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APPROPRIATIONS

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MEMORANDUM

To: Rep. Grad, Chair, House Committee on Judiciary
From: Rep. Johnson, Chair, House Committee on Appropriations
Date: May 10, 2015
Subject: Senate Language in Appropriations Bill

The Conference Committee on the budget is reviewing provisions added by the Senate and would like to give you the opportunity to comment on the sections below. We are planning on completing work on the budget in the next few days and would like your input by noon on Tuesday. I would like input specifically on Sec. E.204.11 VENUE. Thank you for your consideration.

Please note that the language highlighted in green is the language that the Senate removed from the House passed bill. The language that is in green font is the language added by the Senate.

Sec. E.204.2 33 V.S.A. § 5223 is amended to read: (Senate removed this language)

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 days prior to the date for the preliminary hearing specified in the citation.

(b) The Court State's Attorney shall send or deliver a copy of the petition and affidavit to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

Sec. E.204.3 33 V.S.A. § 5224 is amended to read:

§ 5224. FAILURE TO APPEAR AT PRELIMINARY HEARING

If a child or custodial parent, guardian, or custodian fails to appear at the preliminary hearing as directed by a citation, the Court may issue a summons to appear, an order to have the child brought to Court, or a warrant as provided in section 5108 of this title. The summons, order, or warrant shall be served by the State's Attorney.

Sec. E.204.2 33 V.S.A. § 5223 is amended to read: (Senate added this language)

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 days prior to the date for the preliminary hearing specified in the citation.

(b) ~~The Court shall send or deliver a~~ A copy of the petition and affidavit shall be made available at the State's Attorney's office to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

Sec. E.204.3 33 V.S.A. § 5224 is amended to read:

§ 5224. FAILURE TO APPEAR AT PRELIMINARY HEARING

If a child or custodial parent, guardian, or custodian fails to appear at the preliminary hearing as directed by a citation, the Court may issue a summons to appear, an order to have the child brought to Court, or a warrant as provided in section 5108 of this title. The summons, order, or warrant shall be served by the law enforcement agency that cited or took the child into custody, or another law enforcement agency acting on its behalf.

EXPLANATION: SAC amended Secs. E.204.2 and E.204.3

Sec. E.204.4 CONSIDERATION OF ON-THE-RECORD APPEALS (Senate removed this

language)

(a) The House Committee on Judiciary and other committees with affected jurisdiction shall consider the appropriate use of on-the-record appeals in executive, administrative, judicial, and other matters within the jurisdiction of the Committee. Each committee shall evaluate how on-the-record appeals may be employed to improve efficiency and reduce expense while preserving access to justice for Vermonters.

Sec. E.204.5 ACHIEVING EFFICIENCIES IN THE JUSTICE SYSTEM; WORKING

GROUP; REPORT (Senate removed this language)

(a) Creation. There is created an Achieving Efficiencies in the Justice System Working Group (“Working Group”) to propose ways to increase efficiencies and reduce costs in all aspects of the justice system.

(b) Membership. The Working Group shall be composed of the following eight members:

(1) the Chief Justice or designee, who shall serve as Chair;

(2) the Secretary of Administration or designee;

(3) the Defender General or designee;

(4) the Attorney General or designee;

(5) the Commissioner of Corrections or designee;

(6) the Executive Director of State’s Attorneys and Sheriffs or designee;

(7) the Executive Director of the Vermont Bar Association or designee; and

(8) the Commissioner for Children and Families or designee.

(c) Powers and duties. The Working Group shall study and make specific recommendations on the following within all aspects of the justice system:

(1) How to increase efficiencies.

(2) How to reduce costs, eliminate redundancies, and streamline processes.

(3) Current and future filing fees and their relationship to access to justice and funding of the Judiciary.

(4) Consolidation of contracts for courthouse security.

(d) Report. The Committee shall report regularly to the Criminal Justice Oversight Committee during calendar year 2015. On or before November 6, 2015, the Working Group shall submit a written report to the General Assembly with its findings and recommendations, including any suggested statutory language.

(e) Meetings.

(1) The Chief Justice or designee shall call the first meeting of the Working Group.

(2) The Working Group shall cease to exist on November 6, 2015.

EXPLANATION: SAC deleted Secs. E.204.4 and E.204.5

Sec. E.204.6 4 V.S.A. § 38 is added to read: (Senate removed this language)

§ 38. COLLECTION OF PENALTIES, FINES, AND FEES

The Judiciary shall employ all reasonable measures authorized by law to collect monetary penalties, fines, and fees ordered by a court. To encourage timely compliance with court-ordered payments, the Judiciary shall ensure that a person who is ordered to pay may satisfy the judgment by cash, check, debit card, or credit card, or may establish a payment schedule to discharge the judgment at the time and place the penalty, fine, or fee is ordered.

Sec. E.204.6 13 V.S.A. § 7180 is amended to read: (Senate added this language)

§ 7180. REMEDIES FOR FAILURE TO PAY FINES, COSTS, SURCHARGES, AND PENALTIES

(a) As used in this section:

(1) "Amount due" means all financial assessments, including penalties, fines, surcharges, court costs, and any other assessments imposed by statute as part of a sentence for a criminal conviction.

(2) "Designated collection agency" means a collection agency designated by the Court Administrator pursuant to subsection 7171(b) of this title.

(3) "Designated credit bureau" means a credit bureau designated by the Court Administrator or the Court Administrator's designee.

* * *

(c) Civil contempt proceeding.

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(3) Hearing The hearing shall be conducted in a summary manner. The Court shall examine the defendant and any other witnesses and may require the defendant to produce documents relevant to the defendant's ability to pay the amount due. Evidence is admissible if it is of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. The Vermont Rules of Evidence shall not apply except that the rules related to privilege shall apply. The State shall not be a party except with the permission of the court. The defendant may be represented by counsel at the defendant's own expense.

* * *

(f)(1) A defendant who is not incarcerated may file a motion to convert all or part of a traffic offense fine to community service. The Court may grant the motion if the defendant establishes that he or she has made a good faith effort to pay the fine but is unable to do so. A fine converted to community service pursuant to this subsection shall not be considered a modification of sentence and shall not be subject to the time limits of Vermont Rule of Criminal Procedure 35.

(2) Community service performed pursuant to a motion granted under this subsection shall be:

(A) credited against outstanding fines at the then-existing rate of the Vermont minimum wage:

(B) monitored by Court Diversion, a restorative justice panel of a community justice center, or a similar entity approved by the Court, which shall report on the defendant's compliance status to the Court;

(C) performed in the county where the offense occurred.

(3) A conversion of a fine to community service under this subsection:

(A) shall not apply to surcharges, court costs, or other assessments;

(B) shall be in addition to the contempt procedures applicable under this section.

EXPLANATION: SAC amended Sec. E.204.6 (rewritten)

Sec. E.204.7 [DELETED] PAYMENT REPORT (Senate removed this language)

(a) The Court Administrator shall conduct a review regarding collection of monetary penalties, fines, and fees by the Judiciary to determine successful strategies, as well as existing impediments, to efficient collections. The Court Administrator shall report his or her findings and recommendations to increase efficiency in collection and encourage compliance with court-ordered payments to the Joint Fiscal Committee on or before November 1, 2015.

Sec. E.204.8 [DELETED] JUDICIAL BRANCH MILEAGE REPORT (Senate removed)

(a) The Court Administrator shall consult with the Commissioner of Buildings and General Services and the Secretary of Administration regarding how judges and other employees of the Judicial Branch are compensated for mileage and other expenses and how to reduce these expenses. The Court Administrator shall report his or her findings and recommendations to the Joint Fiscal Committee on or before November 1, 2015.

Sec. E.204.9 [DELETED] CUSTODIAL TRANSPORTATION CONTRACTS (Senate removed)

(a) The Agency of Human Services, in consultation with the Auditor of Accounts Secretary of Administration, shall review the contracts for custodial transportation of persons between a correctional facility and a courthouse, and for the transportation by

sheriffs of mental health patients under the care and custody of the State, for the purpose of identifying the most efficient and cost-effective ways to provide such services,. The Secretary shall report his or her findings and recommendations to the Joint Fiscal Committee and to the Joint Legislative Criminal Justice Oversight Committee on or before November 1, 2015 or before the next contract is agreed to the Administration.

Sec. E.204.10 32 V.S.A. § 1758 is amended to read: (Senate added this language)

§ 1758. MASTERS, AUDITORS, REFEREES, AND COMMISSIONERS

(a) Unless otherwise provided, the pay and the expense allowance for commissioners, masters, auditors, and referees shall be fixed by the Court or by the presiding judge thereof and paid by the ~~state~~ State.

(b) The Superior Court may order that the cost of a master be shared by the parties, with the shares specified in the order, if:

(1) the distribution of property is contested and governed by 15 V.S.A. § 751 and the value of the property to be distributed exceeds \$500,000.00; or

(2) one or both parties seeks an award of maintenance under 15 V.S.A. § 752 and the parties have non-wage income of \$150,000.00 or more.

Sec. E.204.11 4 V.S.A. § 37 is amended to read: (Senate added this language)

§ 37. VENUE

(a) The venue for all actions filed in the ~~superior court~~ Superior Court, whether heard in the ~~civil, criminal, family, environmental, or probate division~~ Civil, Criminal, Family, Environmental, or Probate Division, shall be as provided in law.

(b) Notwithstanding any other provision of law, the ~~supreme court~~ Supreme Court may promulgate venue rules, subject to review by the legislative committee on judicial rules under 12 V.S.A. chapter 1 of Title 12, which are consistent with the following policies:

(1) Proceedings involving a case shall be heard in the unit in which the case was brought, subject to the following exceptions:

(A) when the parties have agreed otherwise;

(B) status conferences, minor hearings, or other nonevidentiary proceedings; or

(C) when a change in venue is necessary to ensure access to justice for the parties or required for the fair and efficient administration of justice.

(2) The electronic filing of cases on a statewide basis should be facilitated, and the ~~court~~ Court is authorized to promulgate rules establishing an electronic case-filing system.

(3) The use of technology to ease travel burdens on citizens and the courts should be promoted. For example, venue requirements should be deemed satisfied for some court proceedings when a person, including a judge, makes an appearance via video technology, even if the judge is not physically present in the same location as the person making the appearance.

(4) In proceedings involving the termination of parental rights, the Supreme Court is authorized to designate a region of no more than four counties in which the venue for specified types of cases in the region shall be the region as a whole irrespective of the county in which the venue would lie for the case under the governing statute. A designation under this subdivision shall be made by rule and shall be reviewed by the Legislative Committee on Judicial Rules pursuant to 12 V.S.A. § 1.

Sec. E.204.12 12 V.S.A. § 5540a is amended to read: (Senate added)

§ 5540A. JURISDICTION OVER SMALL CLAIMS; ASSISTANT JUDGES

(a)(1) Subject to the limitations in this section and notwithstanding any provision of law to the contrary, Assistant Judges of Essex, Caledonia, Rutland, and Bennington Counties sitting alone shall hear and decide small claims actions filed under this chapter with the Essex, Caledonia, Rutland, and Bennington Superior Courts. ~~This subdivision shall apply only to Assistant Judges holding office on July 1, 2010.~~

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Sec. E.204.13 REPORT; JURISDICTION OF ASSISTANT JUDGES (Senate added)

(a) On or before January 15, 2016, the Vermont Association of Assistant Judges and the Court Administrator shall jointly report to the Senate and House Committees on Judiciary any recommendations for expansion of the subject matter jurisdiction of Assistant Judges. The report shall include specific types of cases in which it would be appropriate for Assistant Judges to sit alone in order to maximize judicial resources and ease caseload burdens on the courts.

*** Court Security ***

Sec. E.204.15 COURT SECURITY; REPORTS (Senate added)

(a) There is established in each county a Committee on Court Security. The Committee shall study issues related to security at its county court house and consider measures to reduce the cost of its county court security budget while maintaining the safety of staff and citizens. The study shall include whether counties should provide a security function at the entrance to county-owned courthouses that would be offset by restructuring of notary fees retained by the counties. On or before January 15, 2016, each county Committee on Court Security shall report to the Court Administrator a proposal to reduce its county court security budget by at least three percent.

(b) The Committee on Court Security shall be composed of the following members in each county:

- (1) The presiding superior judge, who shall be co-chair of the Committee.
- (2) The senior assistant judge, who shall be co-chair of the Committee.
- (3) The court clerk.
- (4) The court manager.
- (5) The Sheriff or designee.
- (6) The State's Attorney or designee.

(c) For purposes of preparing the report required by this section, the Committee on Court Security in each county shall consult with the security and safety program manager and the chief of finance and administration at the Vermont Supreme Court.

Sec. E.204.15 LEGISLATIVE INTENT; COURT FEES (Senate added)

(a) The General Assembly intends that the new revenue generated in fiscal year 2016 from increased court fees be used as a funding source to fill judicial vacancies.

EXPLANATION: Savings that will be used to offset the FY 2016 budget gap.

EXPLANATION: HAC deleted and replaced with new Secs. E..204-E.204.9

EXPLANATION: SAC Deleted Secs. E.204.6 thru E.205.9; added new Secs. E.204.10 thru E.204.15.