

SECOND REGULAR SESSION

SENATE BILL NO. 678

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNEIDER.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3007S.011

AN ACT

To repeal sections 56.085, 479.150 and 550.120, RSMo 1994, and sections 43.503, 67.133, 303.041, 452.556, 455.040, 455.050, 455.205, 482.330, 483.500, 514.440, 534.070 and 610.105, RSMo Supp. 1999, relating to court procedures, and to enact in lieu thereof fifteen new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 56.085, 479.150 and 550.120, RSMo 1994, and sections 43.503, 67.133, 303.041, 452.556, 455.040, 455.050, 455.205, 482.330, 483.500, 514.440, 534.070 and 610.105, RSMo Supp. 1999, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 43.503, 56.085, 67.133, 303.041, 452.556, 455.040, 455.050, 455.205, 479.150, 482.330, 483.500, 514.440, 534.070, 550.120 and 610.105, to read as follows:

43.503. 1. For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the department of corrections, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall submit certain criminal arrest, charge, and disposition information to the central repository for filing without undue delay in the form and manner required by sections 43.500 to 43.530.

2. All law enforcement agencies making misdemeanor and felony arrests as determined by section 43.506 shall furnish without undue delay, to the central repository, fingerprints, charges, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied by the highway patrol. All such agencies shall also notify the central repository of all decisions not to refer such arrests for prosecution. An agency making such arrests may enter

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

into arrangements with other law enforcement agencies for the purpose of furnishing without undue delay such fingerprints, charges, and descriptions to the central repository upon its behalf. In instances where an individual less than seventeen years of age is taken into custody for an offense which would be considered a felony if committed by an adult, the arresting officer shall take one set of fingerprints for the central repository and may take another set for inclusion in a local or regional automated fingerprint identification system. These fingerprints shall be taken on fingerprint cards which are plainly marked "juvenile card" and shall be provided by the central repository. The fingerprint cards shall be so constructed that only the fingerprints, unique identifying number, and the court of jurisdiction are made available to the central or local repository. The remainder of the card which bears the individual's identification and the duplicate unique number shall be provided to the court of jurisdiction. The appropriate portion of the juvenile fingerprint card shall be forwarded to the central repository and the courts without undue delay. The fingerprint information from the card shall be captured and stored in the automated fingerprint identification system operated by the central repository. The juvenile fingerprint card shall be stored in a secure location, separate from all other fingerprint cards. In the event the fingerprints from this card are found to match latent prints searched in the automated fingerprint identification system, the court of jurisdiction shall be so advised.

3. The prosecuting attorney of each county or the circuit attorney of a city not within a county shall notify the central repository on standard forms supplied by the highway patrol of all charges filed, including all those added subsequent to the filing of a criminal court case, and whether charges were not filed in criminal cases for which the central repository has a record of an arrest. All records forwarded to the central repository by prosecutors or circuit attorneys as required by sections 43.500 to 43.530 shall include the state offense cycle number of the offense, and the originating agency identifier number of the reporting prosecutor, using such numbers as assigned by the highway patrol.

4. The clerk of the courts of each county or city not within a county shall furnish the central repository, on standard forms supplied by the highway patrol, with all final dispositions of criminal cases for which the central repository has a record of an arrest or a record of fingerprints reported pursuant to subsections 6 and 7 of this section. Such information shall include, for each charge:

(1) All judgments of not guilty, acquittals on the ground of mental disease or defect excluding responsibility, judgments or pleas of guilty including the sentence, if any, or probation, if any, pronounced by the court, nolle pros, discharges, releases and dismissals in the trial court;

(2) Court orders filed with the clerk of the courts which reverse a reported conviction or vacate or modify a sentence;

(3) Judgments terminating or revoking a sentence to probation, supervision or conditional release and any resentencing after such revocation; and

(4) The offense cycle number of the offense, and the originating agency identifier number of the reporting court, using such numbers as assigned by the highway patrol.

5. The clerk of the courts of each county or city not within a county shall furnish court judgment and sentence documents and the state offense cycle number of the offense, which result in the commitment or assignment of an offender, to the jurisdiction of the department of corrections or the department of mental health if the person is committed pursuant to chapter 552, RSMo. This information shall be reported to the department of corrections or the department of mental health at the time of commitment or assignment. If the offender was already in the custody of the department of corrections or the department of mental health at the time of such subsequent conviction, the clerk shall furnish notice of such subsequent conviction to the appropriate department by certified mail, return receipt requested, within ten days of such disposition.

6. After the court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be collected, maintained, or disseminated by the central repository, or commits a person to the department of mental health pursuant to chapter 552, RSMo, the [prosecuting attorney or the circuit attorney of a city not within a county shall ask the] court [to] **shall** order a law enforcement agency to fingerprint immediately all persons appearing before the court to be sentenced or committed who have not previously been fingerprinted for the same case. [The court shall order the requested fingerprinting if it determines that any sentenced or committed person has not previously been fingerprinted for the same case.] The law enforcement agency shall submit such fingerprints to the central repository without undue delay.

7. The department of corrections and the department of mental health shall furnish the central repository with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that department's custody for any offenses which are mandated by law to be collected, maintained or disseminated by the central repository. All records forwarded to the central repository by the department as required by sections 43.500 to 43.530 shall include the offense cycle number of the offense, and the originating agency identifier number of the department using such numbers as assigned by the highway patrol.

56.085. In the course of a criminal investigation, the prosecuting or circuit **or associate circuit** attorney may request the circuit judge to issue a subpoena to any witness who may have information for the purpose of oral examination under oath to require the production of books, papers, records, or other material of any evidentiary nature at the office of the prosecuting or circuit attorney requesting the subpoena.

67.133. 1. A fee of ten dollars shall be assessed in all cases in which the defendant is convicted of [violating] **a nonfelony violation of** any provision of chapters 252, 301, 302, 304,

306, 307 and 390, RSMo, and any infraction otherwise provided by law, twenty-five dollars in all misdemeanor cases otherwise provided by law, and seventy-five dollars in all felony cases, in criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, except that no such fees shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. All fees collected under the provisions of this section shall be collected and disbursed in the manner provided by sections 488.010 to 488.020, RSMo, and payable to the county treasurer who shall deposit those funds in the county treasury.

2. Counties shall be entitled to a judgment in the amount of twenty-five percent of all sums collected on recognizances given to the state in criminal cases, which are or may become forfeited, if not more than five hundred dollars, and fifteen percent of all sums over five hundred dollars, to be paid out of the amount collected.

303.041. 1. If the director determines that as a result of a verification sample or accident report that the owner of a motor vehicle has not maintained financial responsibility, or if the director determines as a result of an order of [court] supervision that the operator of a motor vehicle has not maintained the financial responsibility as required in this chapter, the director shall thirty-three days after mailing notice, suspend the driving privilege of the operator and/or the registration of the vehicle failing to meet such requirement. The notice of suspension shall be mailed to the person at the last known address shown on the department's records. The notice of suspension is deemed received three days after mailing. The notice of suspension shall clearly specify the reason and statutory grounds for the suspension and the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made. If the request for a hearing is received by the department prior to the effective date of the suspension, the effective date of the suspension will be stayed until a final order is issued following the hearing.

2. Neither the fact that subsequent to the date of verification or conviction, the owner acquired the required liability insurance policy nor the fact that the owner terminated ownership of the motor vehicle, shall have any bearing upon the director's decision to suspend. Until it is terminated, the suspension shall remain in force after the registration is renewed or a new registration is acquired for the motor vehicle. The suspension also shall apply to any motor vehicle to which the owner transfers the registration. Effective January 1, 2000, the department shall not extend any suspension for failure to pay a delinquent late surrender fee pursuant to this subsection.

452.556. 1. The state courts administrator shall create a handbook or be responsible for the approval of a handbook outlining the following:

- (1) What is included in a parenting plan;
- (2) The benefits of the parties agreeing to a parenting plan which outlines education,

custody and cooperation between parents;

(3) The benefits of alternative dispute resolution;

(4) The pro se family access motion for enforcement of custody or temporary physical custody;

(5) The underlying assumptions for supreme court rules relating to child support; and

(6) A party's duties and responsibilities pursuant to section 452.377, including the possible consequences of not complying with section 452.377. The handbooks shall be distributed to each court and shall be available in an alternative format, including Braille, large print, or electronic or audio format upon request by a person with a disability, as defined by the federal Americans with Disabilities Act.

2. Each court shall mail a copy of the handbook developed pursuant to subsection 1 of this section to each party in a dissolution or legal separation action filed pursuant to section 452.310, or any proceeding in modification thereof, where minor children are involved, **or may provide the petitioner with a copy of the handbook at the time the petition is filed and direct that a copy of the handbook be served along with the petition and summons upon the respondent.**

3. The court shall make the handbook available to interested state agencies and members of the public.

455.040. 1. Not later than fifteen days after the filing of a petition pursuant to sections 455.010 to 455.085 a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of abuse or stalking by a preponderance of the evidence, the court shall issue a full order of protection for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. Upon motion by the petitioner, and after a hearing by the court, the full order of protection may be renewed for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the originally issued full order of protection. If for good cause a hearing cannot be held on the motion to renew the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. Upon motion by the petitioner, and after a hearing by the court, the second full order of protection may be renewed for an additional period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be served upon the respondent as provided

by law or by any sheriff or police officer at least three days prior to such hearing. Such notice shall be served at the earliest time, and service of such notice shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at the respondent's last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted pursuant to sections 455.010 to 455.085 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall enter information contained in the order for purposes of verification within twenty-four hours from the time the order is granted. A notice of expiration or of termination of any order of protection shall be issued to the local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system. **The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.**

455.050. 1. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from abuse or stalking and may include:

(1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner;

(2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:

(a) Jointly owned, leased or rented or jointly occupied by both parties; or

(b) Owned, leased [or], rented **or occupied** by petitioner individually; or

(c) Jointly owned, leased [or], rented **or occupied** by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief pursuant to this section by reason of the absence of a property interest in the dwelling unit; or

(d) Jointly occupied by the petitioner and a person other than respondent; provided that the respondent has no property interest in the dwelling unit.

2. Mutual orders of protection are prohibited unless both parties have properly filed written petitions and proper service has been made in accordance with sections 455.010 to 455.085.

3. When the court has, after a hearing for any full order of protection, issued an order of

protection, it may, in addition:

(1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued;

(2) Establish a visitation schedule that is in the best interests of the child;

(3) Award child support in accordance with supreme court rule 88.01 and chapter 452, RSMo;

(4) Award maintenance to petitioner when petitioner and respondent are lawfully married in accordance with chapter 452, RSMo;

(5) Order respondent to make or to continue to make rent or mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the petitioner or other dependent household members;

(6) Order the respondent to pay the petitioner's rent at a residence other than the one previously shared by the parties if the respondent is found to have a duty to support the petitioner and the petitioner requests alternative housing;

(7) Order that the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys, and other personal effects;

(8) Prohibit the respondent from transferring, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties;

(9) Order the respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior or to participate in a substance abuse treatment program;

(10) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the petitioner by a shelter for victims of domestic violence;

(11) Order the respondent to pay court costs.

4. A verified petition seeking orders for maintenance, support, custody, visitation, payment of rent, payment of monetary compensation, possession of personal property, prohibiting the transfer, encumbrance, or disposal of property, or payment for services of a shelter for victims of domestic violence, shall contain allegations relating to those orders and shall pray for the orders desired.

5. In making an award of custody, the court shall consider all relevant factors including the presumption that the best interests of the child will be served by placing the child in the custody and care of the nonabusive parent, unless there is evidence that both parents have engaged in abusive behavior, in which case the court shall not consider this presumption but may appoint a guardian ad litem or a court-appointed special advocate to represent the children in accordance with chapter 452, RSMo, and shall consider all other factors in accordance with chapter 452, RSMo.

6. The court shall grant to the noncustodial parent rights to visitation with any minor child born to or adopted by the parties, unless the court finds, after hearing, that visitation would endanger the child's physical health, impair the child's emotional development or would otherwise conflict with the best interests of the child, or that no visitation can be arranged which would sufficiently protect the custodial parent from further abuse. The court may appoint a guardian ad litem or court-appointed special advocate to represent the minor child in accordance with chapter 452, RSMo, whenever the custodial parent alleges that visitation with the noncustodial parent will damage the minor child.

7. The court shall make an order requiring the noncustodial party to pay an amount reasonable and necessary for the support of any child to whom the party owes a duty of support when no prior order of support is outstanding and after all relevant factors have been considered, in accordance with Missouri supreme court rule 88.01 and chapter 452, RSMo.

8. The court may grant a maintenance order to a party for a period of time, not to exceed one hundred eighty days. Any maintenance ordered by the court shall be in accordance with chapter 452, RSMo.

455.205. 1. The governing body of any county, or of any city not within a county, by order or ordinance to be effective prior to January 1, [2000] **2001**, may impose a fee upon the issuance of a marriage license and may impose a surcharge upon any civil case filed in the circuit court [under the provisions of section 452.305, RSMo]. The surcharge shall not be charged when [no court costs are otherwise required, and shall not be charged when] costs are waived or are to be paid by the state, county or municipality.

2. The fee imposed upon the issuance of a marriage license shall be five dollars, shall be paid by the person applying for the license, and shall be collected by the recorder of deeds at the time the license is issued. The surcharge imposed upon the filing of a civil action shall be two dollars, shall be paid by the party who filed the petition, and shall be collected and disbursed by the clerk of the court in the manner provided by sections 488.010 to 488.020, RSMo. Such amounts shall be payable to the treasuries of the counties from which such surcharges were paid.

3. At the end of each month, the recorder of deeds shall file a verified report with the county commission of the fees collected pursuant to the provisions of subsection 2 of this section. The report may be consolidated with the monthly report of other fees collected by such officers. Upon the filing of the reports the recorder of deeds shall forthwith pay over to the county treasurer all fees collected pursuant to subsection 2 of this section. The county treasurer shall deposit all such fees upon receipt in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence as provided in sections 455.200 to 455.230.

479.150. 1. In any municipality, whenever a defendant accused of a violation of a municipal ordinance has a right to a trial by jury and demands such trial by jury, except as provided in subsection 2 of this section, the municipal judge shall certify the case for assignment

[in the manner provided in subsection 2 of section 517.520, RSMo].

2. Any municipality requiring by ordinance that the municipal judge be a licensed attorney and which has a population in excess of one hundred thousand persons which is located in a county of the first class not having a charter form of government and which does not adjoin another first class county may elect by passage of an appropriate municipal ordinance to hear jury cases before the municipal court; provided, such jury cases are heard in accordance with the following procedures:

(1) Cases shall be heard with a record being made as required in jury cases before the associate circuit court and the trial shall be conducted and the jury selected in accordance with procedures applicable before circuit courts;

(2) In any case tried with a jury in a municipal court under provisions of this subsection, appeals may be had upon the record to the appropriate state appellate court, and the record for appeal in such cases shall be prepared in accordance with the same rules prescribed by the supreme court for trials on the record before associate circuit courts;

(3) The costs of equipment or stenographic services for jury trials a municipality should elect to hold under this section shall be paid by the municipality, except where the supreme court has by rule provided for reimbursement by the defendant for the cost of transcription, and any person who requests a jury trial shall be responsible for all costs incurred in the securing of a jury if such person thereafter waives his right to a jury trial;

(4) The failure to request a jury trial while the case is pending before the municipal court shall be deemed a waiver of the right to a jury trial and after such jury trial there shall be no right to a trial de novo in circuit court;

(5) If the municipal judge is disqualified, the rules for appointment of another municipal judge of the city to hear such cases shall apply; provided, however, that in the event there is no other municipal judge qualified to hear the case, the case shall be certified for assignment [in the manner provided in subsection 2 of section 517.520, RSMo].

482.330. 1. No claim may be filed or prosecuted in small claims court by a party who:

(1) Is an assignee of the claim; or

(2) Has filed more than eight other claims in the Missouri small claims courts during the current calendar year. If the court finds that a party has filed [one] more [claim] **claims** than [is] **are** permitted by this section, the court [may dismiss the petition with prejudice. If the court finds that a party has filed two more claims than is permitted by this section, the court] shall dismiss [with] **the claim without** prejudice.

2. At the time of filing an action in small claims court, a plaintiff shall sign a statement that he is not the assignee of the claim sued on and that he has not filed more than [ten] **eight** other claims in the Missouri small claims courts during the current calendar year.

3. Nothing in this section shall prohibit the filing or prosecution of a counterclaim growing

out of the same transaction or occurrence.

4. No claim may be filed in a small claims court unless:

(1) At least one defendant is a resident of the county in which the court is located or at least one of the plaintiffs is a resident of the county in which the court is located and at least one defendant may be found in said county; or

(2) The facts giving rise to the cause of action took place within the county in which the court is located.

483.500. 1. [Clerks of the supreme court and court of appeals shall severally be allowed and paid by the] **An** appellant or plaintiff in error **shall pay** court costs in an amount determined pursuant to [section 514.015] **sections 488.010 to 488.020**, RSMo; provided, that nothing herein shall be construed to apply to proceedings when costs are waived or are to be paid by the state, county or municipality.

2. [If the judgment of the supreme court or court of appeals is in favor of the appellant or plaintiff in error, the clerks shall assess the fee provided herein in favor of the appellant or plaintiff in error which may be collected in the manner provided by section 514.460, RSMo.

3. Such clerks] **The clerk of the court in which the notice of appeal is filed** shall collect **and disburse** court costs [for other services in such amounts as are] determined pursuant to [section 514.015] **this section in the manner provided by sections 488.010 to 488.020**, RSMo, **and such court costs shall be payable to the director of revenue for deposit to the general revenue fund.**

514.440. The judges of the circuit court, en banc, in any circuit in this state, by rule of court adopted prior to January 1, 1997, may require any party filing a civil case in the circuit court, at the time of filing the suit, to deposit with the clerk of the court a surcharge in the amount of [not to exceed] fifteen dollars in addition to all other deposits required by law or court rule. Sections 514.440 to 514.460 shall not apply to proceedings when costs are waived or are to be paid by the county or state or any city.

534.070. 1. When complaint to the circuit court of the proper county shall be made in writing, signed by the party aggrieved, his agent or attorney, and sworn to, specifying the lands, tenements or other possessions so forcibly entered and detained, or unlawfully detained, and by whom and when done, it shall be the duty of the [judge hearing such case] **clerk of the court** to issue [his] **a** summons [under his hand,] directed to the sheriff or proper officer of the county, commanding him to summon the person against whom the complaint shall have been made to appear, at a day in such summons to be specified.

2. A court date shall be assigned at the time the summons is issued. The court date shall be for a day certain which is not more than twenty-one business days from the date the summons is issued unless, at the time the case is filed, the plaintiff or plaintiff's attorney consents in writing to a later date.

550.120. 1. In any criminal [cause] **or civil case** in which a change of venue is taken from one county to any other county, [for any of the causes mentioned in existing laws,] and whenever a prisoner shall, for any cause, be confined in the jail of one county, such costs shall be paid by the county in which the **case**, indictment or information was originally instituted **to the county in which the case is actually tried or where the prisoner is confined**. In all cases where fines are imposed upon conviction under such indictments or prosecutions, or penalties or forfeitures of penal bonds in criminal cases, are collected, by civil action or otherwise, payable to the county, such fines, penalties and forfeitures shall be paid into the treasury of the county where such indictment or information was originally found or such prosecution originally instituted, for the benefit of the public school fund of the county.

2. The term "costs" as used in this section means:

(1) All items, services and other matters defined as costs under any other provisions of law relating to criminal **or civil** procedures;

(2) All moneys expended as salaries of persons directly related to the care of **criminal** defendants, security of the court, security of the jury and the room and board thereof, transportation of the jury, security and room and board of witnesses, and the processing of the cause, **paid or** payable out of the county treasury to which venue has been changed;

(3) All expenses of whatever nature incurred by a county as the result of jury selection [under] **and service pursuant to** the provisions of [section 545.485] **chapter 494**, RSMo;

(4) Any other expense directly related to the trial and prosecution of such criminal charge found necessary by the trial judge hearing the case.

610.105. If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated [except that the disposition portion of the record may be accessed and except as provided in section 610.120]. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child- care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.