

HCS SCS SB 340 -- JUDICIAL PROCEEDINGS

SPONSOR: Pearce (MCGaugh)

COMMITTEE ACTIONS: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 10 to 2. Voted "Do Pass with a HCS" by the Select Committee on Judiciary by a vote of 6 to 2.

This bill changes a variety of sections of law related to judicial proceedings.

STATE LEGAL EXPENSE FUND (Section 105.716, RSMo)

The bill specifies that when the legal counsel of a public higher education institution conducts the investigation, defense, negotiation, or compromise of a claim covered by the State Legal Expense Fund, the Attorney General retains exclusive discretion regarding the settlement of the claim, and payments for any claim must not be made from the fund without the approval of the Attorney General. When the Attorney General does not approve a settlement offer recommended for acceptance by a public higher education institution, the Attorney General may assume all responsibility of the investigation, defense, negotiation, and compromise of the claim at the request of the public higher education institution.

REPORTING REQUIREMENTS FOR LONG TERM CARE FACILITIES (Section 198.070)

This bill requires that in the event of a suspected sexual assault of the resident, specified mandated reporters must also report to local law enforcement under the procedures of the federal Elder Justice Act of 2009.

CRIMINAL ACTS (Sections 217.360, 221.111, 311.310, 565.225, 566.210 - 566.213, 570.010, 570.030 and 595.030)

The bill prohibits two-way telecommunications devices and their component parts from jails and correctional facilities. This bill exempts a law enforcement officer lawfully engaged in his or her duties or any individual who is authorized to use a two-way telecommunications device in the facility.

This bill increases the offense for knowingly allowing an individual under the age of 21 to possess intoxicants from a class B misdemeanor to a class A misdemeanor. Any subsequent violation is increased to a class E felony. This provision becomes effective January 1, 2017.

The bill adds the act of knowingly accessing, or attempting to access, the address of a participant of the address confidentiality program administered by the Secretary of State to the elements of aggravated stalking. The bill provides that beginning January 1, 2017, knowingly accessing, or attempting to access, the address of a participant of the address confidentiality program to the elements of first degree stalking.

This bill also adds advertising a child for the purpose of participating in a commercial sex act, a sexual performance, or the production of a sexually explicit material to the list of conduct which constitutes sexual trafficking of a child.

The bill specifies that the physical theft or attempted physical theft of property owned by or in the custody of a financial institution in order to deprive the owner or custodian of the property is a class B Felony.

The bill also reinserts a provision of current law allowing a judge to order a person to use continuous alcohol monitoring as a condition of probation for offenses of driving while intoxicated and driving with excessive blood alcohol content. This provision was repealed in the Revised Code. A definition of "continuous alcohol monitoring" was also reinserted.

The bill raises the amount that the Crime Victim's Compensation Fund can pay out to eligible victims to \$400 per week for loss of employment and for injury or death. Additionally, the bill provides that the Department of Public Safety may negotiate directly with providers of medical care and other services on behalf of the victim with respect to the costs of the medical or services.

#### ANIMAL OR LIVESTOCK TRESPASS (Sections 272.030 and 272.230)

The bill specifies that a person commits the offense of animal or livestock trespass if he or she having ownership or custody of an animal knowingly fails to provide adequate control and the animal trespasses onto another person's property or having ownership or custody of livestock knowingly fails to provide adequate control of the livestock for a period of 12 hours or more and the livestock trespasses onto another person's property. The bill removes the specified maximum fines that may be charged for the offenses of animal or livestock trespass. The bill repeals a provision specifying that reasonable costs incurred for the care and maintenance of trespassing animals may not be waived.

#### DISSOLUTION OF MARRIAGE (Sections 452.315 and 452.317)

The bill provides that any party, as part of a motion for temporary maintenance or support in a proceeding for dissolution of marriage or legal separation, may request the court to issue an order reallocating or reapportioning between the parties any or all health, dental, or vision insurance costs incurred during the dissolution or separation proceedings.

#### TRUST AND ESTATES (Sections 473.663, 456.950, and 456.1-113)

The bill specifies that a qualified spousal trust can include without limitation a discretionary power to distribute trust property to a person in addition to a settlor. All property at any time held in a qualified spousal trust, without regard to how the property was titled prior to it being so held, must have the same immunity from the claims of a separate creditor of either settlor as if the property were held outside the trust by the settlors as tenants by the entirety, unless otherwise provided in writing by the settlor or settlors who transferred the property to the trust, and the property must be treated for that purpose, including without limitation, federal and state bankruptcy laws, as tenants by entirety property. Property held in a qualified spousal trust must cease to receive immunity from the claims of creditors upon dissolution of marriage of the settlors by the court.

The respective rights of settlors who are married to each other in any property for purposes of a dissolution of the settlors' marriage must not be affected or changed by reason the transfer of that property to, or its subsequent administration as an asset of, a qualified spousal trust during the marriage of the settlors unless both settlors expressly agree otherwise in writing.

A transfer to a qualified spousal trust cannot avoid or defeat the Missouri Uniform Fraudulent Transfer Act and any transfer of an asset to a trustee of a trust, to the trust itself, or to a share of the trust, in a manner that is reasonably calculated to identify the trust or that share of the trust, subjects that asset to the terms of the trust or that share.

Moreover, the bill changes an intersectional reference to the statute which provides the time period that a will must be presented before a person can file a petition in the probate division for the administration of an estate to determine the heirs when administration of the estate has not commenced and no written will of the decedent presented.

#### JUDICIAL CIRCUITS (Section 478.463)

The bill moves the seat of Division 12 of the 16th Judicial Circuit from Kansas City to Independence.

#### BANKRUPTCY PROCEEDINGS (Section 513.430)

The bill allows a debtor that is the beneficiary of a matured life insurance policy, the debtor may exempt from bankruptcy up to \$15,000 of the policy to be used for the expenses of funeral arrangements when the deceased is a parent, child, or spouse of the debtor.

#### ACTIONS AGAINST MENTAL HEALTH WORKERS (Section 516.105)

The bill provides that all actions against mental health professionals for damages for malpractice or negligence related to health care must be brought within two years from the date of occurrence of the act, with exceptions as provided in the bill.

#### LANDLORD TENANT PROCEEDINGS (Sections 534.350, 535.030, 535.110, and 535.160)

Currently, in an unlawful detainer and forcible entry and detainer suit an execution of the judgment may be issued at any time after judgment, but the restoration of the property cannot occur until after the expiration of time allowed to file an appeal. This bill provides that in these types of suits the judge must issue the execution no sooner than 10 days after the judgment. If an appeal is filed and the losing party posts an appeal bond, then the execution of the judgment must be temporarily suspended while the appeal is pending.

The bill moves the provision of law specifying that if it appears to the officer executing the judgment that the defendant is hindering or delaying the seizure of property then rents, profits, damages, and costs may be seized before the expiration of the time allowed for taking an appeal to a new section and repeals the current section of law.

Currently, in rent and possession suits an appeal must stay execution of the judgment if the defendant gives bond within 10 days after it becomes due. This bill specifies that the bond must be deposited with the court within 10 days after an entry of judgment.

#### RESTORATION OF RIGHTS (Sections 571.070 and 571.073)

The bill provides an avenue for an individual who is otherwise prohibited from possessing a firearm due to a felony conviction to have their right to possess a firearm reinstated. The bill provides a procedure to effectuate this process in court. If the court finds that 10 years have passed since the petitioner was

discharged from confinement, parole, or probation, and has not subsequently been arrested, the petitioner has not been found guilty at any other time of a felony, the petitioner is not the respondent of an ex parte order for protection, the petitioner has not been found guilty of a dangerous felony, the petitioner is not a sexual offender, the petitioner is not violent, and he or she is not a present threat to public safety, then the court must grant the petition.

#### PUBLIC DEFENDERS (Sections 600.042 - 600.101)

Currently, the Director of the Missouri State Public Defender System may delegate the legal representation of any individual to any licensed attorney. The bill specifies that the director may delegate the legal representation of people who are eligible for representation by the Public Defender System. Currently, unexpended funds of up to \$150,000 are to remain in the Legal Defense and Defender Fund at the end of the fiscal year. The bill removes the cap, so all unexpended money remains in the fund.

The bill extends the deadline by which the director must implement a plan to establish district offices that align with judicial circuit boundaries by December 31, 2021.

This bill repeals a provision requiring the Commission on Judicial Resources to report to certain Senate and House committees regarding office space for public defenders.

**PROPONENTS:** Supporters say that this issue was discovered in statute by a judge. This fix will correct an incorrect reference in the law.

Testifying for the bill was Senator Pearce.

**OPPONENTS:** There was no opposition voiced to the committee.