

HCS HB 215 -- JUDICIAL PROCEDURES (Cox)

COMMITTEE OF ORIGIN: Committee on Judiciary

CRIMINAL RECORDS AND JUSTICE INFORMATION ADVISORY COMMITTEE

The substitute replaces the Chairman of the Circuit Court Budget Committee with the Chairman of the Joint Legislative Committee on Court Automation to serve on the Criminal Records and Justice Information Advisory Committee.

PROSECUTING ATTORNEYS AND CIRCUIT ATTORNEYS' RETIREMENT FUND

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, 2013, the substitute 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 surcharge of \$4 is assessed and collected in all criminal cases filed in court, including any violation of a county ordinance or any violation of the state's criminal or traffic laws, including infractions. The substitute adds any person who has pled guilty and paid a fine through a fine collection center to the list of those who are to be assessed the surcharge.

TRANSCRIPTS

Currently, the court reporter for all transcripts of testimony given or proceedings in any circuit court must receive \$2 per 25-line page for the original of the transcript and 35 cents per 25-line page for each regular size page; a judge may order a transcript of all or any part of the evidence or oral proceedings

and the court reporter's fee to be paid by the state; and the court must order the court reporter to furnish three copies of the transcripts of the notes of the evidence for which the court reporter must receive \$2 per legal page and 20 cents per page for the copies. The substitute repeals these provisions and specifies that in cases where an appeal is taken, the court reporter must receive the sum of \$3.50 per legal page for the preparation of a paper and an electronic version of the transcript. In criminal cases where an appeal is taken and the court determines the defendant is unable to pay the costs of the transcript, the court reporter must receive a fee of \$2.60 per legal page and an electronic version of the transcript. Any judge, in his or her discretion, may order a transcript of all or any part of the evidence or oral proceedings and the court reporter must receive \$2.60 per legal page for the preparation of a paper and an electronic version of the transcript. The court reporter's fees for an appeal in a criminal case where the court determines that the defendant is unable to pay the costs or in a case where the judge orders a transcript must be paid by the state. The cost to prepare all other transcripts of testimony or proceedings must be paid by the party requesting the preparation and production. Any party who takes a deposition in a criminal case must be responsible for the costs of providing one copy of the transcript of the deposition to the opposing party.

RESTITUTION

The substitute requires restitution to be paid through the office of the prosecuting or circuit attorney. The provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the restitution and costs. The circuit court en banc must approve the use of any contractor or entity selected by the prosecuting attorney for the collection of restitution and costs. Each prosecuting or circuit attorney who takes any action to collect restitution must collect from the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full.

The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and employees' salaries.

In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering or stealing may be ordered by the court to make restitution to the victim. The substitute allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense. The list of allowable expenses for restitution is revised to only include, but not be limited to, a victim's reasonable expenses to participate in the prosecution of the crime.

Currently, any person eligible to be released on parole for the offense of tampering or stealing may be required as a condition of parole to make restitution. The substitute requires any person eligible to be released on parole to make restitution as a condition of parole.

The court may set an amount of restitution to be paid by any person who has been found guilty of an offense to the victim for the victim's losses due to the offense that may be taken from the inmate's account at the Department of Corrections while he or she is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

INDIGENT DEFENDANTS

Currently, the Director of the Office of State Public Defender must contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. The substitute repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D felonies, all nonsexual misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the contracts. Contracts must be awarded through a competitive bidding process with the approval of the presiding judge of the judicial circuit where the services are rendered. The process must be designed to award contracts to the lowest and best bidder and must give priority to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are

conflicts of the public defender. The Office of Administration must establish a quality assurance program, with the assistance of each presiding circuit judge, to ensure that defendants are being provided quality representation by private attorneys awarded contracts under these provisions. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

The director must also, with the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the State Public Defender System if the prosecuting attorney does not collect and enforce those liens and other judgments.

The director must establish district offices, the boundaries of which must coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but no judicial boundary can include any geographic region of a judicial circuit without including the entire judicial circuit.

The substitute repeals the provision requiring the director and defenders to provide legal services to an eligible person who is detained or charged with any felony, including appeals from a conviction in the case, or who is detained or charged with a misdemeanor that will probably result in confinement in the county jail upon conviction and requires them to provide legal services to an eligible person who is detained or charged with a class A or class B felony, including appeals from a conviction in the case or a person who is detained or charged with any sexual offense. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders. The public defender must provide legal services in those cases in which a private attorney who has a contract for the provision of legal services has a conflict of interest.

The director and defenders are prohibited from providing legal services or contracting out for legal services with private attorneys for motions claiming ineffective assistance of counsel or the representation of any crime victim or witness.

Currently, 18 C.S.R. 10-4.010 authorizes a local public defender office to certify its maximum caseload has been exceeded and thereafter limit its availability to take additional cases after consultation with the presiding court. The substitute invalidates that rule and prohibits the public defender from refusing to provide any representation required under Chapter 600, RSMo, without prior approval from a court of competent jurisdiction.

The public defender must pay the prosecuting or circuit attorney a collection fee of 20% of the funds collected by the prosecuting or circuit attorney on behalf of the public defender. The fee must be deposited in the same manner as collection fees are deposited in the county treasury for delinquent taxes under Section 136.150.

If the prosecuting attorney does not take action to enforce the judgment within 90 days of entry, the commission may also contract with private collection agencies.

DEPARTMENT OF REVENUE RECORDS

The substitute specifies that the Department of Revenue must not release the home address or any other information contained in the department's motor vehicle or driver registration records regarding a former judge, commissioner, or his or her immediate family members. The department must permit the issuance of special license plates and driver's licenses to any former judge or commissioner.

The provisions regarding the State Public Defender's Office become effective July 1, 2014, except for the provisions regarding 18 C.S.R. 10-4.010 under Section 600.053 that contain an emergency clause.