

SS SCS HCS HB 215 -- CRIMINAL PROCEDURES

This bill changes the laws regarding criminal procedures.

CRIMINAL RECORDS AND JUSTICE INFORMATION ADVISORY COMMITTEE
(Section 43.518, RSMo)

The bill replaces the Chairman of the Circuit Court Budget Committee with the Chairman of the Joint Legislative Committee on Court Automation for the purpose of service on the Criminal Records and Justice Information Advisory Committee within the Department of Public Safety.

SEXUAL OFFENSES (Sections 160.261 - 217.010, 217.703, 339.100, 556.036 - 556.061, 558.018, 558.026, 559.115, 559.117, 566.020 - 566.226, 589.015, 590.700, and 632.480)

The bill changes the laws regarding certain sexual offenses. In its main provisions, the bill:

- (1) Renames the crime of forcible rape to rape in the first degree and specifies that a person commits the crime if he or she has sexual intercourse with an individual who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (2) Renames the crime of forcible sodomy to sodomy in the first degree and specifies that a person commits the offense if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (3) Renames the crime of sexual assault to rape in the second degree;
- (4) Renames the crime of deviate sexual assault to sodomy in the second degree;
- (5) Renames the crime of sexual abuse to sexual abuse in the first degree and specifies that a person commits the offense if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (6) Renames the crime of "sexual misconduct in the second degree" to "sexual misconduct in the first degree";
- (7) Renames the crime of "sexual misconduct in the third degree" to "sexual misconduct in the second degree";

(8) Renames the crime of "sexual misconduct" to "sexual abuse in the second degree";

(9) Specifies that a real estate broker's or salesperson's license must be revoked and an applicant must not be issued a license if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of rape in the first or second degree, sodomy in the first or second degree, or sexual abuse in the first or second degree;

(10) Specifies that a prosecution for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree may be commenced at any time;

(11) Defines the terms "domestic violence," "family," and "household member" as they apply to certain information that an insurance company cannot disclose to be the same as they are defined in Section 455.010;

(12) Specifies that a prosecution for an unlawful sexual offense involving a person 18 years old or younger must be commenced within 30 years after the victim reaches the age of 18 unless the prosecution is for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree, in which case the prosecution may be commenced at any time;

(13) Includes being in a drug-induced state or for any other reason being manifestly unable or known by the actor to be unable to make a reasonable judgment to the list of those who are incapable of giving consent to sexual activity; and

(14) Repeals the provision which specifies that a person is not incapacitated with respect to an act committed upon him or her if he or she became unconscious, unable to appraise the nature of the person's conduct, or unable to communicate unwillingness to an act after consenting to the act.

JUVENILE OFFENDERS (Section 217.345)

The bill changes the age requirement for a first-time offender to enter correctional treatment programs from younger than 17 years of age to younger than 18 years of age and repeals the provisions allowing the Department of Corrections to establish a regimented training program for juvenile offenders. The programs must include the physical separation of an offender who is younger than 18 years of age from an offender older than 18 years of age. Currently, the programs must include the physical separation of an offender who is

younger than 17 years of age from an offender older than 17 years of age. The provisions requiring prosecuting attorneys to maintain records regarding the sentencing of offenders younger than 17 years of age, including any treatment programs to which the offender has been assigned, and the provisions requiring the department to submit an evaluation report to the Governor and General Assembly concerning offenders younger than 17 years of age and the programs available to them are also repealed.

DOMESTIC VIOLENCE (Sections 375.1312 and 455.010 - 527.290)

The bill changes the laws regarding domestic violence. In its main provisions, the bill:

- (1) Changes the term "abuse" to "domestic violence" as it applies to orders of protection;
- (2) Specifies that a court must have jurisdiction to also enter an order of protection restraining or enjoining a respondent from committing or threatening to commit domestic violence or stalking;
- (3) Allows any person who has been subject to domestic violence to seek a protective order. Currently, any adult who has been subject to domestic violence may seek a protective order;
- (4) Requires the court to deny an ex parte order of protection and dismiss the petition request if the petitioner is not authorized to seek relief pursuant to Section 455.020;
- (5) Specifies that if the respondent of an ex parte order of protection is younger than 17 years of age, unless otherwise emancipated, service of process must be made upon a custodial parent or guardian of the respondent or a guardian ad litem appointed by the court requiring that person to appear and bring the respondent before the court at the time and place stated;
- (6) Specifies that if an ex parte order is entered and the respondent is younger than 17 years of age, the court must transfer the case to the juvenile court for a hearing on a full order of protection. Currently, if an ex parte order is entered and the allegations in the petition would give rise to jurisdiction under Section 211.031 because the respondent is younger than 17 years of age, the court must transfer the case to juvenile court;
- (7) Specifies that if the petitioner has proved the allegation of domestic violence or stalking by a preponderance of the evidence at a hearing and the respondent cannot show that his or her actions alleged to constitute abuse were otherwise justified under the law, the court must issue a full order of protection for at least 180

days and not more than one year;

(8) Requires notice of an ex parte or full order of protection to be served at the earliest time, and service of the notice must take priority over service in other actions except for actions of a similar emergency nature;

(9) Repeals the provision requiring the court to set the motion to dismiss any order of protection or order for child support, custody, temporary custody, visitation, or maintenance for hearing and both parties to have an opportunity to be heard; and

(10) Specifies that any system operated by the judiciary which is designed to provide public case information electronically must not post notice of a legal change in name if the petitioner is the victim of a crime which includes an act of domestic violence, the victim of child abuse, or the victim of domestic violence.

ELECTRONIC MONITORING (Sections 544.455 and 557.011)

Currently, a judge may release a person charged with a crime pending trial and place him or her on house arrest with electronic monitoring or allow a person convicted of a crime to serve all or any portion of his or her sentence on house arrest with electronic monitoring if the person can afford the costs of the monitoring. The bill allows a judge to place the person on house arrest with electronic monitoring if the county commission agrees to pay the costs of the monitoring from its general revenue.

DEPARTMENT OF CORRECTIONS PROGRAMS (Sections 559.036 and 559.115)

Currently, the Department of Corrections must provide a report and recommendations for the terms and conditions of probation to the court after 100 days of incarceration if the department determines that an offender is not successful in a program. The court must then release the offender on probation or order the offender to remain incarcerated to serve the sentence imposed. The bill specifies that if the department determines the offender has not successfully completed a 120-day program, the offender must be removed from the program and the court advised of the removal. The department may recommend the terms and conditions of probation. The court has the power to grant probation or order execution of the offender's sentence. The court must consider other authorized dispositions if the court is advised that an offender is not eligible for placement in a 120-day program. Except when an offender has been found to be a predatory sexual offender, the court must request the department to conduct a sexual offender assessment if the defendant has pled guilty or been found guilty of a class B sexual abuse felony. The bill repeals a provision

requiring the court to request certain offenders be placed in the sexual offender assessment unit of the department and requires the department to provide to the court a report on the offender and may recommend the terms and conditions of an offender's probation. The sexual offender assessment must not be considered a 120-day program. The bill specifies the process for granting probation to an offender who has completed the assessment.

RESTITUTION (Sections 559.100, 559.105, and 570.120)

The bill requires restitution to be paid through the office of the prosecuting or circuit attorney. These provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the 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.

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. Any restitution collected from a person found guilty of passing a bad check must also be deposited into the fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering in the first degree involving an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without the owner's consent or stealing a motor vehicle, watercraft, or aircraft may be ordered by the court to make restitution to the victim. The bill allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense as a condition of probation or parole. The list of allowable expenses for restitution is revised to 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 bill 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.

POSSESSION OF CHILD PORNOGRAPHY (Section 573.037)

Currently, a person commits the crime of possession of child pornography, a class C felony, if he or she possesses any child pornography or obscene material portraying what appears to be a minor less than 18 years of age. The bill specifies that the offense of possession of child pornography is a class C felony if the person possesses one still image of child pornography or one obscene still image.

Currently, the possession of child pornography is a class B felony if the person possesses more than 20 still images or one video of child pornography or has previously pleaded or been found guilty of the offense. The bill also makes it a class B felony to possess more than 20 obscene still images or one obscene video.

The bill specifies that a person who has committed the offense of possession of child pornography is subject to separate punishments for each item of child pornography or obscene material he or she possesses.

FORENSIC EXAMINATIONS OF CHILDREN (Section 595.220)

The Department of Public Safety must establish rules for reimbursing the costs of forensic examinations for children younger than 14 years of age, including establishing conditions and definitions for emergency and non-emergency forensic examinations and may, by rule, establish additional qualifications for appropriate medical providers performing non-emergency forensic examinations for children younger than 14 years of age. The department must provide reimbursement regardless of whether or not the findings indicate that the child was abused.

INDIGENT DEFENDANTS (Sections 600.011 and 600.040 - 600.064)

The bill redefines "assistant public defenders," "deputy directors," "deputy district defenders," "district defenders," and "division directors" to reflect the current administrative structure of the Public Defender System and specifies that the deputy director exercises the duties of the director on a temporary basis only, when the director is absent or has resigned, until the

Public Defender Commission appoints a new director.

The director is required to prepare a plan to establish district offices with boundaries that coincide with existing judicial circuits. The director must submit the plan to the Chair of the Judiciary Committee of the House of Representatives and the Chair of the Judiciary Committee of the Senate, with fiscal estimates, by December 31, 2014. The plan must be implemented by December 31, 2018.

Currently, an indigent person is eligible for public defender services when detained or charged with a misdemeanor that will likely result in confinement. The bill specifies that a person is only eligible when the prosecuting attorney has requested a jail sentence. An indigent defendant charged with a violation of probation is only eligible for representation when it has been determined by a judge that the appointment of counsel is necessary to protect the person's due process rights.

Notwithstanding the rulemaking authority of the Director of the State Public Defender System and the Public Defender Commission, neither the director nor the commission may limit the availability of a district office or a public defender to accept cases based on a determination that the office has exceeded a caseload standard. The director, commission, any division director, district defender, deputy district defender, or assistant public defender may not refuse to provide the required representation without prior approval from a court of competent jurisdiction.

A district defender is authorized to file a motion to request a conference to discuss caseload issues involving an individual public defender or defenders, but not the entire office, with the presiding judge of a circuit court served by the office. The circuit clerk must provide a copy of the motion to the prosecuting attorney who serves the circuit court. If the motion is approved, a date for the conference must be set within 30 days of the filing of the motion, and notice of the date must be sent to the district defender and the prosecuting attorney. Within 30 days of the conference, the judge must issue an order granting or denying relief. In order to grant relief, the judge must find that the public defender or defenders will be unable to provide effective assistance of counsel due to caseload issues.

In the order, the judge may appoint private counsel to represent any eligible defendant; investigate the financial status of any eligible defendant; determine, with the express concurrence of the prosecuting attorney, whether any cases can be disposed of without the imposition of a jail or prison sentence and allow those cases to proceed without counsel; modify the conditions of release for a

defendant represented by a public defender; place cases on a waiting list for a public defender; and grant continuances.

The prosecuting attorney and district defender have 10 days to appeal the order. The appeal must be expedited by the appellate court in every manner practicable. The commission and the Missouri Supreme Court have the authority to make rules to implement these provisions.

Prior to appointing private counsel to represent an indigent defendant, the court must investigate the defendant's financial status to verify that the defendant does not have the means to obtain counsel; provide each appointed lawyer, upon request, with an evidentiary hearing on the propriety of the appointment; and determine whether the private counsel to be appointed has the necessary experience, education, and expertise in criminal defense to provide effective counsel. A judge is prohibited from requiring a lawyer to advance any amount of personal funds for the cost of defending an indigent defendant.

If an employee of the General Assembly is appointed to represent an indigent defendant during the time period beginning January 1 and ending June 1 of each year or whenever the General Assembly is in a veto or special session or is holding an out-of-session committee hearing, the judge must postpone the trial and court proceedings to a date that does not fall during these times or appoint a different lawyer who is not an employee of the General Assembly.

Private counsel appointed to represent an indigent defendant may seek payment of litigation expenses from the Public Defender System, but the expenses must not include counsel fees and must be limited to those reasonably necessary expenses approved in advance by the director.

SEXUALLY VIOLENT PREDATORS (Section 632.498)

Currently, a sexually violent predator who has been civilly committed is allowed to petition the court for conditional release over the objections of the Director of the Department of Mental Health. The petition must be served upon the court that committed the person, the department director, the head of the facility housing the offender, and the Attorney General. The bill requires the petition to also be served to the prosecuting attorney of the jurisdiction into which the committed person is to be released.

ELECTRONIC MONITORING INFORMATION (Section 632.505)

The bill specifies that the Department of Corrections must provide, upon request, access by the chief of the local law enforcement

agency to the information gathered by the global positioning system or other technology used to monitor a person who has been granted conditional release from the department upon the determination by a court or jury that he or she is not likely to commit acts of sexual violence if released when the person is being electronically monitored and remains in the county, city, town, or village where the releasing facility is located. The information obtained must be closed and cannot be disclosed to any person outside the agency except upon an order of the court supervising the conditional release.

DEFINITION OF SEXUALLY VIOLENT OFFENSE (Section 1)

The bill specifies that it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "sexually violent offense" to include, but not be limited to, holdings in *Robertson v. State*, 392 S.W.3d 1 (Mo. App. W.D., 2012); *State ex rel. Whitaker v. Satterfield*, 386 S.W.3d 893 (Mo. App. S.D., 2012); and all cases citing, interpreting, applying, or following those cases. These provisions are to be applied retroactively.

The provisions of the bill regarding the prohibition on limiting the availability of a district office or a public defender to accept a case because of exceeding the caseload standard under Section 600.062 and the provisions regarding sexually violent offenses under Section 632.480 contain an emergency clause.