

UNOFFICIAL

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE BILLS NOS. 614, 696,
906, 530, 912 & 914**

89TH GENERAL ASSEMBLY

1998

L2241.15T

AN ACT

To repeal sections 57.130, 138.430, 196.790, 211.031, 211.331, 426.220, 426.230, 441.500, 441.510, 441.530, 441.550, 441.570, 441.580, 441.590, 441.610, 441.620, 441.630, 441.640, 441.641, 451.100, 476.682, 477.087, 478.265, 478.266, 478.267, 487.090, 491.060, 528.620, 534.070, 534.350, 534.360 and 535.110, RSMo 1994, and sections 56.765, 57.280, 57.290, 82.1025, 105.464, 211.447, 441.520, 478.464, 479.500, 487.020, 487.030, 488.012, 488.015, 506.363, 506.369, 506.372, 506.375, 506.390, 514.040, 534.090, 534.380 and 535.030, RSMo Supp. 1997, and to enact in lieu thereof fifty-eight new sections relating to the judiciary, with an expiration date for a certain section.

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

Section A. Sections 57.130, 138.430, 196.790, 211.031, 211.331, 426.220, 426.230, 441.500,

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

441.510, 441.530, 441.550, 441.570, 441.580, 441.590, 441.610, 441.620, 441.630, 441.640, 441.641, 451.100, 476.682, 477.087, 478.265, 478.266, 478.267, 487.090, 491.060, 528.620, 534.070, 534.350, 534.360 and 535.110, RSMo 1994, and sections 56.765, 57.280, 57.290, 82.1025, 105.464, 211.447, 441.520, 478.464, 479.500, 487.020, 487.030, 488.012, 488.015, 506.363, 506.369, 506.372, 506.375, 506.390, 514.040, 534.090, 534.380 and 535.030, RSMo Supp. 1997, are repealed and fifty-eight new sections enacted in lieu thereof, to be known as sections 56.765, 57.130, 57.280, 57.290, 82.1025, 105.464, 138.430, 196.790, 211.031, 211.331, 211.447, 426.220, 426.230, 441.500, 441.510, 441.520, 441.530, 441.550, 441.570, 441.580, 441.590, 441.610, 441.630, 441.641, 441.643, 451.100, 476.682, 477.087, 478.242, 478.265, 478.266, 478.267, 478.269, 478.464, 479.500, 487.020, 487.030, 487.090, 488.012, 488.015, 491.060, 506.363, 506.369, 506.372, 506.375, 506.390, 514.040, 528.620, 534.070, 534.090, 534.350, 534.360, 534.380, 535.030, 535.110, 600.101, 1 and 2, to read as follows:

56.765. 1. A surcharge of one dollar shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge 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.

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state [treasurer] **of Missouri and remitted to the director of revenue** who shall deposit the amount **collected pursuant to this section** to the credit of the "Missouri Office of Prosecution Services Fund" which is hereby created **in the state treasury**. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760, and no other moneys from either the state's general revenue or any other source except the sources described in section 56.760 shall be used to fund the Missouri office of prosecution services. **The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting from the investment of money in the fund shall be credited to the Missouri office of prosecution services fund.** The Missouri office of prosecution services may collect a registration fee to pay for actual expenses included in sponsoring training conferences. The revenues and expenditures of the Missouri office of prosecution services shall be subject to an annual audit to be performed by the Missouri state auditor. The Missouri office of prosecution services shall also be subject to any other audit authorized and directed by the state auditor.

3. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the county treasurer of each county from which such funds were generated. The county treasurer shall deposit all of such funds into the county treasury in a separate fund to be used solely for the purpose of additional training for circuit and prosecuting attorneys and their

staffs. If the funds collected and deposited by the county are not totally expended annually for the purposes set forth in this subsection, then the unexpended moneys shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year, or at the request of the circuit or prosecuting attorney, with the approval of the county commission or the appropriate governing body of the county or the city of St. Louis, and may be used to pay for expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial, for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

4. There is hereby established in the state treasury the "Missouri Office of Prosecution Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of prosecution services from registration fees, federal and state grants or any other source established in section 56.760 in connection with the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited into the fund.

5. The moneys in the Missouri office of prosecution services revolving fund shall be kept separate and apart from all other moneys in the state treasury. The state treasurer shall administer the fund and shall disburse moneys from the fund to the Missouri office of prosecution services pursuant to appropriations for the purposes set forth in sections 56.750, 56.755 and 56.760.

6. Any unexpended [balance] **balances** remaining in the **Missouri office of prosecution services fund and the Missouri office of prosecution services revolving** fund at each biennium shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to general revenue.

57.130. **1.** The sheriffs of the several counties shall collect and account for all the fines, penalties, forfeitures and other sums of money, by whatever name designated, accruing to the state or any county by virtue of any order, judgment or decree of a court of record, provided that by court rule provision may be made for a court clerk to collect fines, penalties, forfeitures and other sums of money accruing to the state by virtue of any order, judgment or decree of the court.

2. The provisions of this section shall expire and be of no force and effect on and after July 1, 2002.

57.280. **1.** Sheriffs shall receive a charge for service of any summons, writ or other order of court, in connection with any civil case, and making on the same either a return indicating service, a non est return or a nulla bona return, the sum of twenty dollars for each item to be served, except that a sheriff shall receive a charge for service of any subpoena, and making a return on the same, the sum of ten dollars; however, no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality. In addition to such charge, the sheriff shall be entitled to [collect and] receive for each mile actually traveled in serving any summons, writ, subpoena or other order of court, the rate prescribed by the Internal

Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile, provided that such mileage shall not be charged for more than one subpoena or summons or other writ served in the same cause on the same trip. All of such charges shall be [charged and collected] **received** by the sheriff who is requested to perform the service. Except as otherwise provided by law, all charges made pursuant to this section **shall be collected by the court clerk as court costs and** are payable prior to the time the service is rendered; provided that if the amount of such charge cannot be readily determined, then the sheriff shall [collect] **receive** a deposit based upon the likely amount of such charge, and the balance of such charge shall be payable immediately upon ascertainment of the proper amount of said charge. A sheriff may refuse to perform any service in any action or proceeding, other than when court costs are waived as provided by law, until the charge provided by this section is paid. Failure to [collect] **receive** the charge shall not affect the validity of the service.

2. The sheriff shall [collect] **receive** for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, five percent on five hundred dollars and four percent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his agent or attorney. The party at whose application any writ, execution, subpoena or other process has issued from the [supreme] court shall [cause the same to be returned without charge unless the court shall, for special reasons, order the personal attendance of the sheriff, in which case he] **pay the sheriff's costs for the removal, transportation, storage, safekeeping and support of any property to be seized pursuant to legal process before such seizure. The sheriff** shall be allowed for each mile, going and returning from the courthouse of the county in which he resides to the place where the court is held, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile.

3. The sheriff upon the receipt of the charge herein provided for shall pay into the treasury of the county any and all charges [collected under] **received pursuant to** the provisions of this section; however, in any county, any funds, not to exceed fifty thousand dollars in any calendar year, other than as a result of regular budget allocations or land sale proceeds, coming into the possession of the sheriff's office, such as from the sale of recovered evidence, shall be held in a fund established by the county treasurer, which may be expended at the discretion of the sheriff for the furtherance of the sheriff's set duties. Any such funds in excess of fifty thousand dollars, other than regular budget allocations or land sale proceeds, shall be placed to the credit of the general revenue fund of the county. Moneys in the fund shall be used only for the procurement of services and equipment to support the operation of the sheriff's office. **Moneys in the fund established pursuant to this subsection shall not lapse to the county general revenue fund at the end of any county budget or fiscal year.**

57.290. 1. Sheriffs, county marshals or other officers shall be allowed a charge for their services rendered in criminal cases and in all proceedings for contempt or attachment, as required by law, the sum of seventy-five dollars for each felony case or contempt or attachment proceeding, ten dollars for each misdemeanor case, and six dollars for each infraction, excluding cases disposed of by a traffic violations bureau established pursuant to law or supreme court rule. Such charges shall be charged and collected in the manner provided by sections 488.010 to 488.020, RSMo, and shall be payable to the county treasury.

2. The sheriff receiving any charge pursuant to subsection 1 of this section shall reimburse the sheriff of any other county or the city of St. Louis the sum of three dollars for each pleading, writ, summons, order of court or other document served in connection with the case or proceeding by the sheriff of the other county or city, and return made thereof, to the maximum amount of the total charge received pursuant to subsection 1 of this section.

3. In cities and counties having a population of three hundred thousand inhabitants and over, each deputy sheriff, not more than two, shall be allowed for each day during the term of court six dollars, to be paid by the city or county of three hundred thousand inhabitants or over.

4. For the services of taking convicted offenders to the reception and diagnostic center designated by the director of the department of corrections, the sheriff, county marshal or other officers shall receive the sum of eight dollars per day for the time actually and necessarily employed in traveling to and from the reception and diagnostic center, and each guard shall receive the sum of six dollars per day for the same, and the sheriff, county marshal or other officer and guard shall receive the mileage rate prescribed by this section for the distance necessarily traveled in going to and returning from the reception and diagnostic center, the time and distance to be estimated by the most usually traveled route from the place of departure to the reception and diagnostic center; the mileage rate prescribed by this section for each mile traveled shall be allowed to the sheriff to cover all expenses on each convicted offender while being taken to the reception and diagnostic center; and all persons convicted and sentenced to imprisonment in the department of corrections at any term or sitting of the court, shall be taken to the reception and diagnostic center at the same time, unless prevented by sickness or unavoidable accident. In cities having a population of two hundred thousand inhabitants or more, convicted offenders shall be taken to the reception and diagnostic center as often as the sheriff deems necessary. When three or more convicted offenders are being taken to the reception and diagnostic center at one time, a guard may be employed, but no guard shall be employed for a less number of convicted offenders except upon the order, entered of record, of the judge of the court in which the conviction was had, and any additional guards employed by order of the judge shall, in no event, exceed one for every three convicted offenders; and before any claim for taking convicted offenders to the reception and diagnostic center is allowed, the sheriff, or other officer conveying such convicted offender, shall file with the state commissioner of administration an itemized statement of such sheriff's account,

in which the sheriff shall give the name of each convicted offender conveyed and the name of each guard actually employed, with the number of miles necessarily traveled and the number of days required, which in no case shall exceed three days, and which account shall be signed and sworn to by such officer and accompanied by a certificate from the chief administrative officer or such officer's designee of the reception and diagnostic center, that such convicted offenders have been delivered at the reception and diagnostic center and were accompanied by each of the officers and guards named in the account.

5. The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed, or who may remove a prisoner from one county to another for any cause authorized by law, or who shall have in custody or under such sheriff's or officer's charge any person undergoing an examination preparatory to such person's commitment more than one day for transporting, safekeeping and maintaining any such person, shall be allowed by the court having cognizance of the offense, three dollars and fifty cents per day for every day such sheriff or officer may have such person under such sheriff's or officer's charge, when the number of days shall exceed one, and the mileage rate prescribed by this section for every mile necessarily traveled in going to and returning from one county to another, and the guard employed, who shall in no event exceed the number allowed the sheriff, marshal or other officer in transporting convicted offenders to the reception and diagnostic center, shall be allowed the same compensation as the officer. Three dollars and fifty cents per day, mileage same as officer, shall be allowed for board and all other expenses of each prisoner. No compensation shall be allowed under this section for taking the prisoner or prisoners from one place to another in the same county, excepting in counties which have two or more courts with general criminal jurisdiction. In such counties the sheriff shall have the same fees for conveying prisoners from the jail to place of trial as are allowed for conveying prisoners in like cases from one county to another, and the expenses incurred in transporting prisoners from one county to another, occasioned by the insufficiency of the county jail or threatened mob violence, shall be paid by the county in which such case may have originated; provided that the court is held at a place more than five miles from the jail; and no court shall allow the expense of a guard, although it may have actually been incurred, unless from the evidence of disinterested persons it shall be satisfied that a guard was necessary; provided, that when the place of conviction is remote from a railroad, upon which a convicted offender may be transported to the reception and diagnostic center, the court before which such convicted offender is sentenced may, for good cause shown, allow one guard for every two convicted offenders, such guard to receive three dollars a day and the mileage rate prescribed by this section for every mile necessarily traveled in going to and returning from the nearest depot on said railroad to the place where such convicted offender was sentenced.

6. The charges provided in subsection 1 of this section shall be taxed as other costs in

criminal procedure immediately after conviction of any defendant in any criminal procedure. The clerk shall tax all the costs in the case against such defendant, which shall be collected and disbursed as provided by sections 488.010 to 488.020, RSMo; provided, that no such charge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court; provided further, that all costs, incident to the issuing and serving of writs of scire facias and of writs of fieri facias, and of attachments for witnesses of defendant, shall in no case be paid by the state, but such costs incurred under writs of fieri facias and scire facias shall be paid by the defendant and such defendant's sureties, and costs for attachments for witnesses shall be paid by such witnesses.

7. Mileage shall be reimbursed to sheriffs, county marshals and guards **for all services rendered** pursuant to this section at the rate prescribed by the Internal Revenue Service for allowable expenses for motor vehicle use expressed as an amount per mile.

82.1025. In **any county of the first classification, in** any city not within a county and in any city with at least three hundred fifty thousand inhabitants which is located in more than one county, a parcel of property is a nuisance, if such property adversely affects the property values of a neighborhood because the owner of such property allows the property to be in a deteriorated condition, due to neglect, **violation of a county or municipal building code or standard**, abandonment, failure to repair after a fire, flood or some other damage to the property or because the owner or resident of the property allows clutter on the property such as abandoned automobiles, appliances or similar objects. Any property owner, who owns property within a reasonable distance to a parcel of property which is alleged to be a nuisance may bring a nuisance action against the offending property owner for the amount of damage created by such property to the value of the petitioner's property, within the jurisdictional limits, **and court costs** in small claims court, provided that the owner of the property which is alleged to be a nuisance has received notification of the alleged nuisance and has had a reasonable opportunity, not to exceed forty-five days, to correct the alleged nuisance. This section is not intended to abrogate, and shall not be construed as abrogating, any remedy available under the common law of private nuisance.

105.464. 1. No person serving in a judicial or quasi-judicial capacity shall participate in such capacity in any proceeding in which:

(1) The person knows that a party is any of the following: the person or the person's great-grandparent, grandparent, parent, stepparent, guardian, foster parent, spouse, former spouse, child, stepchild, foster child, ward, niece, nephew, brother, sister, uncle, aunt, or cousin, or any firm or corporation in which the person has an ownership interest, or any trust in which the person has any legal, equitable or beneficial interest;

(2) The person knows the subject matter is such that the person may receive a direct, or indirect **as defined by the canons of judicial conduct**, financial gain from any potential result of the proceeding, except that no provision in this subsection shall be construed to prohibit the

person from participating in any proceeding by reason of the fact that the state, or any agency of the state, or any agency of a political subdivision thereof, is a party.

2. No provision in the section shall be construed to prohibit him from entering an order disqualifying himself or herself or transferring the matter to another court, body, or person for further proceedings.

138.430. 1. Every owner of real property or tangible personal property shall have the right to appeal from the local boards of equalization to the state tax commission under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property. The commission shall investigate all such appeals and shall correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious. Any person aggrieved by the decision of the commission may seek review as provided in chapter 536, RSMo.

2. In order to investigate such appeals, the commission may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The commission may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the commission, or based solely upon evidence presented by the parties to the commission.

3. Every owner of real property or tangible personal property shall have the right to appeal to the circuit court of the county in which the collector maintains his office, from the decision of the local board of equalization not later than thirty days after the final decision of the board of equalization concerning all questions and disputes involving the exclusion or exemption of such property from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state, or of the taxable situs of such property. The appeal shall be [as a trial de novo] **conducted** in the manner prescribed [for nonjury civil proceedings] **by section 536.150, RSMo.**

4. Upon the timely filing of an appeal as provided in this section, the state tax commission or the clerk of the circuit court, as applicable, shall send to the county collector to whom the taxes on the property involved would be due, a notice that an appeal has been filed, which notice shall contain the name and address of the taxpayer filing the appeal.

5. If the circuit court, after review of the appeal, finds that the appeal is not a proper subject for the appeal to the circuit court as provided in subsection 3 of this section, it shall transfer the appeal to the state tax commission for consideration.

196.790. Every person, firm or corporation who shall violate any of the provisions of

sections 196.755 to 196.765, 196.780 and 196.785, shall forfeit and pay to the state of Missouri, for the use of the school fund for every such violation, the sum of fifty dollars and costs of suit, to be recovered by civil action **in the circuit court** in the name of the state of Missouri on the relation of any person having knowledge of the facts before [an associate circuit judge, or circuit] a judge assigned to hear the cause[, of] **in** the city or county where such violation occurs, subject to the right of [an application for trial de novo or] appeal[, as the case may be,] as in other civil cases; and it is further enacted that every person, firm or corporation who shall violate the provisions of sections 196.750 to 196.810, in addition to the civil liability to the state of Missouri [herein] provided **in this section**, shall be deemed guilty of a misdemeanor, and shall for the first offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment not exceeding thirty days, and for each subsequent offense, by a fine of not less than two hundred and fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:

(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted under the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support; or

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130, RSMo;

(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his **or her** parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his **or her** home without sufficient cause,

permission, or justification; or

(d) The behavior or associations of the child are otherwise injurious to his welfare or to the welfare of others; or

(e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, **or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;**

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, **or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;**

(4) For the adoption of a person;

(5) For the commitment of a child or person seventeen years of age to the guardianship of the department of social services as provided by law.

2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person seventeen years of age who resides in a county of this state shall be made as follows:

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child or person seventeen years of age may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's residence or the residence of the person seventeen years of age for future action;

(2) Upon the motion of any party or on its own motion prior to final disposition on the pending matter, the court in which a proceeding is commenced may transfer the proceeding of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age, or the county in which the offense under subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

(3) Upon motion of any party or on its own motion, the court in which jurisdiction has been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age for further action with the prior consent of

the receiving court;

(4) Upon motion of any party or upon its own motion at any time following a judgment of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause may place the child or person seventeen years of age under the supervision of another juvenile court within or without the state pursuant to section 210.570, RSMo, with the consent of the receiving court;

(5) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or person seventeen years of age, certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the transfer.

3. In any proceeding involving any child or person seventeen years of age taken into custody in a county other than the county of the child's residence or the residence of a person seventeen years of age, the juvenile court of the county of the child's residence or the residence of a person seventeen years of age shall be notified of such taking into custody within seventy-two hours.

211.331. 1. In each county of the first and second [classes] **classifications** and in the city of St. Louis, it is the duty of the county commission, or, where there is no county commission, such other authorized body, to provide a place of detention for children coming within the provisions of this chapter. It is also the duty of the county commission or other authorized body to provide offices for the personnel of the juvenile court.

2. The place of detention shall be so located and arranged that the child being detained does not come in contact, at any time or in any manner, with adults convicted or under arrest, and the care of children in detention shall approximate as closely as possible the care of children in good homes.

3. The place of detention shall be in charge of a superintendent. The judge of the juvenile court **or, if provided by local rule, the family court administrator** shall appoint and fix the compensation and maintenance of the superintendent and of any assistants or other personnel required to operate the detention facility. Such compensation and maintenance are payable out of funds of the county.

4. The county commission or other governing body of the county is authorized to lease or to acquire by purchase, gift or devise land for such purpose, and to erect buildings thereon and to provide funds to equip and maintain the same for the subsistence and education of the children placed therein.

211.447. 1. Any information that could justify the filing of a petition to terminate parental rights may be referred to the juvenile officer by any person. The juvenile officer shall make a preliminary inquiry and may file a petition to terminate parental rights. If it does not appear to the juvenile officer that a petition should be filed, such officer shall so notify the informant in

writing within thirty days of the referral. Such notification shall include the reasons that the petition will not be filed. Thereupon, the informant may bring the matter directly to the attention of the judge of the juvenile court by presenting the information in writing, and if it appears to the judge that the information could justify the filing of a petition, the judge may order the juvenile officer to take further action, including making a further preliminary inquiry or filing a petition.

2. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer, or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interests of the child and when it appears by clear, cogent and convincing evidence that one or more of the following grounds for termination exist:

(1) The child has been abandoned. The court shall find that the child has been abandoned if, for a period of six months or longer for a child over one year of age or a period of sixty days or longer for a child under one year of age at the time of the filing of the petition:

(a) The parent has left the child under such circumstances that the identity of the child was unknown and could not be ascertained, despite diligent searching, and the parent has not come forward to claim the child; or

(b) The parent has, without good cause, left the child without any provision for parental support and without making arrangements to visit or communicate with the child, although able to do so;

(2) The child has been abused or neglected. In determining whether to terminate parental rights [under] **pursuant to** this subdivision, the court shall consider and make findings on the following conditions or acts of the parent:

(a) A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;

(b) Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control of the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control;

(c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family by the parent, including an act of incest, or by another under circumstances that indicate that the parent knew or should have known that such acts were being committed toward the child or any child in the family; or

(d) Repeated or continuous failure by the parent, although physically or financially able, to provide the child with adequate food, clothing, shelter, or education as defined by law, or other care and control necessary for the child's physical, mental, or emotional health and development;

(3) The child has been under the jurisdiction of the juvenile court for a period of one year, and the court finds that the conditions which led to the assumption of jurisdiction still persist, or conditions of a potentially harmful nature continue to exist, that there is little likelihood that

those conditions will be remedied at an early date so that the child can be returned to the parent in the near future, or the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home. In determining whether to terminate parental rights [under] **pursuant to** this subdivision, the court shall consider and make findings on the following:

(a) The terms of a social service plan entered into by the parent and the division and the extent to which the parties have made progress in complying with those terms;

(b) The success or failure of the efforts of the juvenile officer, the division or other agency to aid the parent on a continuing basis in adjusting [his] **the parent's** circumstances or conduct to provide a proper home for the child;

(c) A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control;

(d) Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control over the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control; or

(4) The parent has been found guilty or pled guilty to a felony violation of chapter 566, RSMo, when the child or any child in the family was a victim, or a violation of section 568.020, RSMo, when the child or any child in the family was a victim. As used in this subdivision, a child means any person who was under eighteen years of age at the time of the crime and who resided with such parent or was related within the third degree of consanguinity or affinity to such parent; or

(5) The child was conceived and born as a result of an act of forcible rape. When the biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such a plea or conviction shall be conclusive evidence supporting the termination of the biological father's parental rights; or

(6) The parent is unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse, including but not limited to, abuses as defined in section 455.010, RSMo, child abuse or drug abuse before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed that a parent is unfit to be a party to the parent-child relationship upon a showing that within a three-year period immediately prior to the [termination adjudication] **the filing of a petition for termination of parental rights**, the parent's parental rights to one or more other children were involuntarily terminated [under] **pursuant to** subdivisions (1), (2), (3) or (4) of this section or similar laws of other states.

3. When considering whether to terminate the parent-child relationship pursuant to subdivision (1), (2), (3), (4) or (5) of subsection 2 of this section, the court shall evaluate and make findings on the following factors, when appropriate and applicable to the case:

- (1) The emotional ties to the birth parent;
- (2) The extent to which the parent has maintained regular visitation or other contact with the child;
- (3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;
- (4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;
- (5) The parent's disinterest in or lack of commitment to the child;
- (6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;
- (7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.

4. The court may attach little or no weight to infrequent visitations, communications[,] or contributions. It is irrelevant in a termination proceeding that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation.

5. In actions for adoption [under] **pursuant to** chapter 453, RSMo, the court may hear and determine the issues raised in a petition for adoption containing a prayer for termination of parental rights filed with the same effect as a petition permitted [under] **pursuant to** subsection 2 of this section.

426.220. All appeals allowed by virtue of section 426.210 shall be taken and made by the appellant, or someone for him, making and filing an affidavit that the appeal is not taken for vexation or delay, but because affiant believes that appellant is prejudiced by the decision appealed from, and by giving bond to the state of Missouri in such sum as the assignee may require, and with such sureties as he may approve, conditioned that appellant will prosecute his appeal with due diligence, and pay all cost thereon awarded against appellant. If judgment for costs be rendered against appellant, it shall be against him and his sureties on the bond. [In all other respects appeals shall be taken, certified and proceeded with in the same manner as applications for a trial de novo from judgments of associate circuit judges.]

426.230. Upon such appeal being allowed and certified, as in section 426.220 is required, the court shall become possessed of the case, and shall proceed to hear and determine the same, in the same manner as if such case was pending before a circuit judge [on an application for trial de novo from the judgment of an associate circuit judge]; and appeals may be taken from the

judgment of the court, in the same manner as appeals are now allowed by law from judgments of circuit judges in this state.

441.500. As used in sections 441.500 to [441.640] **441.643**, the following terms mean:

(1) **"Abatement", the removal or correction, including demolition, of any condition at a property that violates the provisions of any duly enacted building or housing code, as well as the making of such other improvements or corrections as are needed to effect the rehabilitation of the property or structure, including the closing or physical securing of the structure;**

(2) "Agent", a person authorized by an owner to act for him;

[(2)] (3) "Code enforcement agency", the official, agency, or board that has been delegated the responsibility for enforcing the housing code by the governing body;

[(3)] (4) "Community", any "county" or "municipality";

[(4)] (5) "County", any county in the state;

[(5)] (6) "Dwelling unit", premises or part thereof occupied, used, or held out for use and occupancy as a place of abode for human beings, whether occupied or vacant;

[(6)] (7) "Governing body", the board, body or persons in which the powers of a community are vested;

[(7)] (8) "Housing code", a local building, fire, health, property maintenance, nuisance or other ordinance which contains standards regulating the condition or maintenance of residential buildings;

(9) **"Local housing corporation", a not for profit corporation organized pursuant to the laws of the state of Missouri for the purpose of promoting housing development and conservation within a specified area of a municipality or an unincorporated area;**

[(8)] (10) "Municipality", any incorporated city, town, or village;

[(9)] (11) "Notice of deficiency", a notice or other order issued by the code enforcement agency and requiring the elimination or removal of deficiencies found to exist under the housing code;

[(10)] (12) "Nuisance", a violation of provisions of the housing code applying to the maintenance of the [building or dwelling unit which if not promptly corrected will constitute a fire hazard or a substantial threat to the life, health or safety of occupants thereof or to the public] **buildings or dwellings which the code official in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare;**

[(11)] (13) "Occupant", any person occupying a dwelling unit as his **or her** place of "residence", whether or not that person is occupying the dwelling unit as a tenant from month to month or under a written lease, undertaking or other agreement;

[(12)] (14) "Owner", the record owner or owners, and the beneficial owner or owners when

other than the record owner, of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, personal representative, trustee, lessee, agent, or any other person in control of a dwelling unit;

[(13)] (15) "Person", any individual, corporation, association, partnership, or other entity.

[441.510. A civil action may be maintained under the provisions of sections 441.500 to 441.640 in the circuit court for the circuit where the property is located by the following persons or entities on the ground that a nuisance exists with respect to the dwelling unit or the building or premises of which the dwelling unit is a part:

(1) The municipality acting through the code enforcement agency;

(2) Occupants of one-third or more of the dwelling units within a building with respect to that building;

(3) Any not for profit organization validly organized pursuant to law and whose purpose includes the provision or enhancement of housing opportunities in its community;

or

(4) Any owner or tenant of real property within twelve hundred feet in any direction of the property in question who shows that his property or person is substantially affected by the alleged nuisance. An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged nuisance in order to maintain a civil action pursuant to the provisions of sections 441.500 to 441.640.]

441.510. 1. If any building or dwelling is found to be in violation of building or housing codes which a party with standing to sue pursuant to subsection 8 of this section, the county or municipality in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare, the party with standing to sue pursuant to subsection 8 of this section, the county or municipality, in addition to any other remedies available to it, may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

2. At least sixty days prior to the filing of an application for appointment of a receiver pursuant to sections 441.500 to 441.643, the party with standing to sue pursuant to subsection 8 of this section, the county or municipality shall give written notice by regular mail to all interested parties of its intent to file the application and information relative to:

(1) The identity of the property;

(2) The violations of the building or housing codes giving rise to the application for the receiver;

(3) The name, address and telephone number of the person or department where additional information can be obtained concerning violations and their remedy; and

(4) The party with standing to sue pursuant to subsection 8 of this section, the

county or municipality which may seek the appointment of a receiver pursuant to sections 441.500 to 441.643 unless action is taken within sixty days by an interested party.

3. A party with standing to sue pursuant to subsection 8 of this section, a county or municipality may not apply for the appointment of a receiver pursuant to sections 441.500 to 441.643 if an interested party has commenced and is then prosecuting in a timely fashion an action or other judicial or nonjudicial proceeding to foreclose a security interest on the property, or to obtain specific performance of a land sale contract, or to forfeit a purchaser's interest under a land sale contract.

4. Notice of the application for the appointment of a receiver shall be served on all interested parties.

5. If, following the application for appointment of a receiver, one or more of the interested parties elects to correct the conditions at the property giving rise to the party with standing to sue pursuant to subsection 8 of this section, the county or municipality's application for the appointment of a receiver, the party or parties shall be required to post security in an amount and character as the court deems appropriate to ensure timely performance of all work necessary to make corrections, as well as such other conditions as the court deems appropriate to effect the timely completion of the corrections by the interested party or parties.

6. In the event that no interested party elects to act pursuant to subsection 5 of this section or fails to timely perform work undertaken pursuant to subsection 5 of this section, the court shall make a determination that the property is in an unsafe or insanitary condition and appoint a receiver to complete the abatement.

7. A receiver appointed by the court pursuant to sections 441.500 to 441.643 shall not be required to give security or bond of any sort prior to appointment.

8. Notwithstanding the provisions of subsections 1 to 7 of this section, a civil action may be maintained pursuant to the provisions of sections 441.500 to 441.640 in the circuit court for the circuit where the property is located by the following persons or entities on the ground that a nuisance exists with respect to the dwelling unit or the building or premises of which the dwelling unit is a part:

(1) Occupants of one-third or more of the dwelling units within a building with respect to that building; or

(2) Any owner or tenant of real property within twelve hundred feet in any direction of the property in question who shows that his or her property or person is substantially affected by the alleged nuisance. An owner or tenant need not prove any specific, special or unique damage to himself or herself or his or her property or any adverse effect upon his or her property from the alleged nuisance in order to maintain a civil action pursuant to the provisions of sections 441.500 to 441.640.

441.520. 1. The action **to appoint a receiver** authorized by section 441.510 shall be commenced by the filing of a verified petition **by the party with standing to sue pursuant to subsection 8 of section 441.510, the county or municipality.**

2. There shall be named as defendants:

- (1) The last owner of record of the dwelling as of the date of the filing of the petition; and
- (2) The last holder of record of any mortgage, deed of trust, or other lien of record against the building as of the date of the filing of the petition.

3. Any owner of the dwelling who is not a party defendant may be permitted by the court to join as a party defendant.

4. (1) Any owner, whether or not a citizen or resident of this state, who in person or through agent, owns, uses, or is possessed of any real estate situated in this state thereby subjects himself or itself to the jurisdiction of the courts of this state as to any cause of action arising **[under] pursuant to** the provisions of sections 441.500 to **[441.640] 441.643**. Personal service of process shall be made in accordance with the rules of civil procedure; provided that, if such service cannot with due diligence be made, service of process may be made by personally serving process upon the defendant outside this state, or by service in accordance with the rules of civil procedure as in all cases affecting a res within the jurisdiction of the court.

(2) If a landlord of residential property is not a resident of this state or is a corporation, he must designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to transact business in this state. The designation shall be in writing and include the address and the name of the registered agent and shall be filed in the office of the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him is not effective unless the petitioner forthwith mails a copy of the process and pleading by certified mail to the defendant or respondent at the address stated on the assessor's records for the subject property. An affidavit of compliance with this section shall be filed with the clerk of the court.

5. Any action brought **[under] pursuant to** the provisions of sections 441.500 to **[441.640] 441.643** shall be expedited by the court and may be given precedence over other suits.

441.530. The **[petition] application** shall state:

(1) The facts constituting a nuisance with respect to the dwelling unit, building or premises of which the dwelling unit is a part~~[,]~~;

(2) That violations of the housing code exist as determined by a notice of deficiency~~[,]~~;

(3) That the owner of said property has failed, within a reasonable time, to undertake to remove said nuisance~~[,]~~;

(4) If the action is brought by occupants, the number of dwelling units occupied by plaintiffs and the number of dwelling units in the building~~[,]~~; and

(5) The relief sought as authorized by sections 441.570 and 441.590.

441.550. In any [civil action brought under the provisions of sections 441.500 to 441.640, the plaintiff] **application for receivership brought pursuant to sections 441.500 to 441.643, the party with standing to sue pursuant to subsection 8 of section 441.510, the county or municipality** shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit pursuant to the requirements of section 527.260, RSMo. From the time of filing such notice the pendency of suit shall be constructive notice to persons thereafter acquiring an interest in the building.

441.570. The court may, after hearing and finding the dwelling unit or building constitutes a nuisance,

(1) **Appoint a receiver and** direct that present and future rents due from one or more occupants be [deposited] **paid** by the occupant or occupants with [the clerk of the court] **such receiver** as such rents fall due, or

(2) Allow the owner a reasonable time to correct the deficiencies.

Any rents [deposited under] **paid pursuant to** the provisions of this section shall be [held by the court until the deficiencies noted in the building have been remedied, and shall not accrue interest during the time they are so held] **applied to the costs incurred due to the abatement and receivership**. Upon the completion of the work required to abate the nuisance, any remaining surplus after authorized disbursements and payments of cost shall be forwarded to the owner, together with a complete accounting of the rents [deposited] **paid** and the costs incurred.

441.580. Upon the entry of an order directing the [deposit] **payment** of rents [or payment] pursuant to section 441.570, [the deposit of the rents with the clerk of the court] **such payment** in accordance with the terms of the order shall be a valid defense to any action or proceeding brought by an owner against any tenant to recover possession of real property for the nonpayment of rent due and payable after the date of issuance of the order.

441.590. 1. The court may, in any order entered pursuant to section 441.570:

(1) Authorize the [owner] **receiver** to draw upon the rents deposited in court to pay for the cost of necessary repairs upon presentment to the court of the original copy of any invoice for work performed or materials purchased;

(2) Appoint the code enforcement agency, [the owner,] the mortgagee or other lienor of record, **a local housing corporation established to promote housing development and conservation in the area in which such property that is the subject of receivership is located**, a licensed attorney or real estate broker, or any other qualified person, as a receiver [to administer, subject to the court's direction, the rent moneys deposited and to be deposited with the clerk, or if the court so orders, to be collected directly by the receiver from the occupants of the building;] provided, however, that all lienholders of record shall be given the right of first refusal to serve as receiver in the order in which their lien appears of record. **In the event of the**

refusal of all lienholders of record to serve as receiver or in the absence of any lienholders of record, the local housing corporation that is established to promote housing development and conservation in the area in which such property that is the subject of receivership is located, if any, shall be given the right of first refusal to serve as receiver for any residential property consisting of four units or less; or

(3) Where the building is vacant, appoint the code enforcement agency, [the owner,] the mortgagee or other lienor of record, **a local housing corporation established to promote development and conservation in the area in which such property that is the subject of receivership is located**, a licensed attorney or real estate broker, or any other qualified person, as a receiver to remove all of the housing code violations which constitute a nuisance as found by the court, except that all lienholders of record shall be given the right of first refusal to serve as receiver in the order in which their liens appear of record. **In the event of the refusal of all lienholders of record to serve as receiver or in the absence of any lienholders of record, the local housing corporation that is established to promote development and conservation in the area in which such property that is the subject of receivership is located, if any, shall be given the right of first refusal to serve as receiver for any residential property consisting of four units or less.**

2. The court may allow a receiver[, other than the owner,] reasonable and necessary expenses, payable from the rent moneys.

3. No receiver appointed shall serve without bond. The amount and form of such bond shall be approved by the court and the cost of such bond shall be paid from the moneys so deposited.

4. The receiver may, on order of the court, take possession of the property, collect all rents and profits accruing from the property, and pay all costs of management, including all insurance premiums and all general and special real estate taxes or assessments.

5. The receiver shall with all reasonable speed remove all of the housing code violations which constitute a nuisance as found by the court, and may make other improvements to effect a rehabilitation of the property in such fashion as is consistent with maintaining safe and habitable conditions over the remaining useful life of the property. The receiver shall have the power to let contracts therefor, in accordance with the provisions of local laws, ordinances, rules and regulations applicable to contracts.

6. The receiver may with the approval of the circuit court borrow money against, and encumber, the property as security therefor in such amounts as may be necessary to carry out his **or her** responsibilities [under] **pursuant to** sections 441.500 to [441.640] **441.643**. The circuit court may authorize the receiver to issue receiver's certificates as security against such borrowings, which certificates shall be authorized investments for banks and savings and loan associations, and shall constitute a first lien upon the property and its income and shall be

superior to any claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments, and shall be enforceable as provided in subsection 8 of this section.

7. In addition to issuance of receiver certificates, the receiver may pledge the rentals from the property and borrow or encumber the property on the strength of the rental income.

8. Any receiver appointed [under] **pursuant to** the provisions of sections 441.500 to [441.640] **441.643** shall have a lien, for the expenses necessarily incurred in the execution of an order, upon the rents receivable from the premises on or in respect of which the work required by such order has been done or expenses incurred, and this lien shall have priority over all other liens and encumbrances of record upon the rents receivable from the premises, except taxes, assessments, receiver's certificates, and mortgages recorded prior to October 13, 1969.

9. For the purposes of this section, "local housing corporation" shall mean only those local housing corporations established prior to April 28, 1999.

441.610. Any provision of a lease or other agreement whereby any provision of sections 441.500 to [441.640] **441.643** for the benefit of an occupant of a dwelling unit or units is waived or denied shall be deemed against public policy and shall be void.

[441.620. 1. Whenever an occupant of a dwelling unit shall, with respect to the occupied premises or the property of which such premises are a part, file a petition authorized by section 441.510, no action or proceeding to recover possession of such premises shall be maintainable by the owner against such occupant, nor shall the owner, by rent increase or otherwise cause such occupant involuntarily to quit such premises, or decrease services to which the occupant is entitled, for a period of one year from the date of the filing of such petition, notwithstanding that the occupant has no lease or that his lease has expired, except with the approval of the court, so long as the occupant continues to pay the owner, the owner's agent, or a court pursuant to a court order, the rent to which the owner is entitled at the time the petition is filed; provided, however, that the owner may recover possession of such premises if

(1) The occupant is then violating an obligation of a written lease which was executed prior to the date of the filing of the petition, or is using the leased premises for an immoral or illegal purpose or for other than living or dwelling purposes; or

(2) The owner seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling; or

(3) The owner seeks in good faith to recover possession for the immediate purpose of demolishing the property; or

(4) The dwelling unit and the property of which the dwelling unit is a part were, on the date of the filing of such petition, in full compliance with the housing code of the community; or

(5) Such complaint, notice, request or petition relates only to a condition or

conditions occasioned by an act or omission of such occupant or members of his family, or an invitee or assignee thereof, beyond those acts or omissions constituting ordinary wear and tear.

2. Any person from whom possession has been recovered in violation of this section shall be entitled to recover twice the amount of rent for the period for which he was wrongfully dispossessed or twice the damages sustained by him, whichever is greater, and the cost of suit, including a reasonable attorney's fee.]

441.630. Every occupant of a dwelling unit under the provisions of sections 441.500 to [441.640] **441.643** shall be responsible to pay all rents due [the owner] from him **or her** when such rents become due and to exercise reasonable care

(1) To dispose of all rubbish and garbage in his **or her** dwelling unit, and other organic waste which might provide food for rodents, in a clean and sanitary manner;

(2) To refrain from unreasonable use of electrical, heating, and plumbing fixtures;

(3) To meet all obligations lawfully imposed upon the occupants of dwelling units by the code enforcement agency or the community;

(4) To refrain from willfully or wantonly destroying, defacing, damaging, impairing or removing any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereof, and to prohibit any other person on the premises with his **or her** permission from doing likewise; and

(5) Shall not under any circumstances take in additional occupants, sublease, rent or turn over said premises to any persons without the owner's knowledge and consent.

[441.640. The provisions of this law shall not be applicable to one-family buildings if the owner thereof resides therein.]

441.641. If the court appoints a receiver to abate a nuisance [in dwelling units] pursuant to sections 441.500 to [441.640] **441.643**, and the holder of title to the property or any other party in interest does not take action to regain possession of the property within [ten] **two** years of the appointment of the receiver, the court may, for good cause shown, issue a judicial deed transferring title to the property to the receiver, or to any not for profit corporation organized pursuant to law.

441.643. In the event the court finds that the facts alleged in the petition filed pursuant to section 441.530 are unfounded and that the petition was filed frivolously and in bad faith, the petitioner shall be responsible for the reasonable attorney's fees attributable to the defense of said petition.

451.100. Marriages may be solemnized by any clergyman, either active or retired, who is in good standing with any church or synagogue in this state [or by any judge of a court of record, other than a municipal judge]. **Marriages may also be solemnized by any judge without compensation, including a municipal judge; provided that a municipal judge shall not**

solemnize any marriage until the judge shall complete a course of instruction which may be affected by the Missouri Municipal and Associate Circuit Judges Association or any continuing legal education program approved by the Missouri Bar Association relating to the laws governing marriage in this state and the requirements to validly enter into and solemnize a marriage. Marriages may also be solemnized by a religious society, religious institution, or religious organization of this state, according to the regulations and customs of the society, institution or organization, when either party to the marriage to be solemnized is a member of such society, institution or organization.

476.682. 1. Any person assigned as a senior judge pursuant to section 26 of article V of the Missouri Constitution shall receive for each day of service an amount [that when added to the daily amount of annual compensation, salary or retirement compensation payable pursuant to sections 476.450 to 476.595, equals one hundred] **equal to fifty percent of the current annual salary of the office from which the judge retired attributable to one day of service. Notwithstanding the foregoing, no senior judge shall receive less daily compensation than an amount, that when added to the daily amount of annual compensation payable to sections 476.450 to 476.595, is less than one hundred percent of the current annual salary of the office from which the judge retired attributable to one day of service.** For purposes of this subsection, one year shall equal two hundred thirty-five days. **No senior judge shall receive compensation pursuant to this subsection in a total amount that when such compensation is added to the annual compensation, salary or retirement compensation payable pursuant to sections 476.450 to 476.595, the sum is greater than the current annual salary of the office from which the judge retired.**

2. A senior judge assigned pursuant to section 26 of article V of the Missouri Constitution for service outside the county where he resides shall be reimbursed for his travel and other actual and necessary expenses incurred in the performance of his services.

3. On or before the tenth day of each month a senior judge shall certify to the state courts administrator the period during the previous month during which he was assigned services and, if such services were completed, the date thereof and at the same time shall certify his expenses incurred and allowable under this section. The state courts administrator shall then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent and within limitations provided for in this section. The state treasurer upon receipt of such warrant shall pay the same out of any appropriations made for this purpose on the last day of the month during which the warrant was received by him.

4. On or before the twentieth day of each month the state courts administrator shall certify the period of service reported by each senior judge pursuant to subsection 3 of this section to the Missouri state employees' retirement system. Any senior judge accumulating two hundred thirty-five days of such service shall receive credit for one year of judicial service for purposes of

sections 476.520 and 476.545, for each two hundred thirty-five days of service certified by the state courts administrator to the Missouri state employees' retirement system, except, if a pro rata portion of two hundred thirty-five days would cause the senior judge's total judicial service to equal twelve years, the Missouri state employees' retirement system shall credit the service at the time the pro rata portion is certified. Upon receipt of such certification, the retirement benefit of the senior judge shall be recalculated to reflect the attainment of twelve years; the adjusted benefit will become effective the first of the month following certification.

5. Notwithstanding the provisions of section 476.510 or 476.565, no person shall receive benefits pursuant to the provisions of this section if the person is engaged in the private practice of law or doing a law business.

6. The judicial conference of the state of Missouri shall annually report on the use of senior judges pursuant to this section. Such report shall include at least the number of senior judges assigned, the number of cases assigned and disposed of by senior judges, and the expenditures made for that purpose.

477.087. 1. The official station of each judge of the supreme court and court of appeals may be the locus of the court of which the judge is a member or any circuit court county courthouse located where the judge maintains an actual abode in which the judge customarily lives or at any other office in that county.

2. The presiding judge of the judicial circuit in which a judge of the supreme court or court of appeals has his official station may provide suitable office space, if available, upon request by a judge of the supreme court or court of appeals for use by the judge and the judge's staff personnel.

3. Each judge of the supreme court and court of appeals, upon appointment and from time to time thereafter as changes occur, shall notify the state courts administrator in writing of the judge's official station, if other than the city of the locus of the court of which the judge is a member.

4. Judges of the supreme court and court of appeals and their staff shall [not] be entitled to any state allowances for official travel and mileage to or from their official station and the locus of the court on which the judge sits.

478.242. The presiding judge of any circuit may assign any probate, juvenile, family court, drug court, or traffic court commissioner, or any other commissioner or deputy commissioner of any division of the circuit court to hear particular cases or classes of cases, pursuant to subsection 2 of section 478.240. A circuit or associate circuit judge shall by order of record confirm or reject all orders, judgments and decrees of a commissioner or deputy commissioner within the time such judge could have set aside such orders, judgments and decrees, had the same been made by him, and if so confirmed, such orders, judgments and decrees shall have the same effect as

if made by the judge on the date of such confirmation. All commissioners and deputy commissioners who receive from the state pursuant to law the full amount of the salary provided for any judge provided by article V of the constitution shall also be entitled to all other compensation, both current and deferred, and benefits provided by law for such judges.

478.265. [The judge of the probate division of the circuit court of any county which has more than four hundred thousand inhabitants] **In the twenty-second judicial circuit, a majority of the circuit and associate circuit judges, meeting en banc,** may appoint a person to be known as commissioner of the probate division of the circuit court, who shall possess the same qualifications and take and subscribe a like oath as [such] **an associate circuit judge.** The compensation of the commissioner shall be [limited, determined and paid in the same manner as division clerks as provided by subsection 2 of section 483.243, RSMo, until June 30, 1981, and section 483.245 RSMo after that date except as provided in sections 478.266 and 478.267; provided, however, that said commissioner shall receive a per diem of twenty dollars per day as compensation unless said commissioner is a regular salaried employee serving the probate division of the circuit court in which event he shall receive no per diem allowance; and his service shall extend until terminated by order of the judge of the probate division of the circuit court entered of record but not beyond the term of office of such judge] **as provided by section 2 of this act and payable from the same source as the compensation of the probate commissioner in the twenty-second judicial circuit was payable on August 27, 1998.** Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of [such] **the judge for matters within the jurisdiction of the judge of the probate division;** but [the] **a judge shall by order of record reject or confirm all orders, judgments, and decrees of the commissioner within the time such judge could set aside such orders, judgments, or decrees, had the same been made by him; and if so confirmed such orders, judgments, and decrees shall have the same effect as if made by the judge on the date of such confirmation.**

478.266. 1. [Notwithstanding the provisions of section 478.265, on and after January 2, 1979, each county of the first class having a charter form of government and containing all or part of a city having a population of at least four hundred fifty thousand or more] **In the sixteenth judicial circuit,** a majority of the circuit **and associate circuit judges, meeting en banc,** may appoint one person, who shall possess the same qualifications as [a] **an associate circuit judge,** to act as commissioner of the probate division of the circuit court. The commissioner shall be appointed for a term of four years. The compensation of the commissioner shall be [the same as that of a circuit judge] **in the amount provided by section 2 of this act,** payable in the same manner and from the same source as the compensation of the judge who serves in the probate division of the circuit court. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the judge **for matters within the**

jurisdiction of the judge of the probate division. [The] A judge shall by order of record reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by him. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

2. [The judge of the probate division of the circuit court of each county of the first class having a charter form of government and containing a population of at least four hundred fifty thousand inhabitants and in any city not within a county and, after January 1, 1991, in each county of the first class having a charter form of government and not containing all or part of a city having a population of at least four hundred fifty thousand or more] **In each of the sixteenth, twenty-first and twenty-second judicial circuits, a majority of the circuit and associate circuit judges, meeting en banc,** may appoint a person to be known as deputy commissioner of the probate division of the circuit court, who shall possess the same qualifications and take and subscribe a like oath as [such] **an associate circuit judge.** The deputy commissioner shall be appointed for a term of four years. The compensation of the deputy commissioner shall be the same as that of an associate circuit judge [of the circuit court in a county of the first class], payable in the same manner and from the same source as the compensation of an associate circuit judge [of the circuit court of a first class county]. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the clerk of the probate division and [such] **the judge for matters within the jurisdiction of the judge of the probate division;** but [the] a judge shall by order of record reject or confirm all orders, judgments, and decrees of the deputy commissioner within the time such judge could set aside such orders, judgments, or decrees, had the same been made by him; and if so confirmed such orders, judgments, and decrees shall have the same effect as if made by the judge on the date of such confirmation.

478.267. [Notwithstanding the provisions of section 478.265, on and after January 2, 1979, in each county of the first class having a charter form of government and having a population of at least nine hundred thousand or more inhabitants, the judge of the probate division of the circuit court] **In the twenty-first judicial circuit, a majority of the circuit and associate circuit judges, meeting en banc,** may appoint one person, who shall possess the same qualifications as [a] **an associate circuit judge,** to act as commissioner of the probate division of the circuit court. The commissioner shall be appointed for a term of four years. The compensation of the commissioner shall be [determined by the judge of the probate division of the circuit court, not to exceed the compensation of a circuit court judge] **in the amount provided by section 2 of this act,** payable in the same manner and from the same source as the compensation of the judge who serves in the probate division of the circuit court. Subject to approval or rejection by the judge of the probate division, the commissioner shall have all the powers and duties of the judge **for**

matters within the jurisdiction of the probate division. [The] A judge shall by order of record reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by him. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

478.269. In the twenty-third judicial circuit, by a majority of the associate circuit and circuit judges meeting en banc, may appoint one person, who shall possess the same qualifications as a circuit judge, to act as commissioner of the probate division and the family court division of the circuit court. The commissioner shall be appointed for a term of four years. The compensation of the commissioner shall be the same as that of an associate circuit judge, payable in the same manner and from the same source as the compensation of an associate circuit judge. Subject to approval or rejection by a circuit or associate circuit judge, the commissioner shall have all the powers and duties of a circuit judge. A circuit or associate circuit judge shall, by order of record, reject or confirm all orders, judgments and decrees of the commissioner within the time the judge could set aside such orders, judgments or decrees had the same been made by him or her. If so confirmed, the orders, judgments and decrees shall have the same effect as if made by the judge on the date of their confirmation.

478.464. 1. In the sixteenth judicial circuit, associate circuit divisions shall hereafter be numbered beginning with the number 25:

- (1) Division 101 shall hereafter be division 25;
- (2) Division 102 shall hereafter be division 26;
- (3) Division 103 shall hereafter be division 27;
- (4) Division 104 shall hereafter be division 28;
- (5) Division 105 shall hereafter be division 29;
- (6) Division 106 shall hereafter be division 30;
- (7) Division 107 shall hereafter be division 31; and
- (8) Division 108 shall hereafter be division 32.

2. [Twelve months after construction of two new courtrooms in Independence is completed,] **On and after August 28, 1998,** there shall be one additional associate circuit judge in the sixteenth judicial circuit, to [be known as] **sit in** division 33. [The presiding judge of such circuit shall certify to the state of administration office the actual date of completion of said construction.]

3. Divisions 25, 26, 27, 29, and 31 shall sit in Kansas City and divisions 28, 30, 32, and 33 shall sit in Independence.

479.500. 1. In the twenty-first judicial circuit, a majority of the circuit judges, en banc, may establish a traffic court, which shall be a division of the circuit court, and may authorize the

appointment of not more than three municipal judges who shall be known as traffic judges. The traffic judges shall be appointed by a traffic court judicial commission consisting of the presiding judge of the circuit, who shall be the chair, one circuit judge elected by the circuit judges, one associate circuit judge elected by the associate circuit judges of the circuit, and two members appointed by the county executive of St. Louis County, each of whom shall represent one of the two political parties casting the highest number of votes at the next preceding gubernatorial election. The procedures and operations of the traffic court judicial commission shall be established by circuit court rule.

2. Traffic judges may be authorized to act as commissioners to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by circuit court rule. Traffic judges may also be authorized to hear in the first instance violations of county and municipal ordinances involving motor vehicles, and other county ordinance violations, as provided by circuit court rule.

3. In the event that a county municipal court is established pursuant to section 66.010, RSMo, which takes jurisdiction of county ordinance violations the circuit court may then authorize the appointment of no more than two traffic judges authorized to hear municipal ordinance violations other than county ordinance violations, and to act as commissioner to hear in the first instance nonfelony violations of state law involving motor vehicles, and such other offenses as may be provided by rule. These traffic court judges also may be authorized to act as commissioners to hear in the first instance petitions to review decisions of the department of revenue or the director of revenue filed pursuant to sections 302.309, 302.311, 302.535 and 302.750, RSMo.

4. In establishing a traffic court, the circuit may be divided into such sectors as may be established by a majority of the circuit and associate circuit judges, en banc. The traffic court in each sector shall hear those cases arising within the territorial limits of the sector unless a case arising within another sector is transferred as provided by operating procedures.

5. Traffic judges shall be licensed to practice law in this state and shall serve at the pleasure of a majority of the circuit and associate circuit judges, en banc, and shall be residents of St. Louis County, and shall receive from the state as annual compensation an amount equal to one-third of the annual compensation of an associate circuit judge. Each judge shall devote approximately one-third of his working time to the performance of his duties as a traffic judge. Traffic judges shall not accept or handle cases in their practice of law which are inconsistent with their duties as a traffic judge and shall not be a judge or prosecutor for any other court. Traffic judges shall not be considered state employees and shall not be members of the state employees' or judicial retirement system or be eligible to receive any other employment benefit accorded state employees or judges.

6. A majority of the judges, en banc, shall establish operating procedures for the traffic court which shall provide for regular sessions in the evenings after 6:00 p.m. and for Saturday or

other sessions as efficient operation and convenience to the public may require. Proceedings in the traffic court, except when a judge is acting as a commissioner pursuant to this section, shall be conducted as provided in supreme court rule 37. The hearing shall be before a traffic judge without jury, and the judge shall assume an affirmative duty to determine the merits of the evidence presented and the defenses of the defendant and may question parties and witnesses. No term of imprisonment or confinement may be assessed by a traffic judge. In the event a jury trial is requested, the cause shall be certified to the circuit court for trial by jury as otherwise provided by law. Clerks and computer personnel shall be assigned as needed for the efficient operation of the court.

7. In establishing operating procedure, provisions shall be made for appropriate circumstances whereby defendants may enter not guilty pleas and obtain trial dates by telephone or written communication without personal appearance, or to plead guilty and deliver by mail or electronic transfer or other approved method the specified amount of the fine and costs as otherwise provided by law, within a specified period of time.

8. Operating procedures shall be provided for electronic recording of proceedings, except that if adequate recording equipment is not provided at county expense, then, in that event, a person aggrieved by a judgment of a traffic judge or commissioner **finding a violation of a county or municipal ordinance** shall have the right of a trial de novo. The procedures for perfecting the right of a trial de novo shall be the same as that provided under [sections 512.180 to 512.320, RSMo, except that the provisions of subsection 2 of section 512.180, RSMo, shall not apply to such cases] **section 479.200**.

9. The circuit court shall only have the authority to appoint two commissioners with the jurisdiction provided in subsection 3 of this section.

10. All costs to establish and operate a county municipal court under section 66.010, RSMo, and this section shall be borne by such county.

487.020. 1. In each circuit or a county having a family court, a majority of the circuit and associate circuit judges en banc, in the circuit, may appoint commissioners, subject to appropriations, to hear family court cases and make findings as provided for in sections 487.010 to 487.190. Any person serving as a commissioner of the juvenile division of the circuit court on August 28, 1993, shall become a commissioner of the family court. In each circuit or a county therein having a family court, a majority of the circuit and associate circuit judges en banc may appoint, in addition to those commissioners serving as commissioners of the juvenile division and becoming commissioners of the family court pursuant to the provisions of sections 487.020 to 487.040, no more than three additional commissioners to hear family court cases and make findings and recommendations as provided in sections 487.010 to 487.190. The number of additional commissioners added as a result of the provisions of sections 487.010 to 487.190 may be appointed only to the extent that the state is reimbursed for the salaries of the commissioners

as provided in sections 487.010 to 487.190 or by federal or county funds or by gifts or grants made for such purposes, **except that any county of the first classification having a charter form of government on August 28, 1993, which had appointed only one commissioner of the juvenile division of its circuit court under section 211.023, RSMo, may, in addition to the commissioners provided for herein, appoint one additional commissioner of its family court whose compensation shall be payable by the state in accordance with section 211.023, RSMo, and section 487.190.** A commissioner shall be appointed for a term of four years. Commissioners appointed pursuant to sections 487.020 to 487.040 shall serve in addition to circuit judges, associate circuit court judges and commissioners authorized to hear actions classified under section 487.080.

2. Each commissioner of the family court shall possess the same qualifications as a circuit judge. The compensation and retirement benefits of each commissioner shall be the same as that of an associate circuit judge, payable in the same manner and from the same source as that of an associate circuit judge.

487.030. 1. [In IV-D cases, as defined in section 452.345, RSMo,] The findings and recommendations of the commissioner shall become the judgment of the court when adopted and confirmed by an order of [the] **a circuit or an associate circuit** judge. [In cases which are not IV-D cases, findings and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner.] Notice of the findings **and recommendations** of the commissioner, together with a statement relative to the right to file a motion for rehearing, shall be given to the parties whose case has been heard by the commissioner, and to any other person that the court may direct. This notice may be given at the hearing, or by mail or other service directed by the court.

2. The parties to a cause of action heard by a commissioner are entitled to file with the court a motion for a hearing by a judge of the family court either within fifteen days after receiving notice of the findings of the commissioner at the hearing, or within fifteen days after the mailing, or within fifteen days after other service directed by the court. In cases in which the family court has jurisdiction pursuant to subdivision (1) of subsection 1 of section 211.031, RSMo, the juvenile officer, in addition to the parties listed above, is also entitled to file with the court a motion for a hearing by a judge of the family court within fifteen days after receiving notice of the findings of the commissioner. The judge shall promptly rule on such motion and, in his discretion, may either sustain or deny the motion, and if the motion is sustained, the judge shall set a date for a hearing. If the motion for rehearing is not ruled on within forty-five days after the motion is filed, it is denied for all purposes. In computing the forty-five days, no day shall be counted during which the court lacks power to act because of an order of a superior court.

487.090. 1. In criminal actions where the defendant and the victim are part of the same family unit, the judge of the division in which the criminal case is pending may only transfer such

case to the family court if it is in the interests of justice to all parties, the rights of the defendant, and the interests of the family. Such transfer shall only be made when[:

(1) The defendant has waived a jury trial with a full understanding of his rights;

(2) Both the defendant and the victim consent to the transfer;

(3) When] the judge of the division in which the criminal case is pending and the administrative judge of the family court approve such transfer.

2. No provision of subsection 1 of this section shall abridge any of the rights of a criminal defendant.

3. If a tort action is properly joined with any of the actions enumerated in section 487.080, the entire action shall not be within the jurisdiction of the family court but shall be assigned to and heard on a civil docket unless the parties stipulate and agree in writing that the matter may be retained in the family court.

4. The judge of the probate division may transfer a guardianship proceeding wherein a guardian of a minor is requested under chapter 475, RSMo, to the family court. If transferred, the family court shall have jurisdiction over such proceeding including the appointment of a guardian or conservator, if requested. Provided, however, upon final judgment, the proceeding shall be transferred to the probate division for administration. After final judgment, the judge of the probate division shall have ongoing authority to transfer the proceeding to the family court for additional action as may be needed to further the interests of justice.

488.012. 1. Beginning July 1, 1997, the clerk of each court of this state responsible for collecting court costs shall collect the court costs authorized by statute, in such amounts as are authorized by supreme court rule adopted pursuant to sections 488.010 to 488.020. Court costs due and payable prior to July 1, 1997, shall not be affected by the adoption of this rule.

2. The supreme court shall set the amount of court costs authorized by statute, at levels to produce revenue which shall not substantially exceed the total of the proportion of the costs associated with administration of the judicial system defrayed by fees, miscellaneous charges and surcharges.

3. Prior to adjustment by the supreme court, the following fees, costs and charges shall be collected:

(1) Five dollars for the filing of a lien, pursuant to section 429.090, RSMo;

(2) Ten dollars for maintaining child support enforcement records, pursuant to section 452.345, RSMo;

(3) Ten dollars for a notice to a judgment creditor of a distributee, pursuant to section 473.618, RSMo;

(4) Three dollars for receiving and keeping a will, pursuant to section 474.510, RSMo;

(5) Seven dollars for the statewide court automation fund, pursuant to section 476.053, RSMo;

(6) Twelve dollars for municipal court costs, fifteen dollars for municipal ordinance violations filed before an associate circuit judge and thirty dollars for applications for a trial de novo of a municipal ordinance violation, pursuant to section 479.260, RSMo;

(7) Five dollars for small claims court cases where less than one hundred dollars is in dispute, and ten dollars in all other small claims court cases, pursuant to section 482.345, RSMo;

(8) Fifty dollars for appeals, pursuant to section 483.500, RSMo;

(9) Fifteen dollars in misdemeanor cases where there is no application for trial de novo, pursuant to section 483.530, RSMo;

(10) Forty-five dollars for applications for a trial de novo for misdemeanor cases, pursuant to section 483.530, RSMo;

(11) Fifteen dollars for each preliminary hearing in felony cases, pursuant to section 483.530, RSMo;

(12) Thirty dollars for each information or indictment filed in felony cases, pursuant to section 483.530, RSMo;

(13) Fifteen dollars for each associate circuit court case filed, and one dollar for each additional summons issued in such cases, pursuant to section 483.530, RSMo;

(14) Forty-five dollars for applications for trial de novo from small claims court and associate circuit court and forty-five dollars for filing of other cases, pursuant to section 483.530, RSMo;

(15) One dollar and fifty cents for a certificate of naturalization, pursuant to section 483.535, RSMo;

(16) When letters are applied for in probate proceedings, pursuant to section 483.580, RSMo, when the value of the estate is:

- (a) Less than \$10,000 \$75.00
- (b) From \$10,000 to \$25,000..... 115.00
- (c) From \$25,000 to \$50,000 155.00
- (d) From \$50,000 to 100,000 245.00
- (e) From \$100,000 to 500,000 305.00
- (f) More than \$500,000 365.00;

(17) Thirty dollars for each additional twelve months a decedent's estate remains open, pursuant to section 483.580, RSMo;

(18) In proceedings regarding guardianships and conservatorships, pursuant to section 483.580, RSMo:

- (a) Twenty-five dollars for each grant of letters for guardianship of a minor;
- (b) Fifty dollars for each grant of letters for guardianship of an incapacitated person;
- (c) Sixty dollars for each grant of letters for guardianship of the person and conservatorship of the estate of a minor;

(d) Twenty-five dollars for each additional twelve months a conservatorship of a minor's estate case remains open;

(e) Seventy-five dollars for each grant of letters in guardianship and conservatorship of incapacitated persons and their estates;

(f) Thirty dollars for each additional twelve months an incapacitated person's case remains open;

(19) Fifteen dollars for issuing orders refusing to grant letters to a spouse or an unmarried minor child and thirty dollars for a certified copy of such orders, pursuant to section 483.580, RSMo;

(20) In probate proceedings, pursuant to section 483.580, RSMo:

(a) Thirty-five dollars for the collection of small estates;

(b) Thirty-five dollars for involuntary hospitalization proceedings;

(c) Thirty dollars for proceedings to determine heirship;

(d) Fifteen dollars for assessment of estate taxes where no letters are granted;

(e) Fifty dollars for proceedings for the sale of real estate by a nonresident conservator;

(f) Forty dollars for proceedings to dispense with administration;

(g) Twenty dollars for proceedings to dispense with conservatorship;

(h) Twenty-five dollars for admitting a will to probate;

(i) One dollar per copied page and one dollar and fifty cents per certificate;

(21) One dollar and fifty cents per page for testimony transcription, pursuant to section 485.100, RSMo;

(22) Fifteen dollars for court reporters, pursuant to section 485.120, RSMo;

(23) Three dollars for witness fees per day, and four dollars when the witness must travel to another county, pursuant to section 491.280, RSMo; **and witness mileage reimbursement for cases other than those involving indigent criminals in which court costs are paid or reimbursed by the state, computed at the rate specifically authorized by rules issued by the commissioner of administration for employees of the state pursuant to section 33.095, RSMo.**

488.015. The court shall not increase the amount of miscellaneous charges or surcharges allowed by law. The amounts of fees payable to the state of Missouri may be annually adjusted as provided in section 488.012 to the extent that projected total collections for all such fees shall not exceed one hundred four percent of such fees assessed or assessable during the previous year less the amount of such assessed fees attributable to any increase in the judiciary's caseload, provided that the amount of the adjusted fee attributable to each case may be rounded to the nearest dollar. [The supreme court may annually adjust each cost, fee, charge or surcharge so that projected total collections for that cost, fee, charge or surcharge will total an amount not to exceed one hundred four percent of the previous year's collections for that cost, fee, charge or surcharge,

provided that the adjusted cost, fee, charge or surcharge shall be rounded to the nearest ten cents. In the event that the total collections for any cost, fee, charge or surcharge exceeds one hundred four percent of the previous year's collections, the supreme court shall reduce such cost, fee, charge or surcharge so that the projected total collections for the coming year shall be decreased by the amount of excess in the preceding year.] The supreme court rule may provide that in the event that any payment of court costs is made in time or installment payments or by credit card or similar method, the clerk may charge an additional fee for such time or installment payments or in order to reflect any transaction cost, surcharge or fee imposed on the recipient of the credit card payment by the credit card company. Any change in the amount of fees made by the court pursuant to this section shall take effect on July first of any particular year, provided that the proposed supreme court rule or amendment to a supreme court rule changing the amount of fees shall be published on or before January first of the year in which the rule or amendment is proposed to take effect. Any such rule may be annulled or amended in whole or part in the manner provided by section 5 of article V of the Constitution of the state of Missouri. Any changes in the amount of fees made by the court pursuant to sections 488.010 to 488.020 shall be presented to the general assembly on or before January first of the year in which the rule or amendment is proposed to take effect.

491.060. The following persons shall be incompetent to testify:

(1) A person who is mentally incapacitated at the time of his production for examination;

(2) A child under ten years of age, who appears incapable of receiving just impressions of the facts respecting which he is examined, or of relating them truly; provided, however, that except as provided in subdivision (1) of this section, a child under the age of ten who is alleged to be a victim of an offense under chapter 565, 566 or 568, RSMo, shall be considered a competent witness and shall be allowed to testify without qualification in any judicial proceeding involving such alleged offense. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony;

(3) An attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the consent of such client;

(4) Any person practicing as a minister of the gospel, priest, rabbi or other person serving in a similar capacity for any organized religion, concerning a communication made to him in his professional capacity as a spiritual advisor, confessor, counselor or comforter;

(5) A physician licensed under chapter 334, RSMo, a licensed psychologist or a dentist licensed under chapter 332, RSMo, **or a chiropractic physician licensed under chapter 331, RSMo**, concerning any information which he may have acquired from any patient while attending him in a professional character, and which information was necessary to enable him to prescribe and provide treatment for such patient as a physician, **chiropractic physician**, psychologist or dentist.

506.363. For the purposes of sections 506.360 to 506.390, "offender" and "correctional center" [are] **shall mean** as defined in section 217.010, RSMo; **and the terms "court costs" and "fees" shall mean as defined in section 488.010, RSMo.**

506.369. 1. [The court shall order the offender to pay the full amount of the filing fee.] If the **court receiving a motion pursuant to section 506.366 determines that an** offender is unable to pay the full amount **of court costs due with respect to a case**, the court shall assess a partial payment of the [filing fee which shall be] **fees in the amount of** twenty percent of the greater of the following:

(1) The average monthly deposits to the offender's account for the six-month period immediately preceding the filing of the complaint or notice of appeal requiring the payment of a fee; or

(2) The average monthly balance in the offender's account for the six-month period immediately preceding the filing of the complaint or notice of appeal requiring the payment of a fee.

2. [If the balance in the offender's account is less than the amount assessed as the initial partial filing fee, the court shall enter judgment against the offender for the full amount of the filing fee. Payment of such judgment shall be made pursuant to section 506.372.] **If a trial court has entered an order pursuant to subsection 1 of this section upon the filing of plaintiff's petition, the determination of the court shall apply to the case until final judgment is entered by either the trial or an appellate court.**

506.372. [Following payment of an initial partial filing fee, or] If the court has entered [judgment for the initial partial filing fee] **an order for payment of fees in installments pursuant to section 506.369**, the offender shall make monthly payments **to the department of corrections** of twenty percent of the preceding month's income credited to the offender's account until the [filing] fees are paid in full. The [correctional facility having custody of the offender] **department of corrections** shall forward payments from the offender's account to the [clerk of the court] **department of revenue for deposit to the general revenue fund**, until the [filing] fees are paid in full. The department of corrections shall establish written guidelines for the priority of payment consistent with state and federal law.

506.375. Notwithstanding any [filing fee] **court costs** which [has] **have** been paid, the court shall dismiss an offender's civil action or appeal from a judgment in a civil action at any time, including before service on the defendant, if the court determines any of the following:

(1) The allegation of indigency is untrue;

(2) The litigation is frivolous, malicious or fails to state a claim upon which relief may be granted; or

(3) The defendant is immune from the cause of action.

506.390. Before payment of any compensatory damages awarded to an offender in

connection with a civil action brought against any correctional facility or against any official or agent of such correctional facility, **the attorney general shall make** reasonable efforts [shall be made] to notify the victims of the crime for which the offender was convicted and incarcerated concerning the pending payment of any such compensatory damages.

514.040. 1. **Except as provided in subsection 3 of this section**, if any court shall, before or after the commencement of any suit pending before it, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay all or any portion of the costs and expenses thereof, such court may, in its discretion, permit him or her to commence and prosecute his or her action as a poor person, and thereupon such poor person shall have all necessary process and proceedings as in other cases, without fees, tax or charge as the court determines the person cannot pay; and the court may assign to such person counsel, who, as well as all other officers of the court, shall perform their duties in such suit without fee or reward as the court may excuse; but if judgment is entered for the plaintiff, costs shall be recovered, which shall be collected for the use of the officers of the court.

2. In any civil action brought in a court of this state by any offender convicted of a crime who is confined in any state prison or correctional center, the court shall not reduce the amount required as security for costs upon filing such suit to an amount of less than ten dollars pursuant to this section. This subsection shall not apply to any action for which no sum as security for costs is required to be paid upon filing such suit.

3. Where a party is represented in a civil action by a legal aid society or a legal services or other nonprofit organization funded in whole or substantial part by moneys appropriated by the general assembly of the state of Missouri, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society, all costs and expenses related to the prosecution of the suit may be waived without the necessity of a motion and court approval, provided that a determination has been made by such society or organization that such party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, and that a certification that such determination has been made is filed with the clerk of the court.

528.620. Any one or more of two or more joint owners of personal property[, other than boats and vessels,] may file a petition in the circuit court for a partition or a sale and partition of the proceeds thereof, in the same manner as suits may be instituted for the partition and sale of real estate, and like proceedings had thereunder, as near as may be, as provided in cases for the partition of real estate.

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 to issue his 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.

534.090. 1. Such summons shall be served as in other civil cases at least four days before the [return day of] **court date specified in** such summons[; except that, the return date shall be set for no later than ten days after service].

2. If the summons in such action cannot be served in the ordinary manner as provided by law, it shall be the duty of the judge before whom the proceeding is commenced, at the request of the plaintiff, to make an order directing that notices shall be set up for ten days on the premises in question and in one public place in the county where the defendant was believed to dwell, informing the defendant of the commencement of the proceedings against the defendant and to make an order directing that a copy of the summons be delivered to the defendant at the defendant's last known address by certified mail, return receipt requested, delivered to addressee only. On proof of the notice and of the mailing of the notice by certified mail by affidavit of some competent witness, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that where the defendant is in default no money judgment shall be granted the plaintiff under the order of publication and certified mail procedure set forth in this section. If such summons is returned executed, then the judge shall set the case on the next available court date.

534.350. The judge rendering judgment in any such cause may issue execution at any time after judgment, but such execution shall not be levied until after the expiration of the time allowed for the filing of an [application for trial de novo or the taking of an] appeal, except as [in the next succeeding section is] provided **in section 534.360.**

534.360. If it shall appear to the officer having charge of the execution that the defendant therein is about to remove, conceal or dispose of his property, so as to hinder or delay the levy, the rents and profits, damages and costs may be levied before the expiration of the time allowed for the filing of [an application for a trial de novo or taking] an appeal.

534.380. [Applications for trials de novo and] Appeals shall be allowed and conducted in the manner provided in chapter 512, RSMo. [Application for a trial de novo or] **An** appeal shall not stay execution for restitution of the premises unless the defendant gives bond within the time for appeal. The bond shall be for the amount of the judgment and with the condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due,

pending determination of the [trial de novo or] appeal, subject to the judge's discretion. However, in any case in which the defendant receives a reduction in rent due to a local, state or federal subsidy program, the amount of the bond shall be reduced by the amount of said subsidy. Execution other than for restitution shall be stayed if the defendant files a bond in the proper amount at such time as otherwise provided by law.

535.030. 1. Such summons shall be served as in other civil cases at least four days before the [return day of] **court date in** the summons[, however, the return date shall be set for no later than ten days after service.] **The summons shall include a court date which shall not be more than twenty-one business days from the date the summons is issued unless at the time of filing the affidavit the plaintiff or plaintiff's attorney consents in writing to a later date.**

2. In addition to attempted personal service, the plaintiff may request, and thereupon the judge, before whom the proceeding is commenced, shall make an order directing that the officer, or other person empowered to execute the summons, shall also serve the same by securely affixing a copy of such summons and the complaint in a conspicuous place on the dwelling of the premises in question at least ten days before the [return date of] **court date in** such summons, and by also mailing a copy of the summons and complaint to the defendant at the defendant's last known address by ordinary mail and by certified mail, return receipt requested, deliver to addressee only, at least ten days before the [return] **court** date. If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint, the judge shall at the request of the plaintiff proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure set forth in this section.

3. If the plaintiff does not request service of the original summons by posting and mailing as provided in subsection 2 of this section, and if the officer, or other person empowered to execute the summons, makes return that the defendant is not found, or that the defendant has absconded or vacated the defendant's usual place of abode in this state, the plaintiff may request the issuance of an alias summons and service of the same by posting and mailing in the time and manner provided in subsection 2 of this section. In addition, the plaintiff or an agent of the plaintiff who is at least eighteen years of age may serve the summons by posting and mailing a copy of the summons in the time and manner provided in subsection 2 of this section. Upon proof by affidavit of the posting and of the mailing of a copy of the summons or alias summons and the complaint, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be

granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure provided in subsection 2 of this section.

4. On the date judgment is rendered as provided in this section where the defendant is in default, the court shall mail to the defendant at the defendant's last known address by certified mail, with a request for return receipt and with directions to deliver to the addressee only, a notice informing the defendant of the judgment and the date it was entered, and stating that the defendant has ten days from the date of the judgment to file a motion to set aside the judgment [or to file an application for a trial de novo in the circuit court, as the case may be], and that unless the judgment is set aside [or an application for a trial de novo is filed within ten days], the judgment will become final and the defendant will be subject to eviction from the premises without further notice.

535.110. [Applications for trials de novo and] Appeals shall be allowed and conducted in the manner provided in chapter 512, RSMo; but no [application for a trial de novo or] appeal shall stay execution unless the defendant [give] **gives** bond, with security sufficient to secure the payment of all damages, costs and rent then due, and with condition to stay waste and to pay all subsequently accruing rent, if any, into court within ten days after it becomes due, pending determination of the [trial de novo or] appeal.

600.101. 1. A public defender shall be reassigned at least two days per month to any county willing to provide office space for the public defender.

2. At least two public defenders shall be reassigned to offices in the fortieth judicial circuit provided that each county in such circuit fund, on the basis of population, its pro rata share of the costs of office space and utility services.

Section 1. The provisions of sections 138.430, 196.790, 426.220, 426.230, 479.500, 534.350, 534.360, 534.380, 535.030 and 535.110 of this act shall be applicable to cases filed on and subsequent to January 1, 1999. Any case filed on or prior to December 31, 1998, shall be governed by the practice and procedure relative to trials de novo in effect on December 31, 1998.

Section 2. The person serving as probate commissioner in the 16th, 21st, and 22nd judicial circuits on August 28, 1998, shall receive compensation in the same amount as a circuit judge for so long as such person holds such position. When the person serving as probate commissioner in each of such circuits on August 28, 1998, shall no longer hold such position by virtue of death, resignation or removal from office, the successor probate commissioner shall receive compensation in the same amount as an associate circuit judge.

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