of causing the unavailability of the witness, such wrongdoing caused or substantially contributed to the unavailability of the witness, the prosecution exercised due diligence to secure by subpoena or other means the attendance of the witness, and the witness failed to appear.

JUROR COMPENSATION (Section 494.455)

This bill specifies that, except in Greene County, the County Commission in any county may vote to restructure juror compensation so that grand and petit jurors do not get paid for the first two days of service but thereafter will receive \$50 per day, as well as \$0.07 per mile for necessary travel from the juror's residence to the courthouse and back, to be paid by the county. A county commission may authorize compensation to a grand or petit juror for the first two days of service, but the compensation cannot exceed \$10.

In Greene County, this pay structure is set by current law.

CHANGE OF VENUE FOR CAPITAL CASES FUND (Section 550.125)

This bill creates the "Change of Venue for Capital Cases Fund", which will consist of money appropriated by the General Assembly. Money in the fund is to be used solely for reimbursement to a county that receives a capital case from another county. At the conclusion of a capital case for which the venue was changed from one county to another, the county that sent the case may apply to the Office of State Courts Administrator (OSCA) for reimbursement to the county that received the case of any costs associated with sequestering jurors. If a county is eligible for reimbursement, OSCA shall disburse the money to the county. If OSCA determines that a county is not eligible for reimbursement or the actual costs are more than the amount dispersed, the county in which the capital case originated shall be responsible for all or the remaining reimbursement.

Applications for reimbursement must be submitted by May 1 of the current fiscal year, and reimbursements must be made by June 30 of the current fiscal year. Reimbursements for applications submitted after May 1 of the current fiscal year will be made in the following fiscal year. If there is not enough money in the fund at the end of the fiscal year when reimbursements are made, reimbursements will be made on a pro rata basis.

SEX OFFENDERS (Section 566.150)

The bill provides that persons guilty of certain sex crimes cannot be present or loiter within 500 feet of athletic complexes or athletic fields that exist primarily for use and recreation of children or within 500 feet of Missouri Department of Conservation Nature or Education Center properties, unless the registered sex offender is the parent of a child participating in an educational program of the Department of Conservation and has permission to be on the property.

This bill has an emergency clause for the provisions related to juvenile justice.

The following is a summary of the public testimony from the committee hearing. The testimony was based on SCS SB 91.

PROPOSERS: Supporters say that persons guilty of certain sex crimes can't be within so many feet of athletic complexes or fields used primary for the recreation of children. They are having a problem with certain offenders loitering near these fields and complexes. They have been asked to leave but refuse and there is currently no recourse for the community. Additional prohibited locations were added in committee. They are just loitering, have no reason to be there and know they are not wanted. Nature centers

can be child based facilities and there have been issues in the past with child sex offenders showing up. Displays in nature centers are often tailored for kids 12 or younger.

Testifying for the bill were Senator Riddle; Missouri Department of Conservation; Arnie C. Dienoff; and Conservation Federation of Missouri.

OPPONENTS: Those who oppose the bill say that this would place more restrictions on her husband, according to one witness. They have kids and they are very involved; this would prohibit their dad from attending their games. He made a bad decision that resulted in a non violent misdemeanor. He regrets that decision and he has paid for his mistake. This is just continuing to punish those who have already paid their debt. There should be an exception for parents. He was charged under Section 573.040. The law should take into account the fact that someone is a parent or spouse. If a person on the registry and is with their families at these events that should be ok.

Testifying against the bill were Chad Mayes; Angie James; Josh James; Sean James; Briana Downing; Lisa Stevens; Brent A Barnhill; and Michael James.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.