

HCS HB 111 -- JUDICIAL PROCEDURES (Cox)

COMMITTEE OF ORIGIN: Committee on Judiciary

This substitute changes the laws regarding judicial procedures.

OFFICIAL STATE MANUAL (Section 11.010, RSMo)

The substitute authorizes the Secretary of State to enter into an agreement with a nonprofit organization to print and distribute copies of the Official State Manual. The nonprofit organization must charge a fee for a copy of the manual to cover the cost of production and distribution.

The manual must include information such as the biographies of elected members of the executive, legislative, and judicial branches of state government.

CONFIDENTIALITY OF MOTOR VEHICLE OR DRIVER REGISTRATION INFORMATION OF JUDGES (Sections 32.056 and 301.146)

The Department of Revenue is prohibited from releasing the home address or any information contained in the department's motor vehicle or driver registration records regarding any state or federal judge or his or her immediate family members, and any state or federal judge is allowed to request the issuance of a special license plate or driver's license.

CHARTER COUNTY ELECTION CYCLES (Section 56.061)

Any charter county is allowed to determine within its charter authority the time of election cycles under Article VI, Section 18, of the Missouri Constitution.

PROSECUTION DIVERSION PROGRAM (Section 56.089)

The substitute authorizes a prosecuting attorney, upon agreement with an accused or a defendant, to divert a criminal case to a prosecution diversion program for a period of six months to two years allowing for any statute of limitations to be tolled for that period. The prosecution diversion plan must be in writing and for a specific period of time, and the prosecuting attorney may impose conditions on the behavior and conduct of the accused or defendant that assures the safety and well-being of the community and the accused or the defendant. Any person participating in the program has the right to insist on criminal prosecution for the accused offense at any time. After completion of the program and any imposed conditions to the satisfaction of the prosecuting attorney, the accused will be entitled to not have the diverted case filed or to a dismissal of

the diverted charges. A prosecutor cannot utilize a diversion program when the participation will prevent a conviction from appearing on the driving record of a commercial driver's license holder.

JUVENILE COURT JURISDICTION (Section 211.031)

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

ELECTRONIC MONITORING OF CERTAIN OFFENDERS (Sections 221.025, 221.105, 544.455, 544.470, and 557.011)

The substitute:

(1) Allows a judge to place any offender ordered to be confined for a nonviolent offense on electronic monitoring as an alternative to jail confinement. The court may place conditions on the monitoring, including the condition that the individual pay for the full costs of electronic monitoring prior to the beginning of the monitoring. A sheriff may contract monitoring services to a private company. The offender must receive credit against any period of confinement ordered while complying with court-ordered electronic monitoring, but electronic monitoring cannot be considered to be custody or incarceration for state Medicaid purposes;

(2) Requires the governing body of any county and the City of St. Louis to establish the amount to be expended for the cost of incarceration of individuals on electronic monitoring; requires the sheriff or the facility superintendent to certify to the circuit clerk of the county or the chief executive officer of the city the number of days an individual was in custody or subjected to electronic monitoring; and requires the county commission or the facility superintendent to supply the cost per diem for county prisoners and electronic monitoring. If the judge finds the offender unable to afford the costs associated with electronic monitoring, the state must reimburse the county for any costs associated with electronic monitoring up to \$12 per day per individual;

(3) Specifies that any person charged with a bailable nonviolent offense who does not post bail prior to his or her appearance before a judge may be placed on house arrest with electronic monitoring; and

(4) Allows a court to order an individual who has been sentenced to confinement to serve all or a portion of the sentence on

electronic monitoring. A circuit court may adopt a local rule authorizing the pretrial release on electronic monitoring in lieu of incarceration of an individual charged with an offense specifically identified in Section 557.011.

CERTAIN MISDEMEANOR VIOLATIONS (Sections 302.020, 302.321, 303.025, and 311.325)

The substitute changes the specified class of certain misdemeanor violations to only be a misdemeanor violation and establishes fines and penalties for a violation of the provisions regarding:

- (1) Driver's licenses;
- (2) Motorcycle helmets;
- (3) Driving while revoked;
- (4) Financial responsibility; and
- (5) Purchase, possession, or consumption of alcohol by a minor.

DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION COURT RECORDS
(Section 452.430)

Any pleading or filing, other than the interlocutory or final judgment, in a dissolution of marriage or legal separation filed before August 28, 2009, is allowed to be a public record if the court clerk has redacted the Social Security number from all pleadings and filings. Upon a request, the clerk must redact the Social Security number from any filings, judgment, or pleading before releasing the information to the public.

FULL ORDERS OF PROTECTION (Section 455.007)

The substitute specifies that, regardless of any other provision of law, the public interest exception to the mootness doctrine will apply to an appeal of a full order of protection which has expired and which subjects the person against whom the order is issued to significant collateral consequences by the mere existence of the order after its expiration.

CHILD PROTECTION (Section 455.040)

The substitute specifies that the provisions regarding the Amber Alert System will be known as Sam and Lindsey's Law and requires the law enforcement agency maintaining the Missouri Uniform Law Enforcement System (MULES) to enter information contained in an order of protection including any order regarding child custody or visitation and all specifics as to the times and dates of

custody or visitation provided in the order. Any change in child custody or visitation within an order must be issued to the local law enforcement agency and the agency responsible for entering the information into MULES.

GUARDIANSHIP OF AN INCAPACITATED PERSON (Section 475.060)

The substitute changes the specified information that must be stated in a petition for a person to appoint himself or herself or another qualified person as the guardian of an incapacitated person.

TRANSFER REQUESTS OF COURT CASES BY PUBLIC ADMINISTRATORS (Section 475.115)

A public administrator is allowed to request the transfer of any case to the jurisdiction of another county by filing a petition for transfer. The substitute requires the court to transfer the case if the receiving county meets the venue requirements and the public administrator of the receiving county consents to the transfer. The receiving county court must appoint its public administrator as successor guardian and/or successor conservator and issue the appropriate letters. In the case of a conservatorship, the final settlement must be filed in the original county within 30 days and forwarded to the receiving county upon audit and approval.

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT (Sections 475.501 - 475.555)

Missouri is authorized to enter into the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The act:

- (1) Allows a court to communicate with an out-of-state court concerning a guardianship or protective proceeding;
- (2) Allows a court to request an out-of-state court to:
 - (a) Hold an evidentiary hearing;
 - (b) Order an individual to produce evidence or give testimony;
 - (c) Order that an evaluation or assessment be made of a respondent;
 - (d) Order any appropriate investigation of an individual involved in a guardianship or protective proceeding;
 - (e) Forward to the court of this state a certified copy of the

transcript or other record of an evidentiary hearing or other proceeding any evidence otherwise produced and any evaluation or assessment prepared in compliance with a court order;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including specified protected health information;

(3) Allows testimony taken in another state from a witness who is located in another state to be offered by deposition or other means allowable;

(4) Permits a court to allow a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means;

(5) Specifies when a court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent;

(6) Specifies that when a court of this state is otherwise lacking jurisdiction it has special jurisdiction for specified guardianship actions;

(7) Specifies that a court which has appointed a guardian or issued a protective order has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own term;

(8) Allows a court to decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum;

(9) Allows a guardian or conservator to petition the court to transfer the guardianship or conservatorship to another state;

(10) Specifies that if a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian may register, after giving notice to the appointing court of an intent to register, the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, a certified copy of the order and letter of office;

(11) Specifies that if a conservator has been appointed in another state and a petition for a protective order is not

pending in this state, the conservator may register, after giving notice to the appointing court of an intent to register, the protective order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, a certified copy of the order and letter of office and of any bond; and

(12) Specifies that upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except those powers prohibited under the laws of this state.

MUNICIPAL JUDGES (Section 479.020)

A person is prohibited from serving as a municipal judge after he or she has reached 78 years of age. Currently, a person cannot serve after reaching 75 years of age.

RECOVERY OF DEPOSITS IN CIVIL ACTIONS (Section 488.432)

Currently, a deposit is not required in a civil action if the filing party is a city, county, or the State of Missouri. The substitute requires the respondent in a civil action to pay a city, county, or the state the amount of the deposit that would otherwise have been awarded and collectable as a judgment if the entity is the prevailing party. The prevailing party must pay the amount collected to the clerk of the appropriate court.

CRIMINAL CASE SURCHARGE (Section 488.5026)

Currently, upon the approval of the governing body of a city or county or St. Louis City, a \$2 surcharge must be assessed as costs in certain criminal cases to be deposited into the Inmate Security Fund to develop biometric verification systems for identifying and tracking inmates within the local jail system. The substitute requires the surcharge to be assessed and collected and allows the funds to also be used to develop information sharing.

STATUTE OF LIMITATIONS FOR INJURIOUS FALSEHOOD (Section 516.140)

An action for injurious falsehood is added to the two-year statute of limitations.

CONDUCT OR SPEECH AT PUBLIC HEARINGS AND 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 the special motion.

FRAUDULENT FIREARMS TRANSACTIONS (Section 571.063)

The substitute creates the crime of fraudulent purchase of a firearm, a class D felony, if a person knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate federal or state laws; provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition; or willfully procures another to violate these provisions.

FIREARMS DISQUALIFICATION PETITIONS (Section 571.092)

The substitute repeals the provisions regarding the filing of a petition for the removal of a disqualification for certain individuals from purchasing, possessing, or transferring a firearm and establishes new provisions regarding the petition. Any person who has been adjudicated incapacitated under Chapter 475, has been involuntarily committed under Chapter 632, or has had a Missouri adjudication or commitment that results in a firearms disqualification pursuant to 18 U.S.C. Section 922(d)(4) or (g)(4) is allowed to file a petition for the removal of the disqualification to ship, transport, receive, purchase, possess, or transfer a firearm. The procedures for filing the petition and the rules of evidence are specified in the substitute.

The circuit court must grant a removal of the disqualification if there is a finding by clear and convincing evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting the removal is not contrary to the public interest. If a petition is granted, the county clerk must forward a copy of the order to the State Highway Patrol so the patrol can contact the Federal Bureau of Investigation to update the petitioner's record with the National Instant Criminal Background Check System within 21 days of the receipt of the order. If a petition is denied, the individual may appeal, and the review of a circuit court ruling will be de novo.

MONETARY INSTRUMENTS (Section 574.105)

Currently, the provisions of law regarding money laundering apply

only to currency and coin of the United States. The substitute revises the provisions by defining "monetary instrument" as currency and coin of the United States or any other country, travelers' checks, personal checks, bank checks, money orders, investment securities, and any other type or form of negotiable instrument.

FISCAL NOTE: Estimated Net Income on General Revenue Fund of Unknown in FY 2012, FY 2013, and FY 2014. No impact on Other State Funds in FY 2012, FY 2013, and FY 2014.