

CCS SS SCS HCS HBs 374 & 434 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

DEPARTMENT OF REVENUE RECORDS (Section 32.056, RSMo)

The bill repeals the requirement that a member of the judiciary notify the Department of Revenue when the member's status changes and he or she and his or her immediate family do not qualify for the exemption from the release of specified personal information contained in the department's motor vehicle or driver registration records and repeals the requirement that the department revise its records in this case.

CRIMINAL RECORDS AND JUSTICE INFORMATION ADVISORY COMMITTEE  
(Section 43.518)

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.

ADMINISTRATIVE HEARING OFFICERS (Section 454.475)

An administrative hearing officer from the Department of Social Services is authorized to correct any administrative child support decision or order, except a proposed administrative modification of a judicial order, containing clerical mistakes arising from oversight or omission at any time upon his or her own initiative or written motion filed by the division or any party to the action if the written notice is mailed to all parties. Any objection or response to the motion must be made in writing and filed with the hearing officer within 15 days from the mailing date. A proposed administrative modification of a judicial order may be corrected by an agency administrative hearing officer prior to the filing of the proposed modification with the court that entered the underlying judicial order or upon the express order of the court that entered the underlying order. A correction cannot be made during the court's review of the administrative decision, order, or proposed order except in response to an express order from the reviewing court.

An administrative order or decision or proposed administrative modification of a judicial order containing errors arising from mistake, surprise, fraud, misrepresentation, excusable neglect, or inadvertence may be corrected prior to being filed with the court if the written motion is mailed to all parties and filed within 60 days of the administrative decision, order, or proposed decision

and order. Any objection or response to the motion must be filed with the hearing officer within 15 days from the mailing date of the motion. Any decision, order, or proposed administrative modification of a judicial order cannot be corrected after 90 days from the mailing of the administrative decision, order, or proposed order or during the court's review of the decision, order, or proposed order except in response to an express order from the reviewing court.

In a case of lack of jurisdiction, the hearing officer may, after notice to the parties, on his or her own initiative or upon the motion of any party or the Family Support Division within the department vacate an administrative decision or order or proposed administrative modification of a judicial order if the hearing officer determines that it is found that the order or decision was issued without subject matter jurisdiction, without personal jurisdiction, or without affording the parties due process and the order, decision, or modification has not been filed with the court. Any objection or response to the motion must be filed with the hearing officer within 15 days from the mailing date of the motion. A decision, order, or proposed administrative modification of a judicial order cannot be vacated during the court's review of the applicable administrative decision, order, or proposed order as authorized under Sections 536.100 to 536.140 except in response to an express order from the reviewing court.

#### JUDICIAL PERSONNEL TRAINING FUND (Section 476.057)

Any moneys received by or on behalf of the State Courts Administrator from fees, grants, or any other sources in connection with providing training to judicial personnel must be deposited into the Judicial Personnel Training Fund, but any moneys collected in connection with a particular purpose must be segregated and not disbursed for any other purpose.

#### JUDICIAL PERSONNEL (Sections 477.405 and 478.320)

The Missouri Supreme Court must, by January 1, 2015, recommend the guidelines appropriate for use by the General Assembly in determining the need for additional judicial personnel or the reallocation of existing personnel and appropriate guidelines for the evaluation of judicial performance. The guidelines must be filed with the chairs of the House and Senate Judiciary committees for distribution to the members of the General Assembly, and the court must annually file a report measuring and assessing judicial performance in the state appellate and circuit courts including a judicial weighted workload model and a clerical weighted workload model.

When the Office of the State Courts Administrator indicates in an annual weighted workload model for three consecutive years or more the need for four or more full-time judicial positions in any judicial circuit having a population of 100,000 or more, there must be one additional associate circuit judge position in the circuit for every four full-time judicial positions needed as indicated in the model. In a multicounty circuit, the additional positions must be apportioned among the counties in the circuit as specified based on population.

#### VETERANS TREATMENT COURTS (Section 478.008)

The bill authorizes a circuit court or a combination of circuit courts to establish a veterans treatment court upon the agreement of the presiding judges of the courts to provide an alternative to dispose of cases which stem from substance abuse or mental illness of current or former military personnel. A court must combine judicial supervision, drug testing, and substance abuse and mental health treatment to participants who have served or are currently serving in the United States armed forces, including members of the reserves, National Guard, or Missouri Guard. Each circuit court must establish conditions for referral of proceedings to the veterans treatment court and enter into a memorandum of understanding with each participating prosecuting attorney that may include other specified parties who are considered necessary. A veterans treatment court may accept participants from other jurisdictions based upon the residence of the participant in the receiving jurisdiction or the unavailability of a veterans treatment court in the jurisdiction where the participant is charged under specified conditions.

A veterans treatment court must make a referral for substance abuse or mental health treatment or a combination of substance abuse and mental health treatment through the federal Department of Defense health care, the Veterans Administration, or a certified community-based treatment program except for good cause found by the court. Any statement made by a participant during treatment or any report prepared by the staff of the treatment program must not be admissible as evidence against the participant in a judicial proceeding. The staff of a veterans treatment court must have access to all records of any state or local government agency relevant to a participant's treatment, but the records and reports are to be treated as closed records and must be maintained by the court in a confidential file not available to the public. The charges, petition, or penalty may be dismissed, reduced, or modified upon the participant's successful completion of a treatment program. Any fees received by a court from a defendant as payment for a program must not be considered court costs, charges, or fines.

#### JUDICIAL CIRCUITS (Sections 478.073 - 478.186 and 487.010)

The General Assembly authorizes the Judicial Conference of the State of Missouri to alter the geographical boundaries and territorial jurisdiction of the judicial circuits by means of a circuit realignment plan as the administration of justice may require subject to state constitutional requirements.

Beginning in 2020, and every 20 years thereafter, the judicial conference must submit, within the first 10 days of the regular legislative session, to the Secretary of the Senate, the Chief Clerk of the House of Representatives, and the chairs of the House and Senate Judiciary committees a circuit realignment plan for the alteration of the geographical boundaries and territorial jurisdiction of the circuit courts subject to the requirements in Article V of the Missouri Constitution. The bill specifies the criteria that must be used when redrawing the judicial boundaries. Once submitted to both chambers, a plan will become effective January 1 of the year following the legislative session in which it is submitted unless a bill realigning the judicial circuits is presented to the Governor and is duly enacted. A realignment plan must not alter the total number of circuits in existence on December 31, 2019, and any plan creating or reducing the number of circuits must be null and void.

The bill repeals the provisions regarding the current geographical boundaries and territorial jurisdiction of the judicial circuits effective December 31, 2019.

These provisions cannot be construed as eliminating any family courts in existence as of December 31, 2019.

#### FAMILY COURT COMMISSIONERS (Section 487.020)

The bill allows the 13th Judicial Circuit in Boone County and Callaway County and the 31st Judicial Circuit Court in Greene County to appoint a family court commissioner whose compensation must be payable by the state without the necessity of reimbursement in substitution of a family court commissioner whose salary is reimbursable. Currently, this provision only applies to the 11th Judicial Circuit in St. Charles County. These provisions must not be construed to allow the appointment of a family court commissioner in the 11th Judicial Circuit in addition to the number of commissioners holding office in the circuit as of January, 1, 1999, or to allow the appointment of a family court commissioner in the 13th Judicial Circuit or the 31st Judicial Circuit in addition to the number of commissioners holding office in those circuits as of January 1, 2013.

#### SURCHARGE IN CIVIL COURT CASES (Section 488.426)

The circuit court in any circuit, except the circuit court in Jackson County or the circuit court in any circuit that reimburses the state for the salaries of family court commissioners under Section 487.020, is allowed to change the surcharge in civil actions to any amount up to \$15. Currently, the only exception allowed is the circuit court in Jackson County.

The circuit court in Jackson County or the circuit court in any circuit that reimburses the state for the salaries of family court commissioners is authorized to change the surcharge in civil actions to any amount up to \$20.

#### COURT REPORTERS (Section 488.2250)

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 copy; a judge may order a transcript of all or any part of the evidence or oral proceedings and the court reporter's fee is 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 bill repeals these provisions and specifies that for all appeal transcripts of testimony given or proceedings in any circuit court, 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 a criminal case where an appeal is taken by the defendant and the court determines that the defendant is unable to pay the costs of the transcript for the purpose of perfecting the appeal, the court reporter must receive a fee of \$2.60 per legal page for the preparation of a paper 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 upon a voucher approved by the court. The cost to prepare all other transcripts of testimony or proceedings must be paid by the party requesting the preparation and production.

#### CHARGES FOR LAW ENFORCEMENT SERVICES (Section 488.5320)

Currently, law enforcement officers are allowed to charge for their services rendered in criminal cases and in all contempt or attachment proceedings except for cases disposed of by a traffic violations bureau. The bill removes the exception and allows them to also charge \$6 for their services in a case in a violations bureau. The charges from cases disposed of by a traffic violations bureau must be distributed so that one-half of the charges collected are deposited into the newly-created MODEX Fund for the operational support and expansion of the Missouri Data Exchange (MODEX) System and one-half of the charges collected are deposited into the inmate security fund of the county or municipal political subdivision where the citation originated. The fund is to be administered by the Peace Officers Standards and Training Commission. If the county or municipal political subdivision has not established an inmate security fund, all of the funds must be deposited into the MODEX Fund.

Sheriffs, county marshals, or other officers located in St. Louis County or the City of St. Louis cannot charge for their services rendered in cases disposed of by a traffic violations bureau.

#### PROPERTY EXEMPT FROM ATTACHMENT (Section 513.430)

Any money or assets payable to a participant or beneficiary from or any interest of any participant or beneficiary in a retirement plan, profit-sharing plan, health savings plan, or similar plan, including an inherited account or plan, that is qualified under Section 401(a), 403(a), 403(b), 408, 408A, or 409 of the Internal Revenue Code of 1986, as amended, must be exempt from attachment and execution in a bankruptcy proceeding whether the participant's or beneficiary's interest arises by inheritance, designation, appointment, or otherwise.

#### LAW SCHOOL CLINICS (Section 514.040)

Currently, when a legal aid society, legal services, or a nonprofit organization funded in whole or substantial part by moneys appropriated by the General Assembly represents an indigent party in a civil case, the court costs and expenses may be waived without the necessity of a motion and court approval if the organization has already determined the party is unable to pay the expenses and has filed the determination with the clerk of the court. The bill adds a law school clinic that has as its primary purpose educating law students through furnishing legal services to indigent persons to the list of organizations that may waive court expenses without filing a motion with the court.

#### 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 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 the 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 provide recommendations for 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.

#### 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 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.

#### LEGISLATIVE INTENT (Section 1)

The bill specifies that it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning 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. It is the intent of the legislature to apply these provisions retroactively.

The repeal of the provisions of the bill regarding the current geographical boundaries and territorial jurisdiction of the judicial circuits become effective December 31, 2020.